ICANN Transcription

IGO Work Track

Monday, 03 May 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 3rd of May, 2021 at 15:00 UTC. In the interest of time, there'll 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 have no listed apologies for today's meeting. 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 your chat. Attendees will not have chat access. Only view to the chat.

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 word alternate, which means you were

automatically pushed to the end of the queue. To remain 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 functionality 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's 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 with your statement of interest, 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.

CHRIS DISSPAIN: Thank you, Terri. Good afternoon, good morning, and good evening, everybody. Welcome to call 10 of the IGO Work Track. I imagine that there are a few people joining as we speak. In fact, I can see a few people joining as we speak so welcome, everybody. The agenda for today is as you will see Item 3, jurisdictional immunity, arbitration super panel and entry to the dispute resolution process. We agreed towards the end of last week's meeting that we would not continue our discussion on this

meeting on entry into the dispute resolution process, unless we had time to do so.

However, we also agreed or rather, Paul McGrady very kindly agreed to send a note through in respect to his comment, as we reached the end of our meeting last week, that said perhaps the parties weren't as far apart as it might seem. And Paul, thank you for your extremely complete note, setting out your views and your view of the position. As I've said, we're not intending to discuss it today unless we have time, which I doubt that we will.

What I would like to request is that in the same spirit that Paul put the note together in the first place, perhaps the IGO reps, or anyone else for that matter, who would like to comment on his notes in respect to entry into the dispute resolution process and trademarks, etc., could please do so either on the email list or in Google documents so that when we come to our call next week, when this will be back at the top of our agenda, we will be able to have a vibrant and hopefully useful, consensus-reaching discussion on the points we discussed last week and the points that Paul has made in his email. So, please do respond to his notes, disagree with him, agree with him, make different points. But let's get some discussion going about that matter.

Brian, I just want to acknowledge your note earlier on today in respect to arbitration. If we get to that, which is the second item on the agenda—3B, rather—then, obviously we'll talk to your note. Before I open up with some brief remarks on jurisdictional immunity for discussion, does anybody have any questions or comments they'd like to make? Okay. Excellent.

So, what we agreed to talk about today is jurisdictional immunity. And the start of that discussion is basically that, very early on in the process in the dispute resolution, current dispute resolution process, the complainant electronically files a complaint and a number of things are required. One of them is that they specify the trademark or service mark, which we will get back to, as I just said.

And the second one is that they must agree to submit to mutual jurisdiction. This has been a major issue in respect to IGOs' use of the UDRP in the past because IGOs' position is that they are not subject to local jurisdictions. I'm going to ask—I'm guessing it would be you, Brian but if anyone else would like to put their hand up that's fine too—to just very briefly and as simply as possible explain to us why IGOs' position is that they have a huge difficulty with agreeing to a mutual jurisdiction in respect to the UDRP.

I think that would at least level set for us. And Brian, thank you. I can see you turned your microphone on. And that will level set for us. But as I said, just briefly and simply please. If you could set it out for us, that will be very helpful. Thanks, Brian. We can hear background noise but we can't hear you, Brian. Are you suffering from the same problem as last week or the week before, when you needed to phone in? Yeah. Okay. Dial in. Thanks. I can see you in the chat. If you could dial in, that would be very helpful. While we're waiting for Brian to do that, would anyone else like to have a crack at explaining why IGOs are troubled by—David, go ahead.

DAVID SATOLA: Thanks, Chris. While Brian's getting reconnected, the principal issue is that by agreeing in advance to the jurisdiction of a particular court, that's deemed to be a waiver of our immunities. And that's why I think I mentioned either last time or the time before when we spoke that even in our commercial contracts, whether it's with our cloud vendors or our paperclip vendors or our cafeteria vendor, our commercial agreements all have arbitration provisions in them. And so, we're looking for something similar here. But it's the subjecting to a court which triggers the waiver of immunities.

And the way that most immunities work, in most IGOs and most countries, is that it is the prerogative of the institution that enjoys the immunity to waive them. And there are cases where IGOs, including the World Bank, choose to waive our immunities to go to a court where we think there's an important issue under litigation or some other reason. But the way that the immunities systems work is it is the prerogative of the IGO to do that. Over. And I hope that answers your question.

CHRIS DISSPAIN: Thanks, David. I'm going to give Brian an opportunity to say something as well, as he's now reconnected to sound. But Brian, you go ahead and then Alexandra, I can see your hand. So, Brian first and then Alexandra. Brian.

BRIAN BECKHAM: Yeah. Hi everyone. Thanks. Sorry for the trouble. I can't really add too much to what David has said, except that over the weekend

we have been in contact with each other, a group of IGOs including some discussions with my own legal counsel's office. And just to build on what David said that this is a very fundamental principle for IGOs, that all manner of commercial contracts have arbitration clauses in lieu of court clauses.

And so, this was the reason I sent around the list. I appreciate people might not have had a chance to read it but the specific details, I don't think are terribly important. Just to say that for example, with the UPU I think applied for a .post top-level domain and in contracting with ICANN, they managed to agree on certain carve-outs for arbitration in lieu of some court processes. So, just to sort of underscore that this is such a fundamental principle for IGOs, that even having gone through the time and expense which I know a lot of people on this call are very familiar with involved in a new gTLD application, that this was a point that they needed to square off with ICANN. Thanks.

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

ALEXANDRA EXCOFFIER: No. Just to add that, for example, for the OECD, the decision to waive immunities has to be taken by the Secretary General. So, it's not a simple matter or a simple process, even within the IGOs. I don't know how it works for others but this is how it works at the OECD.

CHRIS DISSPAIN: Thank you, Alexandra. That's very helpful. So, to be clear, accepting everything that you say, is it right that you can't prevent someone from going to court? You can't prevent someone from suing you. But what you can do is to turn up and say we're immune from this procedure. Would that be fair?

ALEXANDRA EXCOFFIER: Are you asking me?

CHRIS DISSPAIN: I'm asking anyone who'd like to respond. But since you've turned your microphone on, Alexandra, go ahead.

ALEXANDRA EXCOFFIER: Yes, that's fair. We can't prevent anyone from giving it a go. But when we're talking about the mutual jurisdiction clause, as it is written, it means to use UDRP we would have to waive our immunities to even start.

