ICANN Transcription
IGO Work Track
Monday, 28 June 2021 at 15:00 UTC

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JULIE BISLAND: Good morning, good afternoon, and good evening. Welcome to the IGO Work Track Call taking place on the 28th of June 2021 at 15:00 UTC. In the interest of time, there will be no roll call. Attendance will be taken by the Zoom room. If you're only on the telephone, could you please let yourself be known now?

Hearing no one, we have no apologies for today's call, and all members and alternates will be promoted to panelists for today's call meeting. Members and alternates replacing members, when using the chat, please select All Panelists and Attendees in order for everyone to see. Attendees will have view chat access only.

Alternates not replacing a member are required to rename their line by adding three Z's to the beginning of their name, and add in parenthesis "Alternate" at the end which means you are automatically pushed to the end of the queue. To rename in Zoom, hover over your name and click Rename.

Alternates are not allowed to engage in chat, apart from private chats, or use any other Zoom room functionalities such as raising hands or agreeing and disagreeing.

As a reminder, the Alternate Assignment must be formalized by way of a Google assignment form. The link is available in all meeting invite e-mails towards the bottom.

Statements of Interest must be kept up to date. If anyone has any updates to share, please raise your hand or speak up now. Seeing no one, if you do need assistance updating your Statements of Interest], please e-mail the GNSO secretariat. All documentation and information can be found on the IGO Work Track Wiki space.

Recordings will be posted on the public Wiki space shortly after the end of the call. Remember, please, to state your name before speaking. And as a reminder, those who take part in ICANN multistakeholder process are to comply with the Expected Standards of Behavior.

Thank you, and over to our chair, Chris Disspain. You can begin, Chris.

CHRIS DISSPAIN: Thank you, Julie. Hello, everyone. Good morning, good afternoon, and good evening. Welcome to the whatever number call it is. Thank you all for making the effort to be here. It is appreciated. Where we left off at the end of our last call last week was that we were looking at Option B which is currently on the screen, and we left with some questions. Basically, is it feasible to go further than the current document in adding some additional guidelines whilst

allowing for the use arbitration still to be an effective replacement for the registrant's day in court.

We had a discussion about whether we should be providing additional guidelines or whether the broad-brush ones that we put in there at the moment are enough.

And also, we had a suggestion from Jeff that possibly one way of dealing with the jurisdictional issue would be for the IGO to consent to the arbitration for the use of the law of the jurisdiction of the registrar or the registrant. And in fact, to some extent, that suggestion's been captured by the additional bullet point which appears in pink at the bottom of the page for discussion.

And we agreed that we would come back today and discuss that, and we'll also look at Option A which is the tentative super panel. I just want to say thank you to Paul for having put some additional text and done some work, it looks like, at the end of last week on Option A. And when we come to that, I'll get you, Paul, to talk about what it is that you've done.

But it seems to me that the essence for us is this. If we can agree a setup for Option B, for arbitration, and we can reach the situation where we believe we could have the same setup with a super panel, the question becomes whether the fact of having it in an independent arbitrage body rather than as an appeal under the UDRP using WIPO is what we want.

So that's where we got to. The goal for today, as I said, is to try to nail down Option B and to discuss Option A. Before we start that, Berry, would you be kind enough to just give us an overview of

timing. We do not have a call next week, it being the 5th of July, which I believe is a holiday. So what is our timing? When do we need to have our interim report ready by, just to remind everybody, please?

BERRY COBB: Thank you, Chris. According to the project plan, we need to submit the initial report for public comment, I believe it's actually tagged as the 3rd of August. So that gives us, absent the fifth of July week, we'll have eight potential calls available to us, or roughly seven and a half business weeks to get to an initial report that everybody agrees on for publication. That eighth call, which could occur on August 30 if we absolutely need it, but preferably we would conclude by the 23rd of August to wrap up any last-minute changes to the initial report.

In terms of duration for the public comment period, that would be typically 40 days which is the initial part, depending on other activities. We could extend that out a little bit further by an additional business week if we need it.

CHRIS DISSPAIN: Berry, that's great. Thank you. There's a lot of information there. What is the date that we need to have this initial report ready by?

BERRY COBB: Preferably the 23rd of August, and that [inaudible].

CHRIS DISSPAIN: Okay, the 23rd of August. Right. Okay, no problem.

BERRY COBB: The formal date is [inaudible].

CHRIS DISSPAIN: [inaudible]. Yes?

BERRY COBB: Wait a minute. I'm sorry, I'm looking at my wrong calendar.

CHRIS DISSPAIN: Yes. That sounded a bit odd to me. It's earlier than that.

BERRY COBB: Yes. It's way earlier than that. My bad.

CHRIS DISSPAIN: That's okay.

BERRY COBB: I'm thinking [it's a different] working group. So forget everything I just said.

CHRIS DISSPAIN: Well, let's just make this a [inaudible] working group and then we've got more time.

BERRY COBB: So we have until the 3rd of August to publish the initial report. That leaves us the 12th, 19th, and 26th to have our meetings through the month of July since we're taking July 5th off. If we have to, we also have August 2nd, which is the day before the date we wouldn't publish the initial report.

CHRIS DISSPAIN: Right. Thank you.

BERRY COBB: My bad. Thank you.

CHRIS DISSPAIN: Super. No problem at all. So, that's fine. At the risk of taking up too much time, I think it's important. We also need to have a discussion, do we not, about whether we are just going to put out an initial report, rather, that just deals with all the things that we've said here and then says—and I'll come to your question in a second, Jeff—"This is our proposed solution to the Recommendation 5 issue, which is what we're scoped to deal with."

Or whether we should actually be talking to the GNSO Council first and saying, "This our proposed solution, but you may get pushback from the community that says that this is outside of the scope." That's the first point.

The second point is, of course, whether we can in fact publish it ourselves because we are a work track that is supposed to report in to a working group or a PDP that doesn't exist anymore. So there is a sort of GNSO Council principal issue there.

Two things. Jeff, your comment in the chat is, “Can we publish the initial report since that may be during ICANN's public comment moratorium?” And, yes. Paul, I can see your hand. I’ll get to in a second.

Mary, why don't you talk about the moratorium for those who don't know about it and tell us whether you think we can publish or not.

MARY WONG: Thanks, Chris. Hi, everybody. So, just really quickly, because of the transition to the new public comment platform which is going to be part of ICANN Org’s Information Transparency Initiative, or ITI, there’s going to be a pause in public comment proceedings for about a month between late July and late August.

So what this means is that while we can't formally start the clock on a public comment proceeding during that time because of the migration, there's really nothing to stop the work track, the GNSO Council, anyone from circulating the report if it’s ready, saying, “We plan to start the public comment proceeding on date X. But ahead of time, here's something for your review so that you can get in your comments in a timely fashion.”

CHRIS DISSPAIN: Thank you, Mary. And with great respect to Berry's project plan or alternatively, given that it can't be open for public comment, we could—if we needed to—go to the GNSO and say, "Since this can't go out for public comment, we're going to take more time to work on it." But we don't need to have a discussion about that now. I'm just suggesting that it might be open to us. Paul, go ahead.

PAUL MCGRADY: Thanks. Another thing to think about in terms of timing, since we have a very short time frame, which is good, is that it really gives us [inaudible] to resist also doing implementation. This is policy. And the way that it used to be back in the day is that policy was high level and implementation [inaudible].

So one way to speed up this process is to keep doing what we're doing and just saying, "When we identify something that's going to take months …" If it's going to take months to work out the details, I [believe] [inaudible] [implementation] and not policy. Thanks.

CHRIS DISSPAIN: Thank you, Paul. We're struggling to hear you. I got the gist of that, which is that we should, given that we're on to the short timeframe, we should resist getting into the implementation stuff. If there's something that we think is going to take a long time but we've dealt with a high-level piece, we should shift that to implementation, which is a point well-made and well taken, certainly by me.

Just so you know, Paul, if you're going to speak again—which I expect you are—you might need to dial in because of your choppy connection. You've got a choppy connection again. Thanks, Paul.

Mary, would you be kind enough just to briefly address the issue of whether we can actually put out a report or not—given our status, whether it is actually the GNSO that has to put it out?

MARY WONG: That's a good question, Chris. I think the distinction here is between the work track circulating your report saying, "Here's what we're thinking and there will be a public comment proceeding at whatever date" and it being a formal document that is the final one that's going out for public comment. It may end being the same document, but for the ladder you would certainly need some kind of authorization from the GNSO Council given that it's the chartering body for this work.

CHRIS DISSPAIN: And we're not an official working group or a PDP. Right?

MARY WONG: Correct. And this work track was originally set up within the framework of the Rights Protection Mechanisms Working Group which has since completed its Phase 1 work. So it's basically a procedural issue to [sort out] the GNSO Council, even if the document ends up being the same one. It's just a matter of framing and being clear who's sending it for what purpose.

CHRIS DISSPAIN: Fine. So, John doesn't seem to be on the call at the moment, but what I'm going to do is get … John and I will reach out to the Council and just say, "Look, we may be getting to a point where we can produce an initial report. What would you like us to do with it?" because it's a matter for them to decide, I think. And we can do that. Let's make a note, Mary and Stephen and Berry, to do that this week, please, so that we are clear what we are doing and the way forward.

Kavouss, please go ahead.

KAVOUSS ARASTEH: Yes. Good morning, good afternoon, good evening. May you please allow me to slightly compliment what you said? Instead of asking the GNSO, "What do you like we do," We say that it is the opinion of the group that GNSO is invited to authorize the publication of this initial report. But not saying, "What would you like to do?" No, no. that puts them side, if everybody in your group agrees.

That's saying that now we are at the point that we could publish something and saying, "Would you kindly authorize us?" No double we could not do it ourselves without the authorization, on one hand. But on the other hand, it is bad enough to push too many formalities because that may delay the process. Thank you.

CHRIS DISSPAIN: I appreciate that input, Kavouss. Thank you very much.

Okay, unless there are any other comments or questions on the logistics and the timing, which there do not currently appear to be, let us move on and have a look, again, at Option B and consider whether or not we can settle on what is here as a proposal, were we to agree that arbitration is the way forward.

It is up on the screen. I'll just go through it very briefly, and then we'll be open for comments. I can see that people have been making the suggested changes, which is great. Thank you for that.

So the first bullet point says "In communicating a UDRP or a URS panel determination"—just for the sake of this for the moment, could we square bracket the URS stuff? Just because I want us to come back and talk about that separately, to check that we're not running into any challenges. I'm not sure that we are, but it is a slightly different system, so I just want to make sure. So if we could, just square bracket the URS stuff, that would be cool.

"—where the complainant is an IGO Complainant, the UDRP provider shall that the respondent indicates whether they agree that any review of the panel determination will be conducted via binding arbitration."

So you'll recall that what we talked about last time around was that once the UDRP processes complete, and on the assumption that we're talking at the moment that the registrant has lost, the registrant still has the right to go to court. But they will be asked at this stage if they would prefer or if they would be prepared to agree to a second hearing, a final determination, if you will, by binding arbitration.

Then the second bullet point is merely logistics.

And then number three. “If the provider receives an affirmative response from the registrant within a period of time, it will inform both the parties and the registrar. The registrar will stay the implementation of the UDRP decision until it has received official documentation concerning the outcome of the arbitration or other satisfactory evidence.”

And then we've got here in brackets, in blue here, “including that the registrant did not wish to invoke any right to appeal.” I’m not sure who put that in and I’m not sure what that's intended to cover. Could whoever put that in perhaps speak to that? Whoever the anonymous hedgehog might be. Brian, go ahead.

BRIAN BECKHAM: Yeah. Can you hear me?

CHRIS DISSPAIN: Yes, we can hear you well.

BRIAN BECKHAM: Great, thanks. Hi, Chris. Hi, everyone. Apologies that it appears anonymous. I was signed in when I made this suggestion. But it was more of a procedural clarification that if we're talking about staying the implementation, if there's a choice to go down that arbitration or appeals fork in the road, obviously the corollary to that is that if both of the parties agreed—or I should say if neither of the parties wished to appeal—then of course there would be no

further process, no need to delay the implementation of that decision.

Sorry, if that language wasn't clear. And apologies. I made a few suggestions on the fly as we got started. I hadn't seen that there were changes. I know we had discussed on the prior call, but I hadn't—until just earlier today—seen the specific changes that have been made. So, apologies for the late edition.

CHRIS DISSPAIN: Thank you, Brian. The reason it's confusing me is because this paragraph is written on the basis that the UDRP provider receives an affirmative responses from the registrant that they are prepared to go to arbitration. So on that basis, I'm not sure where the relevance of "did not wish to invoke any right to appeal" is. That sounds like a more general point rather than a specific to this particular instance.

I don't want to get stuck into the detail of it, but I'm just not sure that it fits because, as I said, they've already said that they … That may well be right. The language may be in the wrong spot, so perhaps we could just make a note of that and come back to it.

Then we go to the next bullet point that's not crossed out which is that "The registrant shall not be permitted to transfer the domain name." That's sort of a standard thing.

Then we have some text that I think, to a degree, builds on the suggestion that Jeff made towards the end of our call. And Jeff, I'm going to ask you to speak to that in a second, if you will.

It says “The arbitration will be conducted in accordance with the law applicable in either the jurisdiction where the relevant registrar’s principal office is located or the jurisdiction where the respondent is resident (as agreed by the IGO Complainant when submitting its Complaint or as determined by the arbitral panel).”

So, Jeff, it was your suggestion that it would go some way to assisting in replacing the jurisdictional point if we replaced it with a choice of law point, should there be an arbitration. Jeff, do you want to talk to that?

JEFF NEUMAN: Sure. Yeah, so the option I had wanted was the first one which says “as agreed by the IGO Complainant when submitting its Complaint” and not the one that was determined by the arbitral panel. I think we discussed this on the last call and some other calls, and I think Brian also was talking about this issue. When you do an arbitration, although they do it either under certain, like a contract—if there's a breach of contract or a judicial-type determination according to some law—if you're going to have to have some area of law on this because it's not really a breach of contract-type claim you might as well do something similar to what the jurisdiction is in the current UDRP.

So that's it. It's just, it's something that would use a law that is familiar to either the registrar or the registrant. So, yeah, there you go.

CHRIS DISSPAIN: Thank you, Jeff. That certainly makes sense to me. But let's see. David, please go ahead. And then Brian. David, you have the floor.

DAVID SATOLA: Thank you, Chris. Good morning, good afternoon, and good evening, everyone. I hope you can hear me. I would have to run this by our Privileges and Immunities people. I know in our other commercial arrangements where we do provide for arbitration, we usually choose a law for the purposes of the arbitration that has good contract and predictable contract resolution provisions—New York, England, and Wales, something like that.

I don't know that, apart from the privileges and immunities issue, that we'd want to agree to the law, the jurisdiction of the registrant. I mean, if it's some obscure jurisdiction where we don't know the predictability of how contracts are interpreted and enforced, I don't think it's in anyone's interest.

I understand the ethos behind the provision to provide additional certainty as to which law would apply in the arbitration. I'm just not sure that it doesn't also open up some unpredictable responses as well. Over, thank you.

CHRIS DISSPAIN: Thank you, David. Brian, then Jeff, then Paul. Brian, go ahead.

BRIAN BECKHAM: Yeah, thanks. I was going to say something very similar to David which is based on my experience working with our legal counsel. I think this may leave things a little more open than normal. Particularly, there could be not only procedural but substantive questions that would arise from this in terms of the unknown of the jurisdiction of the registrar's principal office or the registrant's location. So this would be something that … My gut reaction would be that this might be problematic from an IGO perspective.

And, again, I wanted to just recall, as we had on the last call, I understand that a number of folks here on the call may be familiar with trademark-oriented legislation in the United States under the ACPA, but we're trying to come up with a global system that's accessible and understandable for people around the world, both registrants and IGOs [inaudible].

JULIE BISLAND: Hey, Brian. We've lost your audio.

CHRIS DISSPAIN: We've lost Brian. No, Brian, we can't hear you. Your audio is completely gone. There was just a loud background noise and then you disappeared. We'll come back to you when you can reconnect or whatever.

Jeff, go ahead.

JEFF NEUMAN: Brian, it almost sounded like your microphone shorted. I don't know if that's what happened, but that's kind of like the sound. Anyway, sorry.

CHRIS DISSPAIN: Electrical advice from Jeff Neuman today. Thank you, Jeff.

JEFF NEUMAN: Yes. I understand David and Brian's concern. I mean, this is what everyone else has to deal with when they agree to a UDRP. Right? So I understand it's not … There's a lack of certainty, but I think it puts IGOs in the same position as every other party and trademark owner that has it.

But at the end of the day, I'd be fine with either that provision or something where we know that there are laws that have redress. But I don't want to be too U.S centric because I think that's not the right thing necessarily to do either. But from the point of view of someone who's litigated in the U.S. on these issues, it is a different standard than the UDRP. And so I think that if registrants are going to be giving up, so to speak, their ability to have this substantively decided in a U.S. court which has favorable law, than the registrant should have a similar standard in an arbitration. Right? It should be a substitute—or an equal substitute. Thanks.

CHRIS DISSPAIN: Okay. Paul, I'm going to come to you in a second. But, Brian, did you want to just finish off what you were saying before I go to Paul?

BRIAN BECKHAM: Yes. Thanks, Chris. Just to check. You can hear me now?

CHRIS DISSPAIN: Yep. Can hear you fine.

BRIAN BECKHAM: Great. If it's okay, it may be useful from Paul in particular because I know [he had] experience with [inaudible] litigation [in the] U.S. And then I can come back.

CHRIS DISSPAIN: Not a problem. Let's go to Paul. Paul, go ahead, please.

PAUL MCGRADY: Hi, all. Thanks, Chris. I guess, as a practical matter, why don't we not solve this—and I'm going to put a suggestion into the chat. But basically, why don't we just say, at the time of agreement to arbitrate, that the parties themselves agree under which body of law the dispute will be handled. And if the parties can agree at that time—one outfits wants Belgian law and one outfit wants Panama law—then there's no arbitration. Right?

And let's just get this out of our purview and just send it to the parties to either agree or not to agree at the start of all this. Thanks.

CHRIS DISSPAIN: Thank you, Paul. That may work. Jay, I'll come to you in a second. And Brian, I'll come back to us well. Oh, and Susan.

I just want to insert myself in here for a second to just say this. I'm not arguing one way or the other, but I would ask us to remember and to consider that this is an ICANN process. And I think we need to be a little careful that we are not seen to be favoring jurisdictions, one jurisdiction over another.

At the end of the day, the current process as I understand it is that if a party decides to go to court, they are entitled to go to court in their own jurisdiction or the jurisdiction of the registrar. They are not, as far as I'm aware, entitled to pick a random jurisdiction.

As I said, I'm not speaking one way or the other. I completely understand the challenges and the problems, but I do think there is, effectively, a third party here which is the overarching policy. And we need to be careful that that is respectful of the jurisdictions of our registrants.

That said, Brian, did you want to respond having heard Paul, or do you want to wait for Jay and Susan to speak?

BRIAN BECKHAM: Yeah, why not? Jay and Susan, please go ahead.

CHRIS DISSPAIN: Okay, fine. Jay, over to you. And then Susan.

JAY CHAPMAN: Thanks, Chris. Can you hear me okay?

CHRIS DISSPAIN: Yep. Sure can.

JAY CHAPMAN: Okay, thanks. Hi, everyone. I just want to make the point here, I guess, to whatever extent some of the discussions about how the choice of law or whatever could be problematic. Ultimately, what we're talking about here, as I see it, is just trying to make sure an IGO doesn't have to be in a courtroom. And through this arbitration idea, we're doing that. Everything else, I believe, should fall right in line with the typical UDRP process or a post-UDRP process.

So the idea that we're either going to come up with some sort of specific jurisdictions that are only okay by IGOs or that—and I'm not sure I even understand what Paul was saying about, look, if they can't agree to a choice of law, then there's no arbitration. Well, what then? I mean, those things just seem kind of confusing to me.

CHRIS DISSPAIN: You would still be able to go to court, I think, is the answer to that one.

JAY CHAPMAN: But is it? Because the idea is that, once again, we're kind of forcing registrants' hands because IGOs are sitting from the

position of, “You're not going to get anywhere in court, so you might as well go with this.”

Now we're forcing registrants’ hands again to say, “Look, if you don't agree with us as the IGO, we're not having an arbitration.” I mean, this just doesn't make much sense in terms of just kind of the way things work in a traditional—I say traditional—just a typical post-UDRP situation. That's what I’m trying to see that we can be consistent with. So from that standpoint, this to me just seems really, really simple.

And to be talking about some of these other ideas, I don't know. It just doesn't make a lot of sense. I think a registrant, if they lose, they go to court. If they're a Florida registrant, they're going to go to a Florida court. They're probably going to get a Florida law applied. I mean that's just the way … In my understanding, that's the way it works.

So I think we should do our best to not … We're already adjusting, or we're considering the idea of adjusting things pretty significantly here, getting rid of the mutual jurisdiction provisions and removing the court portion of this. So if we're going to do that, I think it's a bridge too far to consider [doing] that on some of these other issues like choices of law and stuff like that. Thank you.

CHRIS DISSPAIN: Thank you, Jay. Your point is appreciated. Susan.

SUSAN ANTHONY: Whenever I listen to Jay speak, I'm always reminded of the famous actor Matthew McConaughey who, in my view, could read the telephone book and I would be enraptured.

CHRIS DISSPAIN: I hope you're listening to that, Jay. I'm sure that's not why you put your hand, though, was it, Susan?

SUSAN ANTHONY: No, not at all together. When I heard Paul's comment that if the parties could not agree as to the choice of law, then the possibility of arbitration would be at an end, I was not comfortable with that conclusion. I think that the answer is one of two things, and I'm glad that Brian will be speaking after me because he can clarify whether my thinking is askew.

I was always under the impression where arbitration was agreed to by parties, but their relationship was not the subject of a contract. It is, in fact, a dispute and they have agreed that, instead of going to a court, they will start with arbitration; that each side would make their arguments to the arbitrator, or arbiter, to decide which law will apply.

Either that or there must be a standard operating procedure, I would think, in the World Intellectual Property Organization and other international providers of arbitration that could provide us some guidance here. Because while most arbitrations probably arise out of business relationships and perceived breaches of contract, there are some that do not. And so what do you do in those circumstances? What law should apply?

And let's see. I see Jeff is asking me a question, but I unfortunately haven't been able to follow the chat. So I'll pass the baton over to Brian while I look at the chat and see Jeff's question.

CHRIS DISSPAIN: Thank you, Susan. Brian, go ahead.

BRIAN BECKHAM: Thanks, everyone. I still admit that I'm struggling with the option that Jay and Jeff have outlined. It strikes me as U.S. centric and really failing the test of creating policy that works on a global scale.

I'm just thinking out loud in terms of a way through here because I do appreciate that we're against a little bit of a clock in terms of getting a report and feedback and delivering this, ultimately, in terms of hopefully a final report that works for everyone. So I'm just wondering and thinking out loud if there would be options. I think that leaving this open potentially presents problems for IGOs in terms of privileges and immunities. Now, possibly, we can carve that out somehow, but that may still be not entirely desirable for everyone.

I wonder if it could be, kind of picking up on what Susan said, that the parties could brief the arbitrator or arbitrators on the choice of law that they would find applicable, and in the absence of either an agreement between the parties … Because certainly that, in arbitration, is kind of a standard, that the parties could agree on things like the substantive and procedural law, the place of

jurisdiction, the number and composition of the arbitrators, the arbitrators themselves.

So, in the absence of party agreements, that could be left to the discretion of the arbitrator or there could be, for example, a fallback. And I confess, again, a little bit of not completely understanding the reluctance to use the UDRP framework as some sort of a guide for these arbitral appeals, given that there is a substantial body of case law that's been developed over the years. So, just thinking of some potential options for forks in the road and kind of a fallback position, if you will, if that didn't work. Thanks.

CHRIS DISSPAIN: Thank you, Brian. Susa, Jeff, and then me. Susan.

SUSAN ANTHONY: I'll pass for the moment.

CHRIS DISSPAIN: Jeff.

JEFF NEUMAN: Oh, can I pass? No, I'm kidding. So, a couple things. Just to be clear on my proposal, today when any trademark owner files a UDRP complaint, as we know, they basically have to, in their complaint, select—from the mutual jurisdiction clause—that if there's any dispute that arises as a result of this UDRP, they'd have to, today, consent to the jurisdiction. And I'll put in

parentheses “and the law” of either the registrant or the registrar. Period. Everyone, every trademark owner, has to do that today.

What we're saying in this whole thing, what we've been discussing is that the IGOs feel like they can I use the UDRP because that would they have jurisdictional immunity and they cannot waive that jurisdictional immunity. So the whole premise is that we are not forcing IGOs to agree to be in a jurisdiction, but that leaves the choice of law question still open.

And so the proposal is that on the choice of law—it's not U.S. centric—it's basically that the complainant—so in this case the IGO—will either choose the law of where the registrant is or where the registrar is. Again, same thing every single trademark owner and everyone else that files a UDRP action has to do. So we're not treating them any differently. It's not U.S. centric. Otherwise, the whole UDRP mutual jurisdiction clause is U.S. centric. So that's the proposal. It’s the same as everybody else.

And then the other point is that why we can't just leave it completely open is that there are some jurisdictions around the world that do not recognize a cause of action for a registrant that loses a UDRP. And there are a few I could name that do not. Australia is actually one of the countries that does not recognize a cause of action for registrant that has lost a UDRP action. So we can't just leave this in the complete open. Thank you.

CHRIS DISSPAIN: So, Jeff I just want to attest one thing that you've just said. And Susan, I’m not sure whether you want to come back and speak

now. You're welcome to do. But if not, perhaps your hand should be down.

Jeff, you've just said you can't leave it open because there are some jurisdictions where there's no right of appeal. So that would mean that if I was the registrant and I was in Australia and my registrar was in Australia, how would that work?

JEFF NEUMAN: Yeah, unfortunately the UDRP hasn't solved that one. So I do recognize that what ends up happening, just as a practical matter, is that a lot of them file in the United States if it's, let's say, a .com because that's where the registry is located and they can try to pigeonhole and in rem jurisdiction. It is a problem currently, but it's a problem for all UDRPs.

CHRIS DISSPAIN: It's not a problem that's unique to this situation, so I get that.

JEFF NEUMAN: Exactly.

CHRIS DISSPAIN: Yes. So, Paul, I'll come to you in a second. Having put myself in queue, I just wanted to say a couple of things. So look, it strikes me that we set off on a path the other day, a couple weeks ago of saying what we're asking the registrant to give up is in essence is their absolute … We're saying they can go to court if they want to do so, but the IGO does not have to agree to a jurisdiction

because they're not bound by that. And if the registrant does want to go to court, that's their risk. They can do it and the IGO can turn up and argue that they're not bound by the jurisdiction.

So given that that's the situation we're asking registrants to wear, what is the quid pro quo for that? And what we agreed was that the registrant should still be able to have their day in court, but that that day in court could not be in a court. It would have to be in some form of arbitration or super panel.

And Brian, I take your point on the super panel, but we will get there. Maybe not today, judging by the time. But the point is that some people have expressed a concern about the same group of people effectively hearing a hearing on appeal. But we'll get back to that.

So, given that's the case and given that we agree that the registrant needs to still have their day in court, it seems to me quite a big step from there to say, "Oh, and by the way you now can't have your jurisdiction because you happen to be in a jurisdiction that IGOs don't like"—or anyone doesn't like, for that matter.

And as Jeff has quite rightly said, the current situation is exactly that. I have one question and then I'm going to go to Paul. And perhaps, Paul, you can answer the question for me when you speak. And that is, I've heard people talking about choosing. Who chooses the jurisdiction between the registrar's jurisdiction or the registrant's jurisdiction? Who makes that decision? Is it at the beginning because you've agreed to a mutual jurisdiction? Is it effectively the non-registrant who makes that choice?

And if it's the complainant, then it seems to me that where we would be is that the IGO in this case, as the complainant, would be saying, “Mr. Registrant, you’ve said you're prepared to go to arbitration. The choices for the arbitration are your law or the law of the registrar I choose. Your law or I choose the law of the registrar.” So there is still an element of choice for the IGO. It's just that it is no more wide than it currently is.

Paul, go ahead.

PAUL MCGRADY: Thanks. But that's not the reality on the ground in the UDRP. Right? So the reality on the ground in the UDRP is that the respondent narrows the choices of where the law is, and those choices are where the respondent is and where the registrar is. Neither which the complainant has any control over. And then the complainant has to choose one of those two places, but only in relationship to having a complaint filed in time to stay the enforcement of a UDRP decision if the respondent loses.

But there are no global restrictions on either the complainant or the respondent if they want to file anywhere else for whatever reason. Right? And so, for example, if I were a respondent, maybe the choice of law where I’m at is not helpful. Somebody raised Australia, for example. And so I may want to file some somewhere else.

So for example, if I were an Australian and I had an Australian registrar, under the belief that they don't have a law that will help me, I might file in the U.S. And the U.S. court is more than

capable of ordering a domain name not to be transferred if it somehow resides in the U.S., either at the registry or wherever it is. So it's not like all the choices have been narrowed.

And so if we apply a narrowing that has to do with the UDRP to a narrowing that has to do with the arbitration, what we're trying to do is put our thumb one way or the other on the arbitration where our thumb wouldn't be on the scale if we were just leaving this to the courts without ICANN's involvement at all.

And so that's why I think that we should leave this to the parties and step away from this mess. And if the parties can't agree what law they want to be applied, them no arbitration. Great. And there is pressure on both. It's not just pressure on one because the IGO is not always guaranteed that their immunities will be recognized by wherever the respondent hauls them into. Thanks.

CHRIS DISSPAIN: Sure, but respectfully, Paul, a couple of things. First of all, if precedent has clearly been set in a court that the registrant could go to, if precedent has clearly been set that the IGO is not subject to the jurisdiction, then they know that. Right? So they would be in a position to say, "If you choose to go to court, we know [it's become] 100% certain we know that there's three years' worth of precedent that shows that we will win [and say] that we're not subject to the jurisdiction. So therefore, we want to do the arbitration in Azerbaijan." I wasn't suggesting that anyone here [inaudible] Azerbaijan. I apologize. It wasn't intended to be an insult.

So, I mean, I'm concerned that it works both ways, and I'm concerned to ensure that we don't take a step … Every step we take in further changes takes us further towards the possibility of us being so far out of scope that we just get knocked back and being told that none of these solutions that we've worked so hard to come to are viable because they're not acceptable. So I'm just cautioning. We just need to be a little bit careful that we don't overdo it.

Jeff.

JEFF NEUMAN: Yeah, so thanks. I was following Paul and then I lost him. Paul, what you're suggesting, and I agree with you that a registrant can file anywhere they want, but they risked not having personal jurisdiction over the trademark owner. And therefore they're only guaranteed—I'll put "guaranteed" in quotes—to have jurisdiction in the location of the mutual jurisdiction clause. I agree with you.

But then I lost you because it's really not the parties that decide what law applies. It's really the registrant that decides what law applies, if in fact there is jurisdiction over the trademark owner. Right? So it's not that the parties agree on the choice of law. That doesn't happen in real life.

I just filed the case a couple weeks ago in Florida. If the Florida courts want to exert jurisdiction, or if there's personal jurisdiction there, they're going to apply Florida law. Period. So I don't get how you're saying it's mutually agreed by the parties. It's really chosen by the registrant. Thanks.

CHRIS DISSPAIN: Thank you, Jeff.

PAUL MCGRADY: Chris, I'm happy to respond to that [inaudible].

CHRIS DISSPAIN: Yeah. You do that and then I'll respond to Brian's question in the chat. Go ahead, Paul.

PAUL MCGRADY: Sure. Thanks, Jeff. Good question. And I would say to that, again, you're talking about a situation where a losing respondent files in the court in one of the two jurisdictions that the losing respondent has backed the complainant into agreeing to at the beginning of the UDRP process.

That's a way something like this could go to court. Other ways something like this could go to court is for a losing respondent or a losing complainant to simply file some other place and hope that they can get a court to find some way to interfere with the implementation of the UDRP decision. So the UDRP makes it very clear that from beginning to end, at any time, the UDRP is not interfering with either party's ability to go to court, and there are no limitations on where such parties can go to court.

I have a similar concern—

CHRIS DISSPAIN: That is still the case, Paul. That's still the case. Isn't it?

PAUL MCGRADY: Right.

CHRIS DISSPAIN: That's still the case. So until you agree to go to binding arbitration, that is still the case in what we're proposing.

PAUL MCGRADY: Right. And so my concern … Chris, I have a concern about overreach too, but I seem to be viewing it from the other side of the coin which is that the arbitration is meant to replace court action generally. And the more UDRP principles we bake into it, rather than being what it is, the more that it's not a replacement for court action it really becomes an appeals mechanism.

And I guess I wasn't clear that what we're talking about is an appeals mechanism. What I thought we were talking about with arbitration is a method for the dispute to be worked out between a losing IGO or a losing respondent outside of the court infrastructure. In other words as a substitute for courts, generally.

CHRIS DISSPAIN: That is exactly what we're talking about.

PAUL MCGRADY: So I'll be quiet now. Thanks.

CHRIS DISSPAIN: Well, no, no, no. Wait, wait, wait. That is what we're talking about. What are you suggesting that we might be talking about? You've lost me. We are absolutely saying, subject to an agreement to be bound by it at the time that we've talked about, this the replacement for going to court.

PAUL MCGRADY: Right. In all the ways presumably that one can go to court. Right? I mean, if we're talking about only a substitution for going to court for whatever a losing respondent might do and the binding arbitration is not binding in the sense that it's only for the respondent's reaction to losing a UDRP, then I don't know how that works.

But if we are scooping up all the rights to go to court everywhere in the world, then for us to be baking in the jurisdiction of the losing respondent—which by the way they got to pick, they got to narrow it down from 250-some to one or two—then we're putting the thumb on the scale of the losing respondent by baking that into our binding arbitration because the IGO is giving up whatever rights it may have in other jurisdictions to go to court which the UDRP doesn't prohibit.

CHRIS DISSPAIN: So I understand that, but I'm not sure what the relevance … So just to keep it simple for my simple brain. I'm the registrant. I lose. I have an option now to appeal, for want of a better way of putting

it, to have it reheard by an arbitration panel for a binding result. I agree that that is a binding result.

So as we discussed weeks ago, whilst I could still go to court after that and say I don't, the court's going to say, "But you agreed to binding arbitration." So whilst there might be some courts that throw it out, generally speaking the whole point about arbitration and agreeing to binding arbitration is that it's accepted around the world as being exactly that. Binding.

So that is what I've agreed to do. If I agree to do it, we go to arbitration. Clearly the arbitration needs to be heard according to a law. If you say that the parties can agree [inaudible] any law. So I get to suggest the law and the IGO gets to suggest the law. And then I don't like theirs. They don't like mine. And then we can't agree on a third one. Then there is no binding arbitration, which I think is what you're saying.

Then that the registrant—assuming the registrant has lost—back to the position where they can, if they choose to, go to a court of their own jurisdiction. And the IGO can turn up and argue that they're not subject to the jurisdiction.

Have I got that right so far?

PAUL MCGRADY: Yes.

CHRIS DISSPAIN: That's correct, okay. So the problem with that is, does that not put a level of power in the hands of the winner of the UDRP? And I know this is kind of like “conspiracy theories are us,” but if you've got a situation where the IGO wins, they know that the jurisdiction that the registrant can use … You’re saying the registrant can go anywhere. Is that your point? That the registrant can go to any jurisdiction and have it heard as long as they've got a [right to] action? Is that where I’m getting lost?

PAUL MCGRADY: Either party can go to any jurisdiction anywhere for any court that will hear it. Right? Not everybody has rights to go to every court in the world, but right now there's no limitation on where any party can go.

CHRIS DISSPAIN: So what you're saying is that if two parties can’t agree to go to arbitration because they can’t agree on a law, and if the registrant believes that the jurisdiction that they are in and/or the jurisdiction that the registrar is in is likely to find that the IGO is not subject to their jurisdiction—because there is precedent for that—then they can go to another jurisdiction that they are not resident in, and that the registrar is not resident in, and take proceedings there. Is that what you're saying?

PAUL MCGRADY: If they can get the local court to exercise jurisdiction over it, yes. Now that won't automatically stay the implementation of the

UDRP, so there are inherent risks in that. But right now there's no prohibition against that.

CHRIS DISSPAIN: Sure. But what I don't understand is why we can't just accept that the current situation is that there is a small choice of law. And generally speaking, that's how it's dealt with. And that we're trying to do exactly the same thing here, which is to say we're trying to change as little as possible.

And Brian, that's the answer to your question about scope. As we've discussed all the way along, for this to stand any chance of being successful and getting through the GNSO Council, we need to change as little as possible. That's why you worked in the small group with Susan and Paul to not create new lists, but rather to make a small change that added an additional clause specifically for IGOs and so on and so on. So that's the scope point.

David, I can see your hand is up so let me defer to you for a while. David, go ahead, please.

DAVID SATOLA: Thank you, Chris. This refers to the issue that Paul raised. I actually thought that Paul's suggestion was a good one, that we could not try and resolve this here and leave it to the parties to resolve, but I appreciate that that results in some uncertainty for the process. I wouldn't necessarily say that if the parties fail to agree on a law for the arbitration that that's the end of the story.

Perhaps we could build in a default provision whereby we give the parties the freedom to determine the law that they want to govern their arbitration. If they fail to do so then either the law of X jurisdiction or Y jurisdiction apply, or we give the arbitrator the choice of two or three jurisdictions that have good contract law to apply. Over, thank you.

CHRIS DISSPAIN: Thank you, David. I appreciate that and I appreciate the spirit of trying to figure out a way through this. But it's it seems to me that, if I put myself in Jay's shoes for a moment as a registrant … And I want to say this has nothing to do with it being the U.S.. It just happens to be the easiest example to use.

If I'm in the U.S. and I'm registrant—and I know there's a history of the way that these things have been treated in the U.S. [A perfectly legitimate] precedent exists. It's real. And there are precedents that deal specifically with this particular issue that I've got with an IGO in respect to a different domain name. Surely I should be entitled to say, "I am prepared to agree to arbitration, but I want it to be under U.S. law because that's where I am."

I find that to be actually a far more logical argument than to say, "I should have the right to have the arbitration anywhere." And I equally think that it would be unfair for the other side to be able to say, "Well, I don't like your jurisdiction." I'm prepared to accept that there could be the alternative, as there is now—the registrar and the registrant.

But it seems to me that expecting a registrant to agree to arbitration in a jurisdiction that they may not know, whereas the IGO may have a vast amount of experience in different jurisdictions and know which jurisdiction is favorable and which one they would choose—strikes me as being a tad unfair.

Again, I stress that I'm speaking entirely for myself and I'm not seeking to push the debate in any direction, but I just wanted to say that it seems to me, personally, a point.

I am conscious that there's been a lot of chat in the chat, and I'm not entirely sure it's getting anywhere. But if it is, if somebody would like to draw a thread or a conclusion from it, I'd be grateful. I hadn't expected us to get sidetracked onto this.

David, is your hand still up for [a new] [inaudible] or is that an old hand?

DAVID SATOLA: It's a new hand.

CHRIS DISSPAIN: I apologize. Please carry on.

DAVID SATOLA: Yeah, thanks. Just in response to your question about the precedent. I think both parties would be interested in good precedent being brought. And I don't know—say if New York law was the default for the arbitration—that under New York law, that precedent from another jurisdiction wouldn't be allowed into an

arbitrary process. So let's not throw the baby out with the bathwater.

I also do want to remind the group that one of the things that we're trying to do here is reduce costs for people, for both parties, and having a certain number of name jurisdictions may help to reduce costs.

And also the fact that a long time ago, in a time far, far away, the IGOs had effectively agreed to give up the preventative rights for a curative right. So we're trying to work in good faith on curative rights, but we also want to keep our costs down.

And I had mentioned early in one of our calls in this process that the last time that we checked, there are something like 300 squatted domains that we were aware of. We deal with the priority ones, but we can't devote resources to all 300. So reserving costs is a big issue for us throughout this whole process of figuring out the curative rights and having …

While I appreciate what you say, Chris, about the IGOs being comfortable in a jurisdiction, I don't think it's unfair. We don't necessarily want to have the registrants be uncomfortable, as it were, but maybe some sort of mutual discomfort of jurisdictions and arbitration is actually strategically a good thing. It will keep people out of arbitration.

But I think some additional thought could be given to providing the kind of certainty to the parties. And I mentioned New York law a couple of times. There could be other jurisdictions that we might be happy to deal with. Over.

CHRIS DISSPAIN: Thank you, David. Brian, I'll come to you in a second. I do appreciate the point and I do think that there is something to be said for pain points at both ends. But I can think of quite a significant number of countries where the idea of having an arbitration under any form of U.S. law or New York law would be challenging, whether it's politically or culturally. And so I'm just concerned that we are again, as I said earlier, maybe considering taking a step too far.

Brian, go ahead.

BRIAN BECKHAM: Thanks, Chris. Thanks, everyone. It's a little tricky to track all this, but I'm just wondering, just to pick up on David's point and something Chris mentioned and the thread here. One thing, in terms of the potential pain or strategic choice, I just want to flag something that I feel like we're slightly overlooking here.

We're a small group of people here talking with knowledge about certain jurisdictions and the problem in front of us. And I take Jeff's word for it. I'm a little surprised, but I take Jeff's word that Australia wouldn't provide a cause of action here—for example, for a declaratory action of non-infringement.

But I think we wouldn't want to set up a situation where there's some registrant out there somewhere albeit they would be at this point in the process because they had been judged to be in bad faith. But nevertheless, in terms of due process, there may very well be a registrant out there in some jurisdiction—could be

Australia, could be somewhere else—where they've elected for a local registrar. So that effectively is the only potential court option open to them.

Of course, as Paul's reminded us, nothing stops parties from going to court. But we're talking about staying the implementation in this particular arbitral appeals fork in the road. So I just want to be mindful of the potential unfairness to that registrant.

And just to pick up on something that David said in terms of that New York is often a norm for arbitration. If there could be some way where rather than … I suggested earlier some sort of a fallback position on UDRP principles, but just thinking if a way out of this might be to say that there could be sort of a standard jurisdiction such as New York for choice of law procedural matters. And then it's up to the parties to brief the panel on the applicable substantive law. If an IGO wants to brief the panel and say, "We believe the law of France should apply, or UDRP jurisprudence should apply." If a registrant wants to say the law of the United States, the ACPA, or the law of whichever jurisdiction they consider appropriate. It wouldn't even have to be their home jurisdiction for that matter. Then they could brief the panel on that.

And then ultimately, just as we have in the UDRP today … I don't have the exact language in front of me, but there's sort of a catch-all clause that says the panel should render its decision in accordance with applicable provisions of law that it would deem applicable to the dispute.

So in other words, give the parties the option to get in front of the panel— the arbitrator, rather—the law that they think should apply.

Leave it to the arbitrator. I think at some level, we ought to invest some responsibility and discretion with the arbitrator. And they can take it from there. Thanks.

CHRIS DISSPAIN: Thank you, Brian. Good points. I mean, my only comment would be to say, yes, you're right, of course. You could have the parties argue that the right substantive law should be X or Y, but of course that moves, I would suggest, quite significantly away from David's previous point about saving costs. We're going to end up having lawyers briefing the arbitrators on all sorts of things. But nonetheless, a good point.

Kavouss, over to you.

KAVOUSS ARASTEH: Yes. Thank you very much. I have listened carefully to all discussions. Unfortunately, instead of finding a solution and narrowing down the problems, we're more complicating the situation. There are four different views expressed, four different directions. And there's little chance that we could narrow down the differences. Cost is one element. It's not the only element. There are other elements [inaudible], so we have to have a trade off with the costs and between others.

So I think we are not helping. Sorry, I may be pessimistic, but we are not helping. We are complicating more than before. We're mixing up the situation. We're going to the hybrid situation—court and arbitration. That doesn't seem to take us to a workable solution. Thank you.

CHRIS DISSPAIN: Thank you, Kavouss. Okay. So here's what I think we need to do. We have a two-week gap now, and I want us to gather on the 12th—or whatever day it is—and see if we can move towards finalizing some form of initial report. We're not going to be able to do that unless we do some work on the list. I think we have got, in principle, agreement close to—in principle, agreement—on quite a large number of points. And I think that we can probably work through the ones that we don't. And I think we can do that on the list.

And I'm going to ask, if I may, something very specific here which is that whilst I think Google documents are a wonderful thing and whilst it's wonderful to be able to draft and add things, it involves a significant discipline to everyone on this group to actually go and have a look to see what the situation is with the document. And it's very hard to have a discussion.

Whereas if you send an e-mail to the list that says, "Here are my thoughts on this," then it will stimulate discussion on the list. And I think that is what we need to be doing over the next 10 days or 12 days or so. Albeit that I know that some of those days will involve flag waving and fireworks and other celebrations for those in the U.S.

So I'm going to ask that the those of you who are uncomfortable with the … Paul, I know your position is … You're saying, "My suggested solution is that the parties make that choice themselves." And if you wouldn't mind just sending a note to the

list that sets out how you think, not in any great detail, but just in broad-brush terms, “This my suggested solution.”

Brian and others who have considered the idea of a different type of solution, we need to see what those suggestions are. It's not enough to simply say we're uncomfortable with the current suggested wording.

And those who are comfortable with the idea that—and I’m just going to use this as an example—if the registrant loses, that the jurisdiction is neither the registrant’s nor the registrar's, then you will be able to say that on the list.

I want us to try and knock this out. I’m conscious that we hear from a small number of voices—mine, obviously, but there's a reason for that—on these calls, all of whom are wise and have a great depth of experience. But we also have on this call representatives from At-Large and other areas who rarely speak. And that's perfectly fine, but I think it would be great to get a little bit more opinion and a little bit more input, rather than just having us lawyers bat to this ball between us constantly.

So we have an opportunity between now and the next meeting to have some real discussion on the list, not just proposing redrafts in the Google Docs, but actually having a discussion. And I really would appreciate it if we could do that.

Paul, if you send a note to the list. I’m conscious that I need to be a little careful. I could be responding to all sorts of things, and I want to be a little bit careful that I don't overstep the line as the chair. But if it's necessary in order to get the debate going for me

to be confrontational—not personally, but in argument terms—I will do so, so that we can actually start to coalesce around a couple of solutions. I appreciate that …

Yes, Brian, if people make updates to the Google Doc then they could drop a note to the list. But there's only a point in making an update to the document, in my view, if it's gone through a discussion and you've said, "I have some wording. Here is my suggested wording." And there's no reason why you couldn't put that in the chat as well. Just a thought.

We've got 10 minutes left and I don't really want to start a whole new discussion, but I want to just get clear. I want to see on the list the alternatives and the arguments in respect to the choice of law for arbitration. But it would also be good to see any comments or thoughts about the alternative proposal, which is the super panel proposal.

And on that, Paul, could I ask you to briefly just address what you tried to achieve by making these additions and changes to Option A—which you've bracketed as "super panel"—just so that we can get a feel for that and what you're thinking was? Would that be feasible?

PAUL MCGRADY: Yeah, Chris. Happy to. It looks like most of my changes may be further down because I'm only seeing a handful of the blue ink. Here we go, yeah.

CHRIS DISSPAIN: Yeah, it's on the … Keep going, keep going. A bit more, a bit more.

PAUL MCGRADY: Yep. That's good now.

CHRIS DISSPAIN: There we go. That's it, that's it.

PAUL MCGRADY: Perfect. So I basically decided that it didn't make any sense for me to make up an entire straw being proposal on my own since staff had captured the overwhelming majority of what it would hold. So, briefly, the blue stuff. I added in some additional powers that the UDRP and URS panelists did not have in order to make the appeals mechanism or the super panel more robust.

The first one is to allow for discovery mechanism including information on the various domain names under a respondent's name or in their account. This to further help improving one of the elements under the bad faith, which can find bad faith in a situation where a respondent has multiple domain names that belong to either that brand owner or other brand owners. This is, to a certain extent, more difficult to prove these days under privacy law, and so it's a good fix here.

The other thing is the ability to impose monetary sanctions on a party acting in bad faith within the appeals process. So, for example, somebody who registered a domain name to engage in

a phishing campaign and who simply filed the appeal to lengthen the time of the phishing campaign, or otherwise not cooperating with the proceedings. We don't want folks to have the ability just to abuse the appeals mechanism.

And I put in the ability to order that the loser of the appeals process pay for both the cost of the appeals panel as well as the filing attorney's fees for the prevailing party. I made this neutral on purpose. If an IGO—because we're speaking specifically of IGOs here—loses, and they should have lost in the initial one, and they choose to seek relief under this super panel and they lose again and really should have, at some point the IGO needs to get the message to knock it off—as does a losing respondent who should have lost and used a super panel.

And then, I think, lastly, "telephonic hearing and a right to serve discovery on the opposing party." And that makes reference to what I've already mentioned above.

So in other words, just some more due process stuff baked in. Thanks.

CHRIS DISSPAIN: Thank you. So with the exception of the monetary one, which I'll talk about in a second, they all seem to be attempts to beef up, to make it more court-like, to make it more equivalent to arbitration. If I've understood the intention of what you've tried to do.

And I would appreciate anyone who's in favor of Option A as opposed to going to binding arbitration—and I have to say I'm not

sure that there are that many there are, but it's open for discussion—to also comment on the list on those.

I personally wonder if your monetary sanctions thing isn't another step—quite a big step to take, but I'll leave that for discussion on the list. And thank you, again, for the work that you put into doing that.

Are there any final comments or questions or anything that anybody wants to cover?

John, I can see you're on the call. You will have missed the discussion at the beginning where we talked about logistics and said that you and I and Org staff will reach out to the Council this week to say that we are likely to be able to come up with some initial report and what are the logistics that they would like us to employ for getting that out. And Kavouss quite rightly said we should tell them we want to send it out rather than ask permission. So we can sort that out later in the week.

Has anyone else got any other comments or last things to say? Okay, we'll given that there are no hands, I am expecting to hear from a number of us on the list. Paul has already undertaken to put his piece together, and I really encourage others to do so. And let's hope that we can take the next 12-13 days to have vibrant and meaningful discussion the list so that when we meet again we can actually get very clear about what points we can we cannot agree on—in which case we can bracket them and say, "We're not sure yet"; this only an initial report, so it's perfectly okay to have things in there that we haven't agreed yet—but those that we can

and those that we can send out for public comment either before, after, or during the proposed moratorium.

With that, unless there are any final comments—seeing none—let's close the meeting and stop the recording. Thank you very much indeed, everybody.

[END OF TRANSCRIPT]