

**ICANN  
Transcription  
IGO-INGO Curative Rights Protection PDP WG Call  
Thursday, 7 December 2017 at 17:00 UTC**

Note: Although the transcription is largely accurate, in some cases it is incomplete or inaccurate due to inaudible passages or transcription errors. It is posted as an aid to understanding the proceedings at the meeting, but should not be treated as an authoritative record. The audio is also available at: <https://audio.icann.org/gnso/gnso-igo-ingo-crp-pdp-07dec17-en.mp3> Adobe Connect recording: <https://participate.icann.org/p5eyj5b6tk4/> Attendance of the call is posted on agenda wiki page: <https://community.icann.org/x/ZBJyB> The recordings and transcriptions of the calls are posted on the GNSO Master Calendar page <http://gnso.icann.org/en/group-activities/calendar>

Julie Bisland: Okay, thank you so much. Well good morning, good afternoon and good evening everyone. Welcome to the IGO INGO Access to Curative Rights Protection Mechanism Working Group call on the 7th of December, 2017.

On the call today we have George Kirikos, Petter Rindforth, Phil Corwin, Zak Muscovitch, Jay Chapman, David Maher, Paul Tattersfield and Poncelet. From staff – sorry – we have Steve Chan, Berry Cobb, Mary Wong and myself, Julie Bisland. I have no apologies at this time.

I would like to remind all to please state your name before speaking for transcription purposes and to please keep your phones and microphones on mute when not speaking to avoid background noise. And with this I'll turn it back over to Petter Rindforth.

Petter Rindforth: Thank you. Petter Rindforth here. And so we'll start with the traditional and new statement of interest changing? No, see no hands up. So the – although we don't have a specific agenda out there, but topics today is to discuss the possible Recommendation 3, the three options we have there and also to discuss what is called Option 6 from the time where we still had a great number of different kind of options.

So let's see if we have – let's start with the Options A, B, C. So you see on the screen and I hope you have also seen most of it before. As you know, the first question – the first Option A was to – where a losing registrant challenged the initial UDRP URS decision by filing suit in a national court of mutual jurisdiction and IGO that succeeded in this – in its initial UDRP URS complaint, also succeeds in asserting jurisdictional immunity in that court. The decision rendered against the registrant in the predecessor UDRP or URS shall be vitiated.

And from when we sent out the request now to our working group members, we had support of 14 answers, we had support from five – eight members that did not support and one said that he could live with this option.

And as you see there was some additional comments there and we have – we have decided that working group members could be free to make a vote and also to make additional comments without the need to recognize the personal identity.

And I wish that we keep it that way but of course working group members that once they raise their hands and make comments on the working group meetings, either to support or to not support and all these options we are free to do so. But if we go just quickly through these – some said – one said that sadly Option A is the best of a very poor set of options. Another comment that supported this option regardless of political opposition.

And third one said he was still undecided on all three options on the rationale simple solution that's being (unintelligible) everyone is – in the face and apparently hiding in plain sight for some, for almost three years in the (unintelligible) so IGOs must authorize a licensing agent and have them fight IGOs battling in court.

I just have comment on that for me personally, we've seen from a number of the replies from IGO representatives that they didn't feel that that was an

acceptable way for them to authorize a licensee or some agent to handle the cases.

And even if we – we still have better – possible way for IGOs to deal with dispute resolutions. I think it would be non-acceptable to have that as the way – one and only way for them to accept the possibility to fight a domain dispute in a national court.

And there's a very long – very long reply but I would just go through the bottom – Zak, I see your hand is up. You're welcome.

Zak Muscovitch: Yes. Thank you so much, Petter. So as I had made a note in the last call, there was – I realize that I'm late to this party coming at the tail end of your admirable work. I've been monumentally impressed by the thoughtfulness of all concerned. And this is an incredibly complex issue that you've investigated and considered over a long period of time.

And firstly, I've gone back and forth with it in my own mind and at some point in time I've seen and saw merit in each of the options. But, you know, as someone who is, until recently, an outsider to this working group, I maybe be able to offer some insight into how I'm seeing it, that you might find some value in.

And that's that it looks to me that there's a split within the working group. There's some that like Option A and there's some that like Option C and they both have points on their side.

What I'm wondering, and I'm sure you've turned your thoughts to this in the past so it's nothing new, that the changes that are being recommended, whether it's Option A or whether it's Option C, seem to be trying to – as other people mentioned – solve a problem that some people perceived as doesn't exist.

But regardless of that, the options on the table seem to require a consideration of the wording of Paragraph 4K, for example, or adding another provision to the UDRP that enables the arbitration later on or, you know, requires a – making it clear that a cause of action exists for both parties regardless of the outcome of the UDRP.

And these kinds of changes, you know, as an outsider, I wonder why and how, more particularly, the IGO Working Group can recommend specific changes to the UDRP when there's a companion working group that's tasked with that and if it's just making recommendations about the IGO, and it requires changes to protect the IGOs interests, how can that be done when it doesn't consider how it affects other stakeholders and how it – and how opening up the UDRP to make these revisions, should also becoming by possibly other revisions to maintain the balance of the UDRP? I'm sure there's a cause of action for 4K and make it clear about how sovereign immunity can – cannot be asserted.

And so I'm wondering whether there's a possibility of a consensus position that the working group decides your working group make a strong recommendation of (unintelligible) support that due to the complexity