CHRIS DISSPAIN: I completely agree. Absolutely. Got that. Yep. Completely get that. Completely agree. I was trying to make a distinction, the distinction being that, yes, absolutely. What you've spoken to is in respect to the mutual jurisdiction clause. But at the end of the day, if someone were to go to court you haven't agreed to mutual jurisdiction at all but someone were to go to court, it would be a matter for you to go to that court and say, we are not obliged—

we're not bound by this jurisdiction. And what that understanding enables us to do is to have two distinct conversations.

One conversation is a conversation about mutual jurisdiction clause, which is, can we abandon that? And then there's a second conversation, which is can the registrant, if they want to at any point, go off to a court? And that then is inserted into the discussion about, should they have a right to do that as opposed to going to arbitration, or before arbitration, or instead of arbitration or a super panel. So, that was the reason for me raising the point. So, on the basis that everybody hopefully now understands the situation … David, I can see your microphone is open. Did you want to say something?

DAVID SATOLA: Yeah, I did Chris. Thank you. I'm looking for the raise hand function and I can't find it. I'm sorry.

CHRIS DISSPAIN: Don't worry. It's no problem. It depends on what version. I'd tell you but it depends on what version of Zoom you're using so actually I can't.

DAVID SATOLA: That's an even deeper quandary for me. I have no idea. Just wanted to reinforce what Alexandra said and to say we do get sued all the time, for a variety of reasons. And I think one of the reasons for countries, when they join and create IGOs, for

granting the immunity is to lessen the litigation burden on the IGOs.

I think, also fundamentally, the discussion in the work track so far seems to have been based on a distinction or a dichotomy between jurisdiction of a court and arbitration. Whereas, I think for the egos, the fundamental threshold question is waive immunity or not waive immunity? And those are kind of two different vectors of thinking and they may or may not intersect. So, it would be great if we, through the work track, can get those two discussion streams on the same tack because unless we do, we'll have this kind of I think, unresolvable loop. Over. Thank you.

CHRIS DISSPAIN: Yep. Thank you very much. Okay. So, here's the question then. Leaving aside the later question of whether a registrant, if they lose, can then set off to a local court to have the matter dealt with there, at which the IGO will turn up and argue that they're not bound by that jurisdiction … Leaving that aside, it is clear that if we were going to find some form of tweak to the current situation, that would mean that we could proceed with a set of recommendations that would be acceptable to IGOs, then the requirement that at the beginning of the process, the IGOs or both parties need to submit to a mutual jurisdiction would need to go.

So, why would that not be acceptable to anybody? Is it not acceptable? And if it isn't acceptable, why? Let me see if anyone wishes to put their hands up and say that it is not acceptable. Because if it is acceptable, we can move on rapidly to arbitration

and super panel. Okay. Well, no one has their hand up. Paul has his hand up.

PAUL MCGRADY: I just want to understand what we're saying, which is we're not addressing the issue of whether or not this precludes a registrar from exercising any rights it may have under local law to do whatever it wants to do in a court. So, that's what I'm understanding. And at this point are we talking about having an arbitration clause as a mandatory alternative for situations in which the IGO is a complainant? Or are we talking about expanding the two options that we have into three. Right now, there's two other options [inaudible].

CHRIS DISSPAIN: Sorry, you're breaking up.

PAUL MCGRADY: So, right now we have two options—the location of the registrant or location of the registrar. And the current complainant has to consent to, I guess, both of those. And so, are we talking about an alternative clause that would scrap those or an alternative clause that would add arbitration as one of the other options, such the complainant could [inaudible] the location of the registrar, the location of the registrant, or this arbitration?

CHRIS DISSPAIN: At least I think the answer is no. What we're talking about is purely, at the very beginning of the process, not requiring an IGO to agree to be bound by a mutual jurisdiction. So, in other words, if the registrant loses then as I think you have said on numerous occasions, Paul, nothing can prevent anyone from going to a court in their jurisdiction.

What we may get to, if we can agree to abandon the requirements at the beginning of the process, is a position where either we can agree that as part of the deal, the registrant, if it's an IGO matter, will not have the right to go to their jurisdiction because they will have agreed to go to arbitration. Or that they will have the right to go to their own jurisdiction, which is what is contemplated in the current Recommendation 5, but that the IGO has the right, of course, to turn up and argue that they are not bound. And if they win that argument, then the matter would then go to some form of arbitrational super panel.

But at this moment, I'm at a loss to understand why … Given that this whole thing is wrapped up together at the moment—we're talking in principle—is it acceptable to abandon the requirement to agree to being bound by a mutual jurisdiction? And thank you Paul, for saying that you understand that. Of course, the devil's in the details. I get that completely. Now I have David, then Jay, then Alexandra. David, please go ahead.

DAVID SATOLA: Thanks, Chris. I think I'll yield the floor. I can pick up the point later. Thank you.

CHRIS DISSPAIN: Not a problem. Thank you very much. Jay, hello. I know you asked me to ask the question again. Are you any clearer or would you like me to put it into—try and put it into some different words?

JAY CHAPMAN: No, I think I'm okay, Chris. Thank you very much. Good morning, everyone. I continue just to kind of scratch my head at the discussions here and see if there might be an opportunity where … At the end of the day, what I would like to see is a situation where the IGOs are happy that they're not waiving their immunity, per se, but we're also not closing off existing rights for registrants. And while I hear this idea of no one can prevent someone from going to court … There's a lot of things that you can't prevent someone from doing, but that doesn't necessarily mean that they're going to be successful or they're even worth the time of doing. So, I'm not sure where using that as a reason or a crutch to deprive registrants practically of their rights to effectively [inaudible].

CHRIS DISSPAIN: Let me push on that and test that for a second, Jay.

JAY CHAPMAN: Go ahead.

CHRIS DISSPAIN: So, I completely understand what you're saying. So, my question would be this. And then let me be clear. Giving in on a point at this stage it doesn't mean you have to … You can, of course, change your mind if the end result isn't what you want. But if it was this, there's no requirement at the beginning of the process for an IGO to say that they submit to a local jurisdiction.

You go through the process. The IGO wins. And if it was set in a way that said you are entitled, as the next step in the process, should you wish to do so to then bring a case in your local jurisdiction. And the IGO is obviously entitled to argue whatever it is they choose to argue. And if that argument happens to be, "We're not bound by that jurisdiction," and they win, you still had the right to go to your local jurisdiction. You've lost, either because you've lost on fact or you've lost on the fact that the IGO wasn't bound. And then there is an alternative dispute resolution, being an arbitration or a super panel.

Does that make sense to you? And is that something that you would find acceptable? Because what that means is that the IGOs can get into the process, which they can't do at the moment.

JAY CHAPMAN: Well, I'm not sure that IGOs can't get into the process at the moment. I think we have cases and history from the prior working group that did their research and study that showed that IGOs do use the UDRP and that they can. And that was kind of one of the conclusions was that they can. So, whether or not … And David—

CHRIS DISSPAIN: Well, they can. Sorry to be clear. They can, if they're prepared to abandon their right to immunity. So, the answer will be actually, “Yes, they can”. And they're saying, "No, we don't do that."

JAY CHAPMAN: Well, no. David said it eloquently and succinctly, I think, when he said it's their prerogative whether or not they want to waive those immunities in order to go after a domain name. I think what you said, Chris, I can listen and I'm happy to engage in the discussion because there might be a way down what you've just said. I think there might be a way, potentially, for that to work.

But I guess what I'm trying to imagine is a situation—some alternative situation—where there's much less change made to the process as a whole. And I guess what I'm imagining is the previous working group came up with the idea. And I think this continues to just get either ignored or it hasn't been explained fully—but this idea of an agent or an assignee or some sort of person who stands in the place of the IGO, so that the IGO does not have to waive its immunities but can still pursue a UDRP.

Another idea that has been kicked around a little. So back when the new gTLD rounds came around, ICANN came up with this idea of the independent objector. I'm not super familiar with it—but this idea that, for the public benefit, that people could actually object to given strings of new gTLDs whatever they might be. And ICANN actually funded that and supported it so that someone could stand in the place of the public to say … Again, I don't imagine—I don't know if it's ever even been utilized. But this idea

of an independent objector for IGOs is something that sounds interesting.

Again, I'm trying to imagine a way where we don't really disturb the status quo but we do provide IGOs the protection that they want, which is ultimately just so they don't want to give up. They still want to maintain their immunities or they want to choose not to have to go to court themselves. Great. I'm trying to imagine if there are situations or a set of rules or circumstances or process where that doesn't happen, where we don't have to make registrants have a—or force registrants to have to go to an additional arbitration. Thanks.

CHRIS DISSPAIN: Thank you and I know there's a queue. But that's your bottom line. Your bottom line is you don't want to abandon your right to go to a local jurisdiction and to have the other party bound by that decision. That's correct, isn't it?

JAY CHAPMAN: Well, in the same way that IGOs say this is a fundamental principle for them, my guess is that for any registrant who is not your everyday registrant—

CHRIS DISSPAIN: I get it. I understand.

JAY CHAPMAN: It's a fundamental principle for them that they can utilize their local jurisdiction for disputes, especially in a situation where someone has come to them and said, “We're going to take away your property.” Just to me, that seems kind of fundamental as well.

CHRIS DISSPAIN: Yeah. Okay. And I make no judgment about who's got a better right to stick to their guns, I simply just wanted to be clear. Because I'm very clear. I think we're all very clear that the IGO position is in respect to it and I just wanted to be clear on yours. So, thank you. That is very clear. Alexandra, David, and then Kavouss. Alexandra, please go ahead.

ALEXANDRA EXCOFFIER: Thank you, Chris. If we're talking about rights here, you've been very clear throughout this process that 6ter or others shouldn't grant us rights which we don't have. Well, when countries got together to create international organizations, they took away rights to go to court from anyone and they took away rights from the courts to hear disputes involving international organizations. This is an aspect of international law. So, technically registrants or anyone do not have the right to have a dispute with an international organization settled in court. They can as you said, give it a go, give it a try, go there, and do that.

So, I have a question on what Paul said because I'm a little bit less knowledgeable about the UDRP. Who chooses now? Who chooses the jurisdiction? Is it the claimant or the defendant? Just asking a question because if it is the claimant, then this possibility

of having a third option as an arbitration, and if we're the claimants and we select that, then that could be workable. potentially. I don't know.

CHRIS DISSPAIN: Should we just get Paul to respond. Would that be helpful?

ALEXANDRA EXCOFFIER: Sure. I thought you all knew that. But okay.

CHRIS DISSPAIN: And then you can come back again afterwards. I'm not going to take the risk of responding to a question you've asked Paul. But let Paul quickly respond and then we'll come back to you. Is that all right?

ALEXANDRA EXCOFFIER: Okay. That's fine of course.

CHRIS DISSPAIN: Paul, go ahead.

PAUL MCGRADY: Thanks Chris. Thanks Alexandra. So, the answer is the complainant, they currently have two options, the location of the registrar and the location of the registrant. And so those are the two courts that a complainant has to pick from in the event that a losing respondent wants to challenge the decision.

And so now that doesn't undo all kinds of other language in the UDRP that says either party is free to pursue whatever they want to pursue in the courts, regardless of whether or not UDRP is pending. And so that's other language we would have to deal with. Side issue. So, I just wanted to be clear there. So, if we ended up with a third option where the complainant could choose the appropriate international arbitration forum, and the complainant is an IGO, then that gets us down the road. So, yielding back to Alexandra. Thank you.

CHRIS DISSPAIN: Thank you, Paul. Alexandra?

ALEXANDRA EXCOFFIER: So, if I understand correctly, the IGO is the complainant—

CHRIS DISSPAIN: Yes.

ALEXANDRA EXCOFFIER: - starts the UDRP proceeding. We would have to click one of the options. So, then Paul's option … I'm speaking only for myself and for my organization. But then Paul's option might be a viable option. That way we go straight to that. The reason, just to speak to your other possibility of going to court, we put up immunities. We've already discussed this. It's a long process. It will cost each party hundreds of thousands just to get there. And then we have

to redo it again in arbitration. That's something which we would not be comfortable with, if only for the costs.

So, either we go straight to … We do one process. Either we go straight to arbitration and it's a final binding decision. Whoever wins or loses, so be it. Or, given all the information, the registrant still wants to go to court and we can't prevent that. But if they lose on process, whatever that might be—immunities or otherwise—that ends and the decision stays. That would have to … We don't then go to arbitration yet again and incur, yet again, the costs and the time.

CHRIS DISSPAIN: So, your suggested tweaks to Recommendation 5, then, would be instead of the circular recommendation—which is registrant goes to court, registrant loses, and everybody goes back to the beginning and—your suggested tweak would be registrant has a choice to either agree to go to an arbitration, or to go to their local jurisdiction, or to a jurisdiction, their own jurisdiction or the registrar's jurisdiction, knowing that you could turn up and argue that you're not bound by that decision. And if you won that, then they wouldn't have the right to go to arbitration.

That's what you've just said, I think. And that's an interesting thought in the sense it gives them … Well, it gives the registrant the power, if you will, to say, “I'm prepared to go to arbitration,” or, “I'm going to take my chances with my court.” Thank you, Alexandra. Appreciated. I have David, I have Kavouss, and then I have Jeff. David, please go ahead.

DAVID SATOLA: Thanks, Chris. Alexandra said most of what I wanted to say that I will reinforce the notion that the countries, when they formed these organizations, they enter into a treaty and agree there on what the rights, including immunities, should be. So, in response to, I think it was Jay's comments earlier. Yeah. The registrant has rights. Anyone has a right to go to a court, I suppose. Whether anyone—citizen A, citizen B, citizen registrant—gets to go to court to sue an IGO, the immunity applies in a non-discriminatory way.

Let me put it this way, in one instance, we've heard repeatedly that under the Paris Convention, which is a treaty, ICANN, the GNSO and others don't want to "create rights beyond what is in the treaty." But treaties established these organizations. So if we have utmost respect for the sanctity of treaty in one case with respect to 6ter, I think we have to also, unless we want to have a double standard, grant the sanctity of those treaties that create these organizations and recognize the immunities that are created therein.

So, it might suck. It might be unfair that people can't go to courts. But the place to fix that is not in a set of rules for domain name registrations. The way to fix that is to go to the treaty or to the legislation. So, I can appreciate the frustration but this is not the place to say whether or not the immunities of these organizations apply. They do. And if we're going to start to pick at the conventions and the treaties, then maybe we can start to pick at 6ter but I don't think that's a path we want to go down. Over.

CHRIS DISSPAIN: So, David, thank you. I appreciate the point. I just want to just pick up on one thing just so that we are clear. I think you said, “It might suck that you can't go to court.” To be clear, you can go to court so it's a different suck. You might lose because … I just want to make sure that we're—because I don't want someone picking up that ball and running with it, saying you can't go to court, because you can go to court.

DAVID SATOLA: Okay. Fair enough. Thank you, Chris. Thank you.

CHRIS DISSPAIN: That's all. No problem.

DAVID SATOLA: If your counsel wants to advise you that “Yeah, go to court knowing it's going to be a losing venture,” and you want to spend the money to do it, I suppose.

CHRIS DISSPAIN: Yeah. Understood. It doesn't make sense to me but people may very well want to do that. So, David, thank you. Good afternoon, Kavouss. You’re next.

KAVOUSS ARASTEH: Chris, let me say that I'm somewhat disappointed, of the number of intervention, the overwhelming majority are not in favor to give anything to IGO. There are only one or two persons defending the

right of IGO and IGO is not treated at least on equal basis with registrant. IGO is representative of the hundreds of the governments that they normally—if you go to the international regulations and you go to the law of the treaty, they are representing millions of the people. Their right is ignored.

I don't understand the person saying that IGO would not get any immunity. In fact, what he said that IGO would not get [their] immunity but they provide them something. I don't know what they provide them. The same person mentioned that, “Let's have a status quo and also make IGO satisfied.” I don't know how. They are contradicting. They are really contradicting. And I don't understand that, saying they’ll either go to the court or go to the arbitration. There are not two things on the same footing, either this or that. They're different. And you know the IGO has serious problems going to the local courts.

So, I am afraid that we are not addressing the problem, Chris. I come back to my point that I raised at the very beginning of this meeting, before we established this group. I don't see any light at the end of this tunnel. We open and open and open, more and more, but we never try to find out some way to limit the number of the options. We have discussed tens of options, if you look at your document. I have compiled all the documents, unfortunately—copied them, print them, put them together and tried to make a table for myself. I lost a number of the options and so on and so forth. So, at the end of this meeting, we have something. At the next meeting we come back and go to other things.

And someone today proposed another option. I don't know what that option means. So, we have options and the options become

like a workshop of IGF—75 workshops but no results. Chris, I'd request you kindly to conduct the meeting in a way that we limit the number of options, and we be objective, and we have treating everybody fairly. I know that the IGO are not properly, sufficiently represented at this meeting. And the meeting is full of the registrant defenders. So, disappointed. Sorry to be so straightforward and sorry to be so open. I'm not pointing to any particular person. I respect everybody. I respect their views. But their views is not presented in a fair basis, in a way to find a solution for that. Thank you.

CHRIS DISSPAIN: Thank you, Kavouss. Jeff, you are next.

JEFF NEUMAN: Yeah. Thanks. Sorry. It took me a second to get off mute and I'm just thinking about the last comment, whether I want to make a comment. Here's the part that we're missing. And I understand the point from David, and Alexandra, and Brian earlier. The point here is that we're not talking about a case where someone is suing an IGO, like in your typical case. Remember, a registrant has the right to remove a case from the UDRP right when it starts, right? You can't force a registrant into the UDRP, right? The registrant could say, "No, sorry. I don't want to fight it here. I want to take it to court."

Remember though, even though it is a registrant challenging the … If an IGO wins, we're talking about a registrant challenging that decision. I don't view that as a normal immunity-type case where

the IGO is your typical defendant. They're not. They're still the complainant, at the end of the day. They're still the ones that are trying to take away a registrant's, as Jay put it, property—now, maybe for the right reasons.

But at the end of the day, whether it's the original UDRP, or whether it's a rehearing, or whether it's a removal from the UDRP, at the end of the day, this is not your typical immunity case where David said, "Well, sorry if you don't like that. That sucks. You can go look at the … You can work on the international treaty." I don't think the international treaties envisioned a situation where the IGOs are the aggressors, if you will—are the complainants. Don't think that's what immunity was supposed to address.

So, I do think that this is a different type of case. I think that you cannot forget the importance of removing a case away from the UDRP. There's nothing that forces a registrant to have to do the UDRP. It can remove it into court. So, I just don't think it's as simple as it's being made to sound. I think we need to … Being a UDRP panelist, I wish I could say we always get it right. And well, thankfully, I'll knock on wood, I haven't been challenged in my decisions yet. But we're infallible. We're not infallible. Sorry. We make mistakes.

CHRIS DISSPAIN: Oh, no. That's Freudian—the best Freudian slip of the whole 10 calls so far, Jeff. Well done.

JEFF NEUMAN: Yeah. Panelists make mistakes and remember this is a UDRP. It's all on the paper. There's no cross-examination of witnesses. There's no normal protections that you would have in normal, even arbitration processes. This is like a very streamed-down, watered-down view. And I think we need to take a step back and before … And I appreciate what Kavouss is saying, "We're trying to treat IGOs in a special case." But after all, this is an IGO that's seeking to take away our registrants' property. Now, granted they may not have a right to it but at the end of the day, we can't presuppose that every single panelist gets the decision right and every single case brought by an IGO is or should be a winning case. Thanks.

CHRIS DISSPAIN: Thank you, Jeff. I'm going to wrap this section up in a second but before I do, Alexandra?

ALEXANDRA EXCOFFIER: Yes. Thank you. Just to respectfully disagree with Jeff. If you have a contract, for example, whoever wants to go to—whoever is the aggressor or the wrongdoer—either both parties agreed that they would go to arbitration. The thing is, Jeff, okay, yes. They could take it out. The registrant can take it out from the UDRP and then what? They would take it to court, and we would raise immunities, and then the issue will not be decided. And we would lose, in a way, automatically because we are an international organization. So is that fair? I'm not sure that's necessarily fair.

I think the point of this taskforce is how an issue can be resolved. And we're not saying, "No, absolutely no justice. Absolutely no rights." They have rights. It's just, instead of through courts, they would have their dispute adjudicated through a non-judicial process—an arbitration process. So, respectfully, I don't see the difference. And when immunities are granted, it is up to us whether or not to waive them. And you basically are forcing us, one way or the other, to waive them.

CHRIS DISSPAIN: Thank you, Alexandra.

JEFF NEUMAN: Yeah. Can I respond? Can I just respond because I wasn't clear? I know I wasn't clear.

CHRIS DISSPAIN: Yes. Yes, Jeff. Briefly, please.

JEFF NEUMAN: Yeah. What I was referring to was the gambling option, I'll call it, that if a registrant brings it to court and can't get jurisdiction, then that's it. It doesn't get another bite at the apple, and it's over, and the IGO automatically wins. That was what I was commenting to.

I'm okay with, if we want to have a full arbitration afterwards but I don't think a registrant should be punished for trying to take it to court. If it fails getting jurisdiction, fair enough. Then you should have a right to the arbitration that you were talking about. That's

what I'm talking about, Alexandra. Sorry. I agree with you on us finding a solution and removing to … I agree with most of what you said. What I didn't agree with was the gambling, like you'll lose if you can't get jurisdiction. Thanks.

CHRIS DISSPAIN: Which is actually what I said. Go ahead, Alexandra.

ALEXANDRA EXCOFFIER: If we leave the choice to them, explain to them what IGO immunities means, they still want to go to court, spend hundreds of thousands of dollars, require the IGO to spend hundreds of thousands of dollars and then they lose, "Oh, sorry. You were warned but you lost." But then they go back and have an arbitration where we spend about the same again—and not just us, them as well—I don't see really the point of doing that.

CHRIS DISSPAIN: So, at the moment we're ... Thank you.

ALEXANDRA EXCOFFIER: Yes, it's their property that they want to take away but—

CHRIS DISSPAIN: So, at the moment, we're actually already discussing what effectively is the second part of the discussion. And I'm quite happy to do that but I would quite like to wrap up the first part of the discussion if nobody minds. So, can I ask if Yrjö would speak,

then I'm going to say a few things and we're going to move on. Yrjö, please go ahead.

YRJÖ LÄNSIPURO: Thank you, Chris. Yeah, just to say that to my mind, the principle of the immunity of the IGOs has been around for a while. And I think that we should treat it as a fact of life and try to devise a procedure that takes that into account instead of trying to nibble at the [inaudible].

CHRIS DISSPAIN: Thank you, Yrjö. I appreciate the comment. Look, at the top level, what we're talking about is whether or not, at the beginning of the process, the parties should be required to submit to a mutual jurisdiction. In fact, the only two people who've spoken out against that … Paul, who initially started off by saying, "I'm not clear. What does it mean?" And then put a note in the chat a little while ago said, "Yes, okay, I'm fine. But obviously, the devil's in the details and it's subject to what happens at the end," which is perfectly fine. And Jay, who made a clear statement about what he believes is the right thing to do but also said, "However, I am prepared to carry on discussing it because it may be that it's okay if what we decide at the end works."

So, actually I think it's time to move on. I think we can say that, of course, entirely subject to us being able to agree ultimate processes, it is not inconceivable that this group could agree that the requirement to submit to a mutual jurisdiction at the beginning of the process could actually be taken out in respects to IGOs.

So, I'm going to say for now that that is a possibility. And because it's a possibility, it is worth proceeding to discuss the next bit. Because frankly, if it isn't a possibility, there's no point because if the IGOs are required to submit to a mutual jurisdiction, [inaudible] when they do that, then we are wasting our time. So, let's assume for the sake of this discussion that we can in fact agree to take out the jurisdiction immunity thing, entirely dependent on what we discuss next.

So, now the question becomes, okay, so you go through dispute resolution process. All of the stuff in the middle, we don't need to talk about because it's all the same. The respondent's domain name is identical or confusingly similar. The respondent doesn't have rights and legitimate interest. Domain name is registered or being used in bad faith. All of that happens. And at the end of that process, the panelist says, "I find for the complainant. I find for the IGO."

Now, the question then becomes, irrespective of whether or not the registrant has the right to go to their local court … And I know we need to come back to whether they are going to be required to abandon that right because they agree to use a different process. Whether they've got a right to do that is the next step. But I think it would be useful if we could now move on to discuss, is there a discussion to be had about whether a final process should be an arbitration or what we've called a super panel, which is in essence dealt with under the current UDRP panelist process but is wider and more experienced.

Now, I know a lot has been said about going to arbitration. I think everybody will acknowledge—certainly Alexandra's mentioned it

on a number of occasions—that arbitration is expensive. Whereas it is clear that UDRP is probably less expensive and therefore one assumes a super panel will be less expensive. I am not suggesting that that's a reason to necessarily choose a super panel. But I would like to have a discussion about whether or not it is simply to be arbitration or whether we would consider putting together some sort of a UDRP super panel to deal with a final hearing in the event that one is necessary. Kavouss, your hand is up then Alexandra. Kavouss, go ahead please.

KAVOUSS ARASTEH: Thank you very much again, Chris. At 18:26 Geneva time, I will ask you to kindly advise whether we have followed the agenda. Two, what we have discussed.

CHRIS DISSPAIN: Yes. We have.

KAVOUSS ARASTEH: Wait until I've finished. You're the chair. You have the right to comment but please do not interrupt me. Whether you have followed the agenda, what we have discussed, and what we have achieved at this one and a half hour of discussion. Whether we open the issue or whether we try to have some sort of the way forward. I request you to finally make a summary of that at the end of the meeting and to establish some way for the next meeting.

Chair, I am working for this field for years—not for the IGO, but the field of how [to discuss] at the meeting. We should establish an

objective for meeting and subsequent meetings and we have to follow that. I would like to know what we achieve at this meeting and what is it that we have to do at next meeting and next meeting. We have to take and follow up that one and we do not open again the things and listening to many philosophical, right, nice ideas, and instructions, or teaching or anything like this. So, please kindly be prepared to provide that at 6:20 Geneva time or whatever time you have. Thank you.

CHRIS DISSPAIN: Thank you, Kavouss. Alexandra, go ahead.

ALEXANDRA EXCOFFIER: Yes. Hi. I don't know whether the super panel would be expensive or less expensive. The cost of arbitration, the main cost will be for the for the lawyers. But there's also the arbitrator or arbitrators to pay. I suppose the super panelists will have to be paid. I don't know if that's less or more than arbitrators. For me, the concern would be that arbitration is maybe more well-known.

So if there is, for some reason a reason to go to a court, either to contest that the arbitration was not correctly carried out or something like that, that courts know that—are familiar with arbitration. They may not be familiar with the super panel. And would the super panel decision, then, be final and binding like an arbitration? These are some questions for you because that was your idea, the super panel.

CHRIS DISSPAIN: Thank you very much for reminding me. I appreciate.

ALEXANDRA EXCOFFIER: Put you on the spot for a while.

CHRIS DISSPAIN: I appreciate it enormously. And I agree. I did sort of pull the super panel out of a hat as a possible alternative. But it seems to me that there is merit in your points— in a number of points but in specifically in your points about arbitration being a known quantity and not having to write a whole new set of rules, all that sort of stuff. So, let me see if I can shorten this particular part of the process.

In principle … And again, please. I understand it's dependent on a whole raft of other things. But in principle, if there was going to be a process by which a final, final decision could be made in respects to an IGO's claim about a domain name, is there anyone who is uncomfortable with that being arbitration as opposed to some form of extra special UDRP process? I think everybody's pretty much expressed an understanding of arbitration and said that we've had discussions about it so far. So, I'm wondering if there is any issue with arbitration. Brian and then Jeff. Brian, go ahead.

BRIAN BECKHAM: Thanks, Chris. Just to be clear, are we talking about arbitration at first instance—so, that's in lieu of the UDRP-like process—or the appeals layer?

CHRIS DISSPAIN: We're talking about the secondary layer which may be either before or after a registrant has gone to the local court. But ignoring the local court question for a minute, if there is to be a secondary mechanism, which at the moment, under Recommendation 5 is sending everything back to the beginning again … If there is going to be a secondary mechanism to break that circularity of Recommendation 5, which as I said at the moment, sends everything back to the beginning, again, does anybody have an issue with that being arbitration?

BRIAN BECKHAM: Got you. No. In that case, I will just say, I think that just in case people aren't familiar with the differences under the UDRP process—obviously, we're having this whole discussion about court options and super panels and so on—is that those aren't final and binding processes where our arbitration process is. So, to that point, that may have some attractiveness to the parties in these cases.

One thing just to flag is that, of course, normally under arbitration, either before there's a need for arbitration … So, it could be two private parties to a licensing contract. They would agree on certain provisions about applicable law language jurisdiction, that sort of thing in advance. At the same time, sometimes parties find themselves wanting to go into arbitration, not having had a clause where they've hashed out some of the details in advance. So, just one thing to think about in terms of the arbitration, which I think has a certain attractiveness, in that it has a finality to it, would be

to what extent we would want to prescribe any of the substantive or procedural elements in advance or to leave that to the arbitrator and the parties.

CHRIS DISSPAIN: Yes. Thank you. But that's, if I may suggest, a little far gone in the weeds at this stage. But agreed. Those decisions, if we decided to go to use arbitration, would need to be discussed. Jeff, go ahead.

JEFF NEUMAN: Yeah, I was going to just second what Brian was saying. And I think that there are a number of items that would be into the weeds but I think choice of law is actually one of those that we would have to set out as part of the policy. In other words, if a registrant in the U.S. were to bring an action, it would have an understanding of the law in the U.S., under which it could essentially … The ACPA is the law in the U.S. I do think the standard and the law that applies is something that we, at the policy level, have to decide before anyone could sign off an arbitration. But the other details like how many arbitrators, what rules you follow, that's kind of into the weeds. But I think the standard or choice of law is one of those that's fundamental.

CHRIS DISSPAIN: I agree. And again, I'm not hearing anybody say to me, in principle, use of arbitration is a problem. So, let's pick at that choice of law thing for a little while and see where we get to. What situation with an IGO … If an IGO has an issue with mutual jurisdiction, or other jurisdictions, or local court, are there any

issues we need to get on the table now in respect to the choice of law for an arbitration with respect to an IGO? Alexandra and then Brian.

ALEXANDRA EXCOFFIER: Well, I'm just saying for us, generally, we don't specify the law. We let the arbitrators decide because we don't submit ourselves to national laws. But we would, in a dispute, if an arbitrator would like to reference a law. And usually, it would be the location of one of the parties, the dispute, the location of the dispute. So I suppose where the domain name is located would probably be what the arbitrator would decide. But I'll let Brian follow up on that.

CHRIS DISSPAIN: Brian and then David.

BRIAN BECKHAM: I'll defer to David, if that's okay, and then maybe complement him.

CHRIS DISSPAIN: Sure. David?

DAVID SATOLA: Thank you. Chris, honestly, I'm not sure because I don't work with the commercial contracting that the bank does. I can try and get some information from those of my colleagues who do that work and see what our practice is. But to Jeff's point earlier, there's a lot of stuff about arbitration that could get pretty deeply into some

weeds. But I think that that's probably also something worth discussing at some later point.

And as Alexandra said, yeah. There's a place of arbitration, the language of arbitration, the law governing the substance, the law governing the procedure of the arbitration, the strategy of where it takes place, whether there's one or three. Those are all things that need to be considered. And those who have been in arbitration practice, they're no stranger to those issues.

But I'd like to put this issue on the table. If we're successful in discussing about arbitration and all of that, and if we're successful in putting some parameters around all these open issues—place, language, law, number of arbitrators—it could actually lead to greater predictability in the system. And I know the main focus of the discussion is about getting people into the tunnel but I think we should also give some oxygen to the topic of what comes out of the tunnel in terms of predictability of results. Because I think that's what everybody wants in the end is having—if we go into a tunnel, regardless of whether the tunnel is, that at some point we get out of that tunnel and we know with relative certainty what's going to happen. And I think if we default to an arbitral system, that lends itself to much greater predictability for registrants, for IGOs, for everybody. Over. Thank you.

CHRIS DISSPAIN: Yes. Thank you, David. Appreciate it. And just to circle back and reiterate the point, yes. If we find ourselves in a situation where we have reached sufficient consensus to start talking in some detail about arbitration, then yes, I believe that some of those

pegs will need to be planted into the ground because I don't think we could leave it all for implementation. But we're several fairly large steps away from getting to that point. There's no point in undertaking all of that complicated and difficult work if we don't have agreement. But thank you and I appreciate what you've said.

Brian, and then after Brian, I am going to … And I see that Paul has suggested in the chat that it might be sensible to have a brief explanation of the difference between choice of jurisdiction—sorry, choice of law and consent to jurisdiction. And I think that is actually a very important point to be covered briefly, whether Jeff or Paul wants to do it, either of them, and someone can have a go. But first Brian.

BRIAN BECKHAM: Thank you. I don't want to jump around too much or confuse topics but I think part of this is that there's a lot in the air and the way it fits together helps to answer the question. So, I think first, to simply answer the question, Chris, I think then the arbitration option is something that clearly the IGOs have preferred so that's just to simply answer the question.

Then, just to maybe help unpack or help others answer that question a little bit, if you recall during some of our earlier meetings, I mentioned that in some prior conversations, some ideas had emerged around this arbitral appeal panel topic along the lines of the panel composition. So is that one or three members? Is there a more limited vetted roster? Are there possibilities for strike options, things like this? This goes to the

point David was making about giving some clarity around this process.

Also, just for a little bit of context, which I think helps maybe answer the question a little bit, is there have been a number of ccTLDs, so Country Code Top Level Domains which have … The UDRP applies to all .com and gTLD registrations. A number of ccTLDs have adopted the UDRP or made small modifications to the UDRP. An even smaller number have actually used the UDRP model but have done that through the lens of arbitration.

And so, I mentioned that to say, when we talk about, choice of law and questions along these lines, I think this goes to the question that David was raising about clarity of the substance, clarity of the process. So, in other words, sometimes in arbitration, this is a bit more a la carte, if you will. Whereas I think probably for everybody involved, if we can dovetail on the UDRP experience, that may give some comfort to the questions that David was raising. Well, I'll just end there. Thanks.

CHRIS DISSPAIN: Thank you, Brian. Jeff or Paul, do you want to just have a quick bash at the difference between jurisdiction and choice of law, just so that we've got it in the record? Paul, go ahead.

PAUL MCGRADY: Thanks. So, choosing what law under which a contract or some other document will be interpreted, essentially is just that which is, “Okay, here are a set of principles located in this particular jurisdiction. And we're going to apply those as we work out the

dispute, or what a document means, or how a transaction's going to work." That's different than saying, "I consent to the jurisdiction of that [inaudible]." It's essentially the difference between … Well, I can't come up with a good analogy. But the bottom line is, one is not the same thing as the other.

It really is only the existence of the law from which you can choose, right? The jurisdiction that creates the immunity for the IGOs anyways, right? And so, for example, one, if you were an IGO … [inaudible] I think if you were from an IGO, you would argue that it is the laws of the United States that would keep its citizen from being able to sue an IGO in the first place, right? I don't think there's anything to fear in saying, "Okay, well, we're going to choose the law." There was suggestion that we choose the law and the location of the registrant but that's a whole lot of wildcard. And so, we may want to take a look and see if we can find a jurisdiction whose laws are a little [inaudible] often predictable. Thanks.

CHRIS DISSPAIN: Thank you. And presumably, what we would be trying to avoid is … Jeff, I can see your hand. I'll get to you in a second. What we would be seeking to avoid would be the situation where the law would be governed by the locations of any of the parties, on the basis that to do that would mean that your arbitration panels would need to be cognizant of a huge number of jurisdictions and that is challenging, to say the least. Thank you, Paul. Jeff, go ahead.

JEFF NEUMAN: Thanks. It's even a little bit more complicated than that because normally, you have, when you agree to this … Like the example that Brian sent around earlier, there's two parties to a contract and they are agreeing amongst themselves as to what would apply and what the arbitrator would look at. So, in the example Brian sent around, the arbitration looks at whether there was indeed a breach of the contract. In this case, you have two parties that are not in a contract with each other.

And the choice of law is not whether we like the U.S. law better than another kind of law. The choice of law here is important because it … Not every law has domain name legislation or actions or even common law that provides certain rights to domain owners or rights to trademark owners and other things. So, actually, it's a different situation because these two sides are not in a contract with each other.

So, when I say choice of law, what I'm really talking about is, what is the standard by which the arbitrator is going to look at when deciding who should get the name? In other words, is it going to look at bad faith? Is it going to look at infringement? Is it going to look at something else? I don't know. Registration in bad faith and use in bad faith or is it an or? These are what I'm thinking of as choice of law, which is sort of different than, is it going to be New York's law or Swiss law? Does that make sense? It's not your typical arbitration.

CHRIS DISSPAIN: It's a fine point and it raises the interesting question as to whether—at least I think it's an interesting question anyway—as to

whether arbitration is actually the right process. Because, as you quite rightly say, Jeff, generally speaking, arbitrations are a function of contractual dispute. It's not that they don't operate outside of that but mostly, they mostly are contractual.

And the advantage of agreeing to a jurisdiction—I'm going to use the term jurisdiction loosely--such as UDRP is that you just agree that, a, they're experts, or they're at least be supposed to be. You certainly are, Jeff—not a God but an expert. Not an infallible. And they're making the decisions built on the criteria that exist in that process. And so therefore, your point raises the question as to whether it would in fact be more suited and more advantageous to both parties to have the matter dealt with by an extraordinary panel under the UDRP, rather than shifting out to an arbitration process.

I'm not pushing that one way or another. I'm just raising it as a question that arises because of what you've said—what both you and Paul, in fact, have said regarding jurisdictional issues. Alexandra, and then Brian, and then I'm probably going to wrap up until next week. Alexandra, go ahead.

ALEXANDRA EXCOFFIER: Just to say that the same could apply for arbitration as a super panel. We can circumvent the issues that the panelists or the arbitrator will look at. I think that's what Jeff and Brian were trying to get at. So, we don't need to necessarily refer to the contract law of New York or Switzerland. We can circumvent the decision and what the arbitrators will need to look at. In the same way, I'm not sure that it makes that much of a difference of a super panel or an

arbitration. Also, Brian was referring to potentially a list of potential arbitrators which is, I suppose, the same as a list of potential panelists so they would be familiar with the UDRP. They should be familiar with the UDRP so that might be a solution as well.

CHRIS DISSPAIN: Right. Thank you. Brian?

BRIAN BECKHAM: Thanks. I just wanted to say, it sounds like … Of course, as I was mentioning earlier, sometimes it's worthwhile to tease out some of the details to answer the threshold question. But just wanted to reflect, for whatever it's worth, without, of course, purporting to speak for anyone. But it sounds like … The fact that we're having a good conversation around some of the details about choice of law and panelists/arbitrators, rosters and things like this, seems to me a reasonably positive indication that this is a comfortable topic worth exploring and I certainly haven't heard anyone give a clear no that this is something that's too far out there to keep exploring.

CHRIS DISSPAIN: Thank you, Brian. Okay. So, this is where I think we've got to and what I want to see happen next. I think there is a willingness to consider the possibility of dropping the consent to jurisdiction requirement that sits at the beginning of the process. I think that there is a willingness to consider a final binding hearing under the auspices of an arbitration.

Now, there's a whole raft of stuff in the middle of all of that that would need to be sorted out—and I don't mean the detail of the arbitration, I mean matters of principle for the people on this call—in the middle of all of that, that would be need to be sorted out before those agreements or willingnesses would be acceptable. But I think that we can say that it's not out of the question but to drop the immunity and it's not out of the question to put in an arbitration mechanism. So those two things are encouraging.

However, we had finished off last week by agreeing—and I know that some of you weren't on the call at the very beginning when I went through this—that we would leave the discussion on entry into the dispute resolution process, the 6ter, the GAC and all of that stuff. We would leave that for this week, unless we had time, and come back to it next week. And I just want to say, yeah. Paul Mcgrady has very kindly done what he was asked to do which is to put an email on the list that sets out his issues with the entry into the dispute resolution process, the trademark issue, and why he thinks that maybe things are not—that parties are perhaps not as far apart as they might think.

I want to say that I think while Paul has put some fairly straightforward—and I thank him for that—points in that document which quite clearly set out what his view is, it would be fantastic if we could start next week's call having had responses to what he has said on the list, or if you prefer on Google Docs, from those who disagree with him, or have distinctions around some of the things that he said, or have some ideas to overcome what Paul has set out as obstacles to perhaps reaching an agreement.

If we can break the back of that on next week's call, then I think we're in a position to say, "We have a number of things we think are feasible. We have a number of things that we think we can do," and the next step will be for us to decide whether or not we should pursue our discussions about them or whether we think that we would require input from the GNSO Council because of the question of scope, which we all agreed we would come back to before it was necessary to go—before, sorry, the Council meeting, which I think, if I remember correctly, is in the third week of May. So, I'm going to summarize but before I do, I see Kavouss' hand is up so Kavouss, please go ahead.

KAVOUSS ARASTEH: Thank you, Chris. In the last 10 minutes, I heard something at least promising, at least. But before going further, I would like to know that pros and cons for arbitration and for super panels—advantage, disadvantage. Pros and cons for 6ter and GAC list. Pros and cons for UDRP continuation or IGO DRP. And I think that is still on the paper. You have not excluded that. If yes, please let me know.

But at least the last two things that we have discussed, arbitration versus the super panel, we have to know the advantages and disadvantages, taking to account of many things—of cost, taking into account of the degree of expertise, competence that Alexandra mentioned, and so on and so forth. Would it be possible that these sorts of things also will be put on the paper in order to at least share the understanding of some of the people? And then you can decide that what would be specifically for the next meeting and we do not come back to start gain from all of

these. So please specify how many routes or avenue we have and let us know which avenue will be at our next meeting. Thank you.

CHRIS DISSPAIN: Thank you, Kavouss. So, to summarize, we will be discussing the entry into the dispute resolution process at our next meeting as our primary item on the agenda. Thank you for noting in the chat that we can put Paul's document into Google Docs. That's fine. And everyone should feel free to comment on it in Google Docs, or on the email list if they prefer. And perhaps Mary and Steve and Berry, you could make sure that if there's comments on both the list end on Google Docs, they could be cross-pollinated, for want of a better way of putting it. That would be enormously helpful.

We will put the topics—the jurisdictional immunity topic and the arbitration super panel topic—on the agenda for next week but obviously they will only be got to if, indeed, we have time. And I suspect that our discussion on the entry into the DRP will be fulsome. And basically, we need to nail, next week, whether we can see a path through that it would enable us to continue. Because if we can't see a path through on entry, then it's pointless to discuss the other matters any further. Entry is the key thing.

Acknowledging Kavouss' request in respect to the pros and cons of an arbitration and a super panel, I'm not entirely sure how one could put that document together, given the current status of the discussion. But if Mary and Steve, you wouldn't mind just running through the transcript and picking up any of the points that have been made in favor of one or the other. I know, for example, that one of the suggestions was the super panel might be less cost

costly. But actually, that was then responded to by Alexandra, who said she might end up costing the same amount of money because the cost is in the lawyers. And if it's going to be an open process, rather than just on paper, there certainly would be some costs. But anyway, if you could do that, Mary, thank you. That would be great. And I can see you've said yes in the chat.

I do want to thank everybody for being so willing to open up to the possibilities and to taking steps forward, even acknowledging that we're not agreeing to do stuff but just allowing for the possibility that that stuff may be possible. So, I really want to acknowledge everyone if there's probably a willingness to do that. And I would encourage everyone to try and bring the same level of cooperation and willingness to be open-minded to our discussion next week on entry to the dispute resolution process because it's that that's going to dictate whether we continue or not. And then the sub-question, whether we need to go and ask for input from the GNSO Council.

So, with that I'd like to say thank you to everybody. Enjoy the rest of your day and we'll gather again next Monday for call number 11. Thank you very much, everybody.

TERRI AGNEW: Thank you everyone. Once again, the meeting has been adjourned. We'll end the recording and disconnect all remaining lines. Stay well.

[END OF TRANSCRIPT]