
ICANN Transcription

IGO Work Track

Monday, 12 April 2021 at 15:00 UTC

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TERRI AGNEW:

Good morning, good afternoon, and good evening and welcome to the IGO Work Track call taking place on the 12th of April, 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 identify yourselves now?

Hearing no one, we do have listed apologies from Ioana Stupariu from NCSG and no alternate has been put forward. All members and alternates will be promoted to panelists for today's call. Members and alternates replacing members when using chat, please select all panelists and attendees in order for everyone to see chat. Attendees will not have chat access, only view to the chat access. Alternates not replacing a member are required to rename their lines by adding three Zs at the beginning of your name, and at the end in parentheses, the

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word alternate 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 chat or use any other Zoom room functionalities such as raising hands, agreeing, or disagreeing.

As a reminder, the alternate assignment form must be formalized by the way of the Google link. The link is available in all meeting invites 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 or hearing no one, if you do need assistance, please email the GNSO secretariat. All documentation and information can be found on the IGO Work Track Wikispace. Recordings will be posted on the public Wikispace shortly after the end of the call. Please remember to state your name before speaking. As a reminder, those who take part in ICANN multi-stakeholder process are to comply with the expected standards of behavior. With this, I'll turn it back over to our chair, Chris Disspain, please begin.

CHRIS DISSPAIN:

Thank you, Terri. Good morning, good afternoon, and good evening everybody. Welcome to call Number 7 of the IGO Work Track. We're going to spend some time today discussing the three key issues which are listed under Item 3 in the agenda. But before we do that, we're going to have a chat with Barry who's going to take us through the work

plan project package and important dates. At least, I assume it's going to be, Berry. Over to you.

BERRY COBB:

Thank you, Chris. So, for the veterans here, this isn't going to be new to you but this working group or Work Track has attracted others from the community that may not be familiar with what we're doing here. What I'll be sharing with you is what we basically term our monthly project package that contains a series of work products to describe and report on the status and health of a particular project. This was born out of an initiative from about 18 months ago, maybe almost two years now called the PDP 3.0, and in the course of that effort, they wanted to take a more project management-based approach to managing policy development. And that has evolved into really, even at a higher level, a program/project management approach from the GNSO Council's perspective.

If you're not aware, their primary mission is to manage policy development processes, not make policy themselves. And given today's environment with so many issues being discussed and the minimal capacity with which to discuss them, we needed to come up with a solution to make more predictable when policy efforts are to conclude or meet their specific milestones or delivery dates. And part of doing so really serves two components. One is to provide that predictable timeframe when these efforts will conclude so that the council can tee up additional policy discussions on other topics and plan for that accordingly. But secondarily, was also to make sure that the group, the PDP, the Work Track leadership staff, as well as the full group are being

held to account to try to deliver to these target dates. And so, typically four to six weeks after a group starts up, they are required to submit a plan to the GNSO Council for informal approval but mostly to acknowledge that these are—this is the work plan and deliverable dates that the group will work towards.

So, in part of adhering to that, the April GNSO Council meeting is scheduled for the 22nd of April. And here, the work plan will be reviewed and the GNSO Council liaison will provide a status update to the progress of the group here and basically commit to the timeframes by which we think we can deliver a work product. And then in addition, there will be another update in May that Chris can go into a little bit more detail later, or perhaps on our next call.

So, the first work product here is what we call a summary timeline. It's a very simple form of a Gantt chart. The idea is to depict what are the primary tasks that the group will work on as well as what are the key deliverable dates for the work products that it will deliver. In our case, we're bound to get to an initial report, have some sort of public comment period, review those comments, work towards some sort of final report and deliver that final report to the GNSO Council.

Now that timeline is not meant to presuppose that this group will conclude on consensus recommendations but from a project management perspective, we have to assume that this group will have tangible outcomes also known as consensus recommendations for the purposes of planning all the way down the line.

So, by the quick takeaways, there are three quick takeaways from this summary timeline. The first is that we're targeting the initial report for the 1st of August and then secondarily, assuming that we get that far, that final report would be delivered about on or around mid-November.

Now, don't fall into the typical trap of thinking, from a calendar perspective, it should be easy to deliver the report by the 1st of August. But just as a reminder, this group only meets once per week at 1.5 hours and between now and the May Council meeting, that gives us five meetings or a total of seven-and-a-half hours to basically get to an understanding of whether this work can progress towards an initial report or as the group has discussed whether they need to go back to the GNSO Council given some of the restrictions regarding the charter addendum that we've been given.

But even, more so, assuming that the work does go forward, there's only another 10 additional meetings between now and the end of July. So, really in total, that's just shy of 22 hours of on-call deliberation times to get through these two primary topics that we've been tasked to review through. And meeting once per week really doesn't provide a lot of time and further these dates will sneak up on you before you know it.

The third takeaway here is down in the lower left which is a percent complete and a status and health. The status of the project really is much more to do with things around the scheduling and basically has a green, yellow, or red type of indicator behind it and the same for the project health which is the overall health of the project in respect to being able to deliver meaningful outcomes for the group. And these are further defined later on in this package.

The second page deals with what we call a situation report. It gets into a little bit more detail of what we're tasked to do. I won't go into this in full detail but this lower left-hand section over here—I guess I can zoom in for you a little bit—is kind of our key high-level task and deliverables or milestones for which we plan to achieve as we move through the project. And then the right-hand side is really—it's tell me what we're working on, tell me what we plan to work on and tell me what we've completed in the prior period. This is mostly useful for people that are not involved in the details of the day-to-day or week to week work of the Work Track but is usually much more informative for the council so that they understand where the group is in terms of meeting its plan.

If for any reason we start to fall behind schedule or other issues of the project will change, there is the status legend here that basically depending on the criteria or the events that are happening can go from a yellow or to a red state. And in those cases, basically, we have to work with the GNSO Council to explain to them why we're getting in trouble and look for options to remediate and/or change the timeline by requesting additional time and providing justification for needing that extra time. So, I won't go into these in details and I'll send you—I think we included this with the agenda. So, if you do have any questions about this, we can take those offline.

The third work product is something that I don't expect any of you to look at closely. This is what we call the actual project plan or a Gantt chart. The key takeaway here is that there are five major components to this project, the top being what we kick off or organizing the management of this. The second area is the most important because it contains the core of the topics, policy discussions that the group will

have that leads into an initial report, that leads into a final report that eventually we can close the project out. But the idea here is to define the high-level task, understand how long it takes to work them, understand if there are any dependencies or whether we can work items in parallel and then to get to some sort of percent complete as we traverse through the project to show progress is being made from one period to the next.

The next and final product is basically what we call the work plan and action item log. We haven't really used this extensively yet, but as we progress our work, it will become more helpful to us. First and foremost is the action items themselves. As the leadership team starts to ask working group members to perform this or that, we will document that in these action item logs. We need to provide due dates by which we can expect them to be completed and manage them if they don't get completed. And in addition, it tries to map out what our meetings will be when they're scheduled at least for the next one to two months because that will provide a little bit more visibility as to what we'll be working on in the coming weeks. In addition to focusing on what is the work that is in front of us and less to do about the higher-level deliverables. So, I'll stop there and turn it back to Chris. I hope you find this helpful. Again, these will be sent to the council on a monthly basis as we do all of our other groups. And depending on the content at the time they do provide questions and answers that we need to provide back to the council should they have them. Thank you.

CHRIS DISSPAIN:

Berry, thank you very much. As you said, if there are any questions, unless they are burning questions, we can deal with them on the list and people can send a note asking their questions. So, there are no hands up, so good.

We'll go now to Item 3 on the agenda which is a substandard discussion for today. Hopefully, everybody will have seen the status summary that the org team sent out which was basically setting out where we think we've gotten into in this discussion. And as a result of that, I've drawn a number of conclusions that I'm hoping will inform our discussion today. And they are in essence that there are, you can put that back down again so I can—that doesn't need to cover as much of the screen as it's currently covering Terri, or whoever's got charge of the slides.

There are a number of things to talk about today. And now, as I said, the conclusions that I've drawn from looking at the report of where we got to and they split into three simple categories, I think. The first is, we've established a need to get the IGOs into the system and we've talked about two ways of doing that. One way of doing it is [inaudible] and the other way of doing it is the current GAC list that exists of IGOs.

The second point is that we've established that there would be a need to not—even if there is still a court case at the end of the day, there would be a need for the IGOs to not have to submit to a local jurisdiction at the beginning of the process.

And then thirdly, we talked about the principle of fixing Recommendation 5. Can you put the agenda back up on the slide please

rather than the document so that I can look at the points on the agenda? Thanks. Thank you. That's wonderful.

We could fix Recommendation 5 by either having some sort of super panel or going to arbitration. And it became clear from the call last week that there was leaning towards a more formal secondary hearing by a way of arbitration rather than super panels, so we stuck with arbitration. And then there was the secondary question, or rather the precursor question to that, which is was there a need for there to be the right to go to court before there was a right to go to arbitration?

So, just to summarize. Two things at the very beginning, do we take standing from 6ter or do we take standing from the GAC list? Which to be clear is a list that is currently being used to provide the reservation of the full names of IGOs. So, it is a list that is already being used and is already in policy because it is the list that's under which the full names of the IGOs are reserved. So, 6ter or the GAC list is the first [inaudible] that we need to talk about.

The second is that we're clear that there would be a need to move away from the early-stage agreement to local jurisdiction. The third is that an understanding that you would fix the circularity of Recommendation 5 by saying there would be an arbitration.

And the fourth is, whether there is a requirement to go into the local jurisdiction first. So, in other words, you have the UDRP hearing, the IGO wins that. The registrant has a right to go to the local jurisdiction. The IGO argues that the local jurisdiction, that it's not subject to that local jurisdiction. And in the event that the IGO wins that argument, then

there is an arbitration. Or whether it is sufficient for there to be an arbitration that we could abandon the requirement of going to the local jurisdiction. And I know that there are a number of people on this call who will have thoughts about the importance of that and whether we should do that or not.

So, those are the conclusions that we've drawn from the discussions that we've had so far. And my view is, if we could reach an understanding of those three things or four things, we would in essence have solved the Recommendation 5 problem. We would be able to say that—and I can see your note in the chat, Paul, I'll come back to that in a second. We could say that we've solved the Recommendation 5 problem. We could say that we have tweaked, only tweaked the previous recommendations.

Paul, your note says there's some talk about limiting all of this to just cases where someone was impersonating an IGO. Yes. I think the challenge we had with that was we thought that ... There seemed to be a general feeling that that was a step too far because we were in essence writing a separate policy for IGOs rather than tweaking the existing policy. But we can come back to that in a second. Brian, your hand is up. Go ahead.

BRIAN BECKHAM:

Thank you. Hi everyone. Just checking, you can hear me?

CHRIS DISSPAIN:

Yeah.

BRIAN BECKHAM:

Great. Yeah. Thank you very much, Chris. I think that's, broadly speaking, an accurate high-level overview. I just wanted to—and I realize this is a small detail but I think it's an important one. When we look, for example, at the summary of the discussions to date, we jump right in and talk about the challenges in terms of using the current UDRP and URS. Although I think normally speaking, we've been focusing on UDRP. And that makes sense on some level, but I wanted to just zoom out a little bit and recall that there was—and I don't have the particular correspondence or advice in front of me. But there were discussions involving the principle of a separate mechanism modeled on but separate from the UDRP I think was a terminology that was used in one place.

And then I believe there was the Los Angeles communique where the GAC advised that in answering this question the UDRP shouldn't be reviewed. And of course we all know that the UDRP is set to be subject to a separate review it looks like later this year sometime. So, I just want to make sure that we're all on the same page in terms of are we actually proposing something that would be more along those lines of modeled on but separate from the existing UDRP or would this be a proposal to actually amend the UDRP? In which case, that might be slightly more problematic. Thanks.

CHRIS DISSPAIN: Brian, how would you justify creating a whole new process as a tweak to a bunch of recommendations that include a recommendation that there should be no new process?

BRIAN BECKHAM: Yeah. I think, I mean, we've gone over this I think on virtually every call that we have that broad parameter of coming up with recommendations that are generally consistent with prior work and with the council instructions. And I don't feel it's any kind of a stretch to say that you would be generally in line with that if you use the UDRP model but effectively did a cut-and-paste and made a few tweaks there while leaving the UDRP intact because there's a separate policy track that's going to look at the UDRP. And in essence, I think it's only going to complicate things if we propose changes to the UDRP on its own terms. And I think we've gotten more than sufficient coverage with that generally consistent with language to do something which was a cut and paste with a few tweaks.

CHRIS DISSPAIN: I'm lost on this, which is a very simple question but may be a very complicated answer which is I completely understand what you were saying about tweaking and generally consistent. But how is a separate process generally consistent with a recommendation that says there should be no separate process?

BRIAN: Well, I mean, look I think we're kind of going back to square one because if we can't unlock that question then we might as well pull the plug on this because we've got GAC advice which says that the UDRP shouldn't be amended. We've got GAC advice that says that this mechanism should be modeled on but separate from. So, I don't know, I guess, and I think, IGO colleagues can certainly jump in here but I think we've been operating under the premise that we can pull this off under that generally consistent with language. If not, then I think we have a more fundamental fork in the road in front of us.

CHRIS DISSPAIN: Well, let me go to Kavouss. His hand is up and he's next, and then I'll come back depending on what Kavous has to say and address the point that you've just made. But, Kavous has waited long enough. Kavous, go ahead.

KAVOUSS ARASTEH: Yeah. Thank you very much. Good afternoon, good morning, good evening to everybody. First of all, just one minute on the schedule of the timing. Yes. We have a very tight schedule. So, it is absolutely necessary as you have done up to now, you continue to have most constructive and well-guided sessions to avoid further ramifications of options and so on so forth to reach the target of, if I remember correctly, August. I was very happy to read the last paragraph of the summary that you have two points. One is, issue of a standing 6ter, you said and the GAC list. Now you said 6ter or the GAC list this should be clear.

And the second is jurisdiction. I understood that you want to move away from jurisdiction going to arbitration or super panel. And now, when you further said that you go to the third point, then you go to the fourth point, I was a little bit lost.

So once again, I come back to what I had. First point, 6ter or GAC list. Second point, moving away from jurisdiction, super panel, or arbitration and last point in my understanding separate policy rather than the existing policy. So, having said that, I have consulted the GAC chair and asked them to review the 2013 GAC list and to confirm whether it is updated or valid today or whether they need to be updated and I will receive or we will receive some reply. They will investigate that. That is some small things that, without you asking, I have already taken some action and the chair of the GAC in investigating that list.

Brian referred to Los Angeles GAC Communiqué. My experience of GAC Communiqué, that sometimes there is one communiqué that overriding other communiqué or paraphrasing other communiqué or changing the terms and language of other communiqués where we need to be very clear of what is the latest up-to-date communiqué dealing with IGO. This is the difficulty that sometimes for your information at the last meeting with a lot of problem that you have with many people, I ask them that please do not put a new GAC advice relating to the previous GAC advice. Just refer to the previous and ask follow-up action and they followed that.

So, we should not put one advice at the top of other advice which may have the risk of a language problem that board very carefully follow that and you know that some of the GAC Communiqué, that before the new

bylaw and now we have to be quite clear. We have to be consistent with the bylaw and we have to be clear and concise and so on and so forth.

So, could you please kindly guide me again or put at the end of this meeting what are the steps that we have to follow? If it is through these two, three, I am very happy.

Perhaps the third one, a new policy rather than the existing policy may be some of the less probable things that we think but perhaps we should concentrate on the two main issues. 6ter, GAC list, super panel, and arbitration. Taking into account that GAC mentioned that for arbitration, GAC or IGO is not ready, or at least at that time, to pay any costs and so on and so forth. [Inaudible] but please kindly guide us.

I am very confident that you'll guide us in a good way in order to achieve the target and so on and so forth. Please kindly avoid any ramification and repetitions of what we have told before. And we should be concentrated on an issue that you indicate but not to start to go to a philosophical description of the things that may not be. Go to the concrete proposal. I'm not asking you; I'm asking ourselves. Thank you.

CHRIS DISSPAIN:

Thank you, Kavouss. Before I go to Paul, whose hand is up and is next, let me try to just make one slight adjustment to what you've said. The points that I have raised for discussion are basically those with an addition. So, it is 6ter versus the GAC list—what is the basis upon which

an IGO steps into the funnel, as we've said with the way we've described it? That's the first point.

Second point is, currently, the IGOs are required to agree to submit to a local jurisdiction at the very beginning of the process and there was a discussion about the possibility of moving away from that at the beginning of the process. That's the second point.

The third point is that, in the event that there needs to be a secondary hearing, a rehearing appeal, whatever you want to call it, that we talked about making that arbitration. That's what you referred to as super panel or arbitration.

And then there is an additional point which is that currently Recommendation 5 and the current UDRP says that the registrant can bring a case in their local jurisdiction, which in fact they've actually got the right to do in any event and the question was whether they will replace—whether the addition of arbitration meant you could walk away from that or whether that was a step that was pre-required. But we've got a slight different number of issues to talk about at the moment but understand completely what you've said, Kavouss, and yes, we'll try and stay on track. Paul, over to you and then I'm going to come back to Brian's point. Paul, go ahead.

PAUL MCGRADY:

Thanks. This is one of these moments where you can get swept up in ICANN group think. And so, the two options that have been put forward to us are 6ter create standing that's different than what the prior working group put out there which was that a panelists could infer or

attribute standing to someone whose name was on the list. And the other option that's been put out to us is that the GAC holds some lists which creates trademark rights enough for standing, I guess, in order for all of this to work. That's a binary.

And I just want to be on the record as saying that I'm not there. I think that there are lots of options that we could be kicking around to not create trademark rights out of thin air, either by presupposing their existence just because it's on a 6ter list or having the GAC be able to be in a position to create them out of thin air by putting something on a list. All kinds of things. For example, saying something along the lines that being on the 6ter list creates a presumption of common law trademark rights which the IGO would then have to support through evidence or all kinds of other things like that.

And so, I just don't want to go onto the next call and have everybody say, "No, we've agreed on that." I'm not there yet. I don't know if others are not there yet. My particular constituency meets this week and this is going to be an AOB item for them. I just didn't want to surprise everybody with silence this week and have you guys come back and say, "This was all well settled, Paul. Where were you?" Thank you.

CHRIS DISSPAIN:

So, I'm glad you're here and I'm glad you said that because to be clear, I'm not suggesting that either. I'm not suggesting that unless you equate the right to use the ... If you equate the right to use the UDRP as creating trademark rights because the UDRP is built for trademarks, then I completely understand what you're saying. But I had in mind

what you've just said which is that it would say that in the special case of the IGOs, no one is suggesting it's a trademark right. We are suggesting it's—I don't know how you'd say it. It's equivalent, it's a common law trademark, whatever you say. So, to be clear, in my mind, and I know that—and I imagine that Susan would agree with me as well, the concept that this created trademark rights is not on the table. Does that make sense to you, Paul?

PAUL MCGRADY:

Thanks, Chris. Yeah. I mean, as long as we're being explicit somewhere about that, then that takes away a lot of heartburn.

CHRIS DISSPAIN:

Yeah. Okay. I mean, let's park that to one side but I know that Mary and Steve got a note of that and that's certainly not the intention of what I was saying. If anybody thinks it's different, then now will be the time to say so because I wasn't—the intention was to achieve an outcome which was a curative right, not to achieve an outcome that was to create a right as opposed to a curative right. And I draw a distinction there very specifically.

Now, I want to come back to Brian's point if I may but Brian, your hand is still up. Is that because it's an old hand or because you want to speak again before I say something? A-ha, it's gone down. Thank you.

So, Brian, I want to address what you've said. All of the stuff that we've talked about so far in respect to dealing with recommendation 5, tweaking recommendation 5 and moving away from the circular thing,

the possible introduction of the super panel or arbitration, whether or not the right to go to the law in your own jurisdiction should be dropped or not.

And indeed the use of 6ter in accordance with the current recommendations that the PDP made or the tweaking of 6ter or its replacement with the GAC list, have all been built around the principle of working within the current system. This was on the last call. If it wasn't the last call, it was the call before. I think I said, be aware everybody that, whilst I understand the need to do it this way because to create a separate process is a step too far, it is entirely possible that by doing it this way, we end up with actually a wider stream for IGOs to row down as the things that they can have a curative right over than we would otherwise do if we had a narrow, defined, specific IGO process.

But if what you're saying, Brian, is that absent a separate process, then there's no point in continuing then I think we need to get that on the table and address that. Because the whole basis upon which we've been working, at least my understanding and if anyone disagrees with me then please say so now, has been that we are playing within the current process and that we need to be able to describe what we are doing as tweaking the existing process and justify the fact that we have done so within the scope. I'm happy for anyone to take me on, on that and disagree with me. And Brian, go ahead, Brian.

BRIAN BECKHAM:

Yeah. Thank you, Chris. Maybe I've slightly misunderstood that we were let's say brainstorming together, and I think frankly, we've made

reasonably good progress. We're mindful that we are in a little bit of a chicken and egg spot where if we kind of in this brainstorming exercise agree that we're likely to come to some an agreement—and I appreciate that that's an assumption. But if we do that, then there would be a basis to potentially go back to the council and ask we've done some brainstorming as a group, we think a solution may be insight, we therefore wanted to ask if you would allow us a small deviation from the charter.

CHRIS DISSPAIN:

Okay. If you're asking this Work Track to consider going back to the GNSO Council and saying we think we have a set of solutions but it is a ... And I'm paraphrasing it, Brian, so if I get this wrong, no doubt you'll call me up on it. We believe we've got a set of possible solutions but as a prerequisite to those solutions we need to create what amounts to a parallel process. How do you feel about that? If that's what you're asking this group to do, I'm prepared to put that on the table and see if there's an appetite to do it. But I want to be clear that that's separate from the assumptions that were made in the staff paper that went out before this meeting. I'm not averse to doing it, I'm just saying it's a separate question and it's a question that we need. If it is a prerequisite for moving forwards in this discussion with the IGOs on board, then clearly, we need to make that something that we do sooner rather than later. Before I come back to you, Jeff's hand was first and then, Kavouss. Jeff, go ahead.

JEFF NEUMAN: Yeah. Thanks. Hopefully, you can hear me.

CHRIS DISSPAIN: Yes. We can hear you fine.

JEFF NEUMAN: Great. Thanks. I guess this question is for Brian. So, Brian, if we can solve these issues—in other words, if we can find a way to give standing to the IGOs, if we can remove the commitment to mutual jurisdiction from the UDRP and we can create a process whereby a losing registrant that's not able to get jurisdiction in the court could go to an arbitration to have its case reheard. I mean, I understand you keep going back to the GAC advice. My question to you is would these not be positive steps and progress as opposed to everything you're asking for, right? So, I guess if we can make some progress on the issue and everybody's happy or everybody believes that that's progress, I don't know why we can't just do that. And then you could take up the other issues that you still have which I'm not completely convinced why those issues would be different for IGOs than for any trademark owner. And I'm not comparing trademark rights to IGO rights. I'm just thinking about normal users of the UDRP. I don't understand. I mean, I know what the GAC advice says but GAC advice is usually on the broader scale but if we can solve these identified issues and really solve them, then I'm not sure why you are—it's almost like you're saying, "Well, if we can't do everything that we want, the IGOs want, we're just going to walk away." I don't understand that so maybe you can help me understand.

CHRIS DISSPAIN: Sorry about that. Let's go to Kavous because his hand is up and then if Brian wants to respond to Jeff, he's welcome to do so. Kavouss, the floor is yours.

KAVOUSS ARASTEH: Yes. If sometimes you believe that I should not intervene, tell me. I will very—

CHRIS DISSPAIN: No. You're fine. You go ahead.

KAVOUSS ARASTEH: No. I don't do that. But I think that before going to GNSO and asking to depart from its initial charter on what degree. I leave it open. We should all agree that we have a solution, agreed by all of us and that solution only is applicable or implementable if we modify the charter. But we are not there yet. We are not there yet.

So, if you want to follow that path, I have no problem, but we should all agree with whatever way you want to have agreement, consensus, full consensus, half—I don't know, but we are not yet there. That is point one.

And what Jeff mentioned, Jeff opening another avenue. What I said at the beginning, that try to limit the avenues to the absolute minimum necessary. Opening new avenues, new options, new ramifications we may not get the target of date and timing. So, we leave it to you to conduct a meeting in a way that not to open so many options. There are

several options and everybody's right in his wisdom or her wisdom but we should think of the limited time. By any option you need chair to put some target date. Within two meeting, we should agree on this. If not, put it away and take the other one. But we should not tackle everything at the same time because we would not get rid of all of these things which may be valid but would not take us anywhere. Thank you.

CHRIS DISSPAIN:

Thank you, Kavouss. That's very helpful. Let me try to build on what you just said and also what Jeff said and what Brian has said. I think we've honed in on a number of points that we believe are the key points that solve the specific issue of Recommendation 5. Now, no one is suggesting that by completing this Work Track and redrafting Recommendation 5 and making any tweaks that are necessary in order to make it work, no one is suggesting that that necessarily solves the overall problem and necessarily solves the differences between the outstanding GAC advice and the GNSO recommendations. There is GAC advice on the table and that's with the board. There are GNSO recommendations on the table that they are with the board, and at some point, the board is going to have to decide what to do about the fact that those two pieces—the one set of recommendations, the one set of advice are in fact in conflict with each other.

Solving this problem within the context of this Work Track does not mean you've necessarily agreed that the GAC advice will change and the GAC will restore its advice and everything will be okay with the current version of the UDRP. I don't believe. And I don't think anybody is asking for that to be the case. I think the question is this Work Track has a very

specific job to do. It may be possible for it to do a heap of things within the context of its scope with some tweaks that do go a long way to helping to solve what is currently the two opposing bits of advice and recommendation. But at the end of the day, what we do is only a small piece in a much larger machine, a small cog in a much larger machine.

So, I completely understand Brian, your desire to create a situation that solves all of the problems. But I keep coming back to my one point, which is how do we do that if we're going to stick to our guns and say, we're just tweaking? And what you have said—and I want to make sure I've got this right. What you have said is, "Well, maybe the answer is we do need to go back to GNSO and say, "Actually, we believe we can solve this problem in a bigger way if you will and we need you to amend our scope and our charter." And what Kavouss has said is, "We could do that but we shouldn't do that until we know what the solution is."

But what that means is that there needs to be an appetite amongst the balance of this Work Track to have a discussion about a parallel track. Because what in essence the IGOs it seems to me are saying and what the GAC advice says is that there should be a parallel track. And if this Work Track is prepared to have that discussion, we can have that discussion and we can then go to the GNSO Council and say, "Actually we found a solution but it involves a whole bunch of things that are not within our scope, what do you think?" And if it's not prepared to have that discussion, then we have to decide whether we should continue to try and tweak the existing process or not. Does anyone think that is not a fair assessment of where we're at right now? Okay. So, nobody thinks that. Everyone thinks that's a fair assessment. Brian, go ahead.

BRIAN BECKHAM:

Yeah. Thanks, Chris. I agree. I think that's a fair assessment and this is not easy and I think you're doing a great job helping us through here. Just two additional comments to maybe help unpack this a little bit. One thing that I take a little bit of issue with is ... The way I understand what Jeff has said is basically—I'll say this a bit pointedly for effect—is the GNSO charter is set in stone and let's basically toss the GAC advice and ignore it and just figure out something here under the charter we've been given. Maybe Jeff I'm misunderstanding that but if that's the upshot, then I feel that's a little bit wrong-headed in particular because it frankly ignores the reality of why we're here which is that the prior working group effort on this went completely off a cliff.

I guess zooming out on a completely different topic, one of the reasons why—and I can't certainly speak for the GAC or its advice on this topic but I can share my perspective as a UDRP provider.

During the course of last year at WIPO, we passed the 50,000 UDRP case mark. We've created a jurisprudential overview which looks back at a lot of jurisprudence on those cases over the years. And to me, it boils down to a simple question, which is the UDRP, it's something that's known and is working well and there's a lot of history and a lot of legal analysis around it. And any changes to that should be undertaken extremely carefully. Even if what we're looking at doing here in this working group seems on its face, very straightforward and very focused for a specific issue, it frankly concerns me as a UDRP provider and representing the institution that created the UDRP in the first place, that we would, in the span of a few working group meetings, overhaul aspects of the

UDRP. It just feels to me like, why would we take that risk when we can take that UDRP model?

And by the way, the ICANN staff did this back in 2007. They worked up a draft of a UDRP for IGOs. We can take that UDRP model and make adjustments that we're talking about making here in this group under that generally consistent with framework and completely avoid that risk of upsetting jurisprudence, of causing questions for potential filing parties, etc. In other words, it seems to me, the far more elegant solution to basically take the inspiration of the UDRP, map it over to the IGO question, then to put any risk whatsoever on the 20 years of jurisprudence behind the UDRP.

For me that hangs over all of this. There's just too much at risk to do this in a quick fashion. When the RPM Working Group undertakes the UDRP review, I think most people expect that that's going to be a year's long process. The first phase of RPM Working Group met for four and a half years, granted they had a few more topics but those were frankly far easier than the UDRP. There were many, many sub teams, side conversations, additional meetings, so on and so forth. So, I know I'm repeating myself but it seems to me, why take the risk? Thanks.

CHRIS DISSPAIN:

So, Brian, I'm going to let Jeff obviously speak for himself and I have no doubt he will. But just before that, let me respond to two things that you've said. So, first of all, I don't think there's anything, suggestions that we should ignore the GAC advice and say that the GNSO charter [inaudible]. Well, certainly, what I'm saying is, I've got no problem going

back to the GNSO and seeking a clarity around the scope and so on. The GAC advice is the GAC advice and it stands alone and anyone who imagines that what we do, even with GAC members on this Work Track, it's no guarantee that it's going to be in the final analysis. The upshot of all of this is going to be acceptable to the GAC. And secondly, just to respond to your bigger points about the risk, I think that takes us back to the very beginning of all of this when I said, "I'm finding it very difficult to see the pathway through here and personally without my chair's hat on for a second, personally, I think that the obvious solution to dealing with this particular issue is a separate process. But I don't think that that is doable under the current reading of this scope and charter and I don't see how that would be feasible. Now, I'll put my chair's hat back on again and say that I promised that I would very rarely take that hat off. Jeff, you go next, please.

JEFF NEUMAN:

Thanks, Chris. And Brian, I agree with you that there's so much jurisprudence with the UDRP and that's precisely why I'm making the argument that we should not change very much at all. In fact, for all the reasons you stated, we should not be changing what registrants have to—what a prima facie case is, for example, for a complainant as much as possible, right? And the only thing we would be changing here is instead of showing a trademark registration or trademark rights, you're showing that you are on this list or whatever but everything else remains the same, right? Your prima facie case still has to show that there's no legitimate rights or interests with the registrant and you still have to argue registration and use in bad faith. It's precisely because of those 20 plus years of jurisprudence that I don't think we should

establish a separate process for impersonating or whatever else you might want to use. It's precisely for that jurisprudence that we have that we should keep the registration and use in bad faith.

In fact, the least amount of risk, I think to the UDRP in general, is by keeping everything exactly the same except for not requiring an IGO to agree to mutual jurisdiction rules and not the policy and also that they should have some sort of way into the process. So, that's the one tiny element that you're changing just for IGOs. Everything else would remain the same pretty much. So, I think it's because of what you said— it's precisely what you said, I think the least amount of risk is to change as little as possible right now and not create this whole separate policy because it's not just for providers, Brian, which I understand why you'd want that but it's also for registrants who have now had 20 plus years of knowing what is right and what's wrong or however you want to describe it. So, I don't think we should be interrupting or upsetting the predictability that's been established for registrants that agree to all of this by contract and create something completely new. Thanks.

CHRIS DISSPAIN:

Jeff, I've got a question, if I may, I have a question for you and then I'm going to get Kavous and then Paul. So, Jeff, acknowledging what you said, what do you say to the argument then that there seems to be a general feeling from the IGOs that the current UDRP is not fit for their purpose perfectly, legitimately and understandably is not fit for their purpose. And therefore, tinkering with it is not a sensible way forward and then what we should be doing is saying there should be a whole new process. In other words, what they're basically saying at the very

least is that the recommendation from the previous PDP in respect to no parallel process is unworkable from their point of view.

JEFF NEUMAN:

Yeah. So, thanks. All I've heard is from Brian saying from a provider standpoint but I'd like to hear from the other IGOs on this call, is it just these issues that are a problem? Like, even if you got these few things, would you not use the UDRP or is it do you have to have more? And if we can't solve it from these tweaks, then I think we just pack up and then we just get a completely new level-setting point. I don't think that we should be talking about changed standards and all that other stuff in this group. That is a much bigger change.

CHRIS DISSPAIN:

I think there's an acknowledgement to that. There's a certain acknowledgement to that in any event, a sense of the requirement to go back to the GNSO. Kavous, please go ahead.

KAVOUSS ARASTEH:

Yes. I believe separate process whether you are talking of the PDP or EPDP and so and so forth is a far reaching objectives. So, we should try to see whether we should take that path or not.

CHRIS DISSPAIN:

Are you suggesting Kavous that you think we should acknowledge that there is a bigger problem and try and solve the small problem within the

context of this group but know that there is a bigger problem to be solved in a different arena, is that what you're saying?

KAVOUSS ARASTEH:

What I'm saying that as you mentioned sometime that even if you have a solution that would not totally satisfy the difficulty that we have. So we may at some time need to look at a more broader solution but let's us do it step by step, what we can do now because at the beginning of this meeting, you show a diagram of timing. You have November and so on, so forth, starting a separate process [inaudible]. Let us take this step by step to see. It is not excluded totally but we should not start that avenue now. Thank you.

CHRIS DISSPAIN:

I understand. Thank you very much. Paul, I know your hand was up and it's gone down again but you put a point in the chat about a third way and I [inaudible] if you'd be prepared to address that for me. Thanks.

PAUL MCGRADY:

Thanks, Chris. But I think Jeff's intervention sort of for me answered the question which is there was a third way which is we aren't prepared to talk about it or we are prepared to talk about it, let's talk about it without the council's early blessing. There's a third way which is to go back to the council and say, "We are prepared to talk about this new process, this new policy but we need your blessing first." But Jeff raised an issue which I think is really important which is, if we amend the

UDRP, then current registrants are stuck with it. If we do a new process, they're not. Thanks.

CHRIS DISSPAIN: It may just be that the day it's been so far but I don't think I've grasped that point. Can you just explain that to me again? New registrants are bound by—sorry, any registrant is bound by it, aren't they? I'm not sure I understood that [inaudible].

PAUL MCGRADY: So, if we have a brand new IGO DRP that we create, the current registrants, whether they were five or five million of them, I don't know, will have not agreed to that when they registered their domain name. They'll only agree to it when they renew it. And so, at the independent process, it's got a contractual problem, whereas tweaking the UDRP does not for what it's worth. Thanks.

CHRIS DISSPAIN: Understood. Although, the new process would only be relevant to those acronyms that are currently temporarily reserved and so therefore there will not be an issue but nonetheless, I take your point. Well, where are we at? We're at a point where we—Jay, your hand is up. Go ahead, please.

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

CHRIS DISSPAIN: And your hand has gone down again. No, you are there. Yes, I can you. Go ahead.

JAY CHAPMAN: Sorry. I just went ahead and put it down.

CHRIS DISSPAIN: Yes, I can hear you well. No problem. Go ahead.

JAY CHAPMAN: Thanks. I appreciate the discussion and it seems like to some extent, we continue to circle back to things that we were talking about from the beginning. And I would like to see and I think most people on here would like to see just us making some progress as to what we are supposed to do. Listening to all the discussion and the points made, I put in the chat, I'll just repeat that for the record that I think I tend to fall in line with Jeff's pragmatic approach. And we have specific instructions from the GNSO. Those are designed to try and assist and provide the opportunity for the IGOs to have the opportunity to go file a UDRP under certain specific circumstances of UDRP. There was an opportunity and I think this kind of gets lost, right? There was an opportunity back in 2014 when the working group came together and by the way, that working group went for four years. So, I don't agree at all with some of the stuff that's been said about that group went off a cliff, that was a four year working group of an opportunity to say or to

stay and get involved and engaged with, are we going to create a new process?

That working group went to [inaudible]. Four of those five recommendations have now been accepted by the GNSO. We have these specific instructions now to work on Recommendation 5 and within the context of Recommendation 5. I do understand and I do think that the jurisdiction—not the jurisdiction, the standing issue is something that we can approach as generally consistent with that prior working group and work on trying to figure out how to exact and nail down standing and then go to work specifically on the jurisdictional issues. Going any broader than that, especially with the UDRP working group that's coming up later this year or next year, whenever that starts, I mean, I think that's where you're going to be able to have more of these broader discussions about standards and things like that. And I also, like I said, I appreciate some of the ideas about, well, we're thinking about things that are narrower. I mean, even from the context, and we just had the discussion of, well, if we create a new process, it would only apply to new registrants or renewals. I mean, even in that, there's a lot of potential leeway and ambiguity as to exactly what that means, how it might be applied and so it makes me a little nervous to open up and start talking about those things. So, I think we resolve the issues kind of as Jeff has aligned, I think that's where we should be. Yeah, that's pretty much it for me so thanks.

CHRIS DISSPAIN:

Thank you, Jay. Thank you very much. It seems to me that we've reached this point. The things we have talked about doing within the

confines of the existing UDRP, there generally seems to be a willingness, of course, the devil's in the detail but there generally seems to be a willingness to take those discussions further amongst those outside of the IGO arena. I'll come back to the IGOs in a second. In the sense that there seems to be a willingness to talk about using 6ter or using the GAC list. There seems to be a willingness to discuss jurisdiction. There seems to be an understanding that some form of arbitration process is a solution to the circularity of Recommendation 5 and clearly there's a fairly significant point to be discussed in respect to whether there should be a pre-write to go to local jurisdiction.

All of those discussions that we've had sit within the structure of the current UDRP and are, I believe we can, with some level of justification go to the council and say, "Look, these might on the surface appear to be significant changes in respect to the way that the UDRP is used specifically by IGOs" and let me be clear, they are only intended in respects to IGOs for now. But we believe that they can be described as tweaks and the working group has reached consensus that they can be and so on. Now, I'm not saying we're there by any stretch of the imagination, there is a lot of work to do but that's, it seems to me to be where we've got to amongst a number of the members of this Work Track.

On the other side of the coin is the view that that won't solve the problem that the IGOs need a parallel process and that that's the only way that that's going to solve the problem and we should take advantage of that. If that is the view of this Work Track, then clearly, we would need to go back to the GNSO at this stage, I think and say to them, "That's where we're headed and what do you think about that?"

To create a parallel process at this stage without that imprimatur seems to me knowing that a significant number of this group think that is more than difficult to describe as tweaking. It seems to me to be a challenge. So, I think that's where we are and I think we need to make a—whether we make a decision today, in the next 20 minutes, I don't know but that's where we are. Kavous and then Jeff. Kavous, go ahead.

KAVOUSS ARASTEH:

Yes, sir. I agree with some part of your sum up that going back to GNSO saying that we need a parallel process. But with that parallel process would be one, modification of UDRP for this purpose only or totally [inaudible]. And then this is one alternative and other alternative would be something else so how you perceive it that because UDRP is only for the IGO is not for other things. If you modify that or just with respect to the IGO you propose the modification to that. Could you clarify that please?

CHRIS DISSPAIN:

Thank you for the question, Kavous. The specific modifications that we are talking about in respect to 6ter or the GAC list and arbitration are specific to the IGO use of the UDRP. As an example of that, if you look at the existing recommendations that were made by the previous policy development process, they recommended that an IGO should be able to claim in a UDRP that their registration in 6ter gives them a—is an equivalent to a common law trademark. And that it should be a matter for the panelists to decide whether that claim is acceptable or not in each individual case. And one of the things that we've talked about

specifically for IGOs is obviously because no one else has registered in 6ter to take that and make that a—not up to the panelist but a given at the beginning. So, it is about specifically about IGOs. Jeff, go ahead.

JEFF NEUMAN:

Yeah, thanks. So, maybe I'm just confused as to what "parallel process" actually means. So, let me give you a hypothetical. If we took the UDRP, copied the language in its entirety, put it into a new document called the IGO DRP and instead of 4A1 saying your domain is identical or confusingly similar to a trademark or service mark, we put in your domain name is identical or confusingly similar to a mark contained on the X, Y, Z list or whatever you want to put in there. Everything else remains identical, except we also change the rules for the IGO DRP to say that you no longer in your complaint need to—under 312? Yeah, there might be a letter in 3B12. You no longer have to state that—or the IGO does not have to state that it consents to—with respect to any challenges to a decision in the administrative proceeding canceling or transferring domain name, it does not need to consent to the jurisdiction of the courts in a mutual jurisdiction. So, if that's all we did and called that the IGO DRP and the IGO rules, is that a parallel process? Because if that's a parallel process, then I think that's okay to do a parallel process. But if by parallel process, we mean, we have to change all the standards and everything else and the, and to and or and the—

CHRIS DISSPAIN:

I'm assuming that's what Brian means but maybe Brian doesn't mean that.

JEFF NEUMAN: And what the GAC means.

CHRIS DISSPAIN: [Inaudible], can you address that?

BRIAN: Yeah, thanks, Jeff and Chris. Jeff, that's exactly what I was getting at. And so, if that's the parallel process, that would be acceptable then—would you mind repeating that? Because I think you're saying basically if we take a cut and paste and tweak the three things basically that we've been looking at, that would be, let's say on a purely definitional level, a parallel process but in terms of, would it get us in trouble with the charter not running [afoul] of that.

CHRIS DISSPAIN: No, he was asking you whether that would be—he was saying, "Is that what you meant by a parallel process?"

BRIAN BECKHAM: .

CHRIS DISSPAIN: I think he thought and I thought that what you meant by a parallel process was a process that had its own set of rules and wasn't a cut and paste.

BRIAN BECKHAM: No. No. I meant exactly how Jeff had described it.

CHRIS DISSPAIN: So, we wouldn't change the rules and still be negotiating as to whether or not there should be a right to go to local jurisdiction. We'd still be negotiating whether or not they would be arbitration or a super panel, let's assume it's arbitration for the sake of this discussion. Would still be discussing whether or not it was 6ter or the GAC list? But everything else would [inaudible]. So, what's the difference?

BRIAN BECKHAM: If we could do this in a vacuum, I think frankly, it would make more sense to make some revisions to the UDRP criteria. I mean, just looking, for example, at the one that's most often invoked is for before. And so, that looks at basically if there's an intent to confuse for a commercial purpose. And so, if one of the examples we've been talking about is someone masquerading as a UDRP, of course, if they're doing that for soliciting donations fraudulently, that's clearly a commercial purpose. If they're doing it to distribute malware or phish, maybe you can say that's under the commercial purposes umbrella. But in other words, I think it would more closely map the concerns if the specific UDRP criteria could be adjusted but if that's a bridge too far, then I think that certainly shouldn't stand in the way.

CHRIS DISSPAIN:

Kavous, I can see your hand. I'm going to come to you in one second. So, just to be clear, Brian, on the basis that we could hold a discussion that—leaving aside your point about changing the criteria for a second because that may well be a step to go. If we could hold a discussion based around the three key points that I started off talking about today, which are, do you use 6ter or the GAC list, can be comfortable abandoning the [inaudible] jurisdiction at the beginning, going to arbitration at the end and leaving one question to be decided amongst us which is, is there still a court case or not? If we're going to have that discussion and then agree that we could go back to GNSO and say, "Of course, all of this would be much easier to do if it was in a separate process, then doesn't that solve the problem because then it becomes the GNSOs decision about whether or not it's in scope or out of scope to slip it into a parallel process. If at the end of the day, the negotiation points are exactly the same and the only difference point is whether you call it a parallel process or not, it doesn't matter. Well, sorry. It matters but my point is reaching agreement about the negotiating points is a win and you're left with not us making the decision about the parallel process because we think that's out of our scope, possibly. Very quick response from you, Brian, then I'll go back to Kavous, then I'm going to wrap it up.

BRIAN BECKHAM:

Yeah, thanks. I hope I'm following and if so, then absolutely. And that's why I've tried to come back to this generally consistent with. So, it sounds like yes would be the answer to that but maybe I should, once we're done here, go back and listen again to the call just to make sure. But, I guess, I just want to say, certainly, I mean, don't want to hold up

progress. I think we've come to a lot of agreements and principle on the big picture points and so I certainly want to come alongside that.

CHRIS DISSPAIN:

Completely agree and you have and these points are incredibly important and we need clarity around them because obfuscating or fudging it only causes a problem later on. I'm going to go to Kavous now and then I'm going to wrap it up. Kavous, go ahead, please.

KAVOUSS ARASTEH:

Yes. Let me understand what is suggested. Do we go to GNSO asking that we have agreed if we agree to have a separate process or parallel process, whatever you call them which include a—you said tweaked, I said modified, UDRP, these we call them IGO but it is not only that one, it is together with other elements that associated with that modified UDRP. And what are those associated course of action or steps whether 6ter or GAC list will be part of that? Whether jurisdiction taken away and the arbitration and super panel will be part of that. So, what would be the scope of this separate process? This is one question. And then, could GNSO say that, did you come to the conclusion that every other solution got exhausted and you just come to this one or you believe that with this one, you covering at least all the difficulty. So, I would like to be clear that you put it for the next meeting to discuss on that because if you want to do it for GNSO, maybe we should do it for the next council meeting at least to test it to see whether they're accepted or not accepted. Thank you.

CHRIS DISSPAIN:

Very good point, Kavous, and I agree with you. Thank you for that. So, I think Brian's point about going away and thinking about this and checking the record and listening is important. There's an awful lot of fast talking and many points made and assumptions about people's understanding so I think we all need to be clear. My goal for the next meeting is to get us all to agree the next steps and the next steps are a choice—it seems to me, are a choice of continuing to work on the points that are listed on the agenda and I'm just going to summarize them as standing in court proceeding. Those points, continuing to work on those and parking the possibility that we could encompass those points in a parallel process. In other words, as Jeff put it, cutting and pasting and simply making those changes but taking it out of the UDRP and making that recommendation as part of what we say or not.

Or we say that actually that's not going to solve the problem. What we need is a proper parallel process if I could call it that with a different set of rules encompassing some of the things that Brian's talked about, about criteria, etc. And if that's where we're at or at least we're—an understanding that enough of this, believe that, then we're at a point of either going back to the GNSO and asking them if we can do that or not or we're at a point of packing up our bags, I suppose and going home but leaving that aside as an option for now. And the third option, the third thing we could do, I suppose, is we could do a report to the GNSO of where we currently are and not address the actual question but I don't think that's particularly helpful. So, I think for me, I think if we can all come back to the next call having considered the discussion on this call, having considered whether or not we are prepared to proceed dealing with the two broad-brush and described issues of standing in

court proceeding from this agenda to discuss whether we can reach an agreement on those. If we can, then maybe an opportunity to discuss a separate parallel process or not but I don't think that's particularly relevant right at this moment. And if we can't, then it clearly needs to go back to the GNSO now acknowledging that in any event, whatever we do, it's all going to go to the GNSO.

I hope that makes sense and I hope that everybody's in a position to come onto the call next week ready to either agree to proceed to dealing with those broad-brush topics or stating their position that they think we should go to the GNSO to talk about our scope. One of those two things. And if you want to put your opinion on the list and have a discussion on the list, please let's do that. Very happy for that to be the case, very happy for people to type emails, it saves a bit of time. I want to say thank you to all of you for being on the call. I want to say thank you especially to all of you who've listened. I'm not in any way not saying thank you to those who've spoken but the people who've been listening and absorbing all of this just as important. So, thank you all and unless there's anything else, I'm going to wrap it up and we'll convene next week with effectively a similar agenda to that which we have for today. Okay. That's it. No. Brian, you got in just in time. The last bid in the auction.

BRIAN BECKHAM:

Thanks, Chris. Just wanted to—one small question, clarification to Jeff. I think that's useful, Jeff, and I'll certainly do my part to consult and come back. It sounds okay, of course, it does leave behind some things that have been discussed along the way but if it's a way forward, then

certainly it's worth exploring. Just one question and if you want to answer this in the next call or on the list, would be that, assuming there would be changes to the UDRP whether that's the end or what have you, that those would apply mutatis mutandis to whatever parallel process this Work Track would come out with. I would assume so but just wanted to clarify that.

CHRIS DISSPAIN:

For what it's worth, Brian, I think that's a given, isn't it? I mean, I think you'd have to do that otherwise it doesn't make any sense. But point taken and Jeff can deal with that on the list. All right. Thank you, Brian. Jeff, thank you for the clarification and let's wrap it and see you all again next week. Thanks everybody.

TERRI AGNEW:

Thanks. The meeting has been adjourned. I will stop recording and disconnect all remaining lines. Stay well.

[END OF TRANSCRIPT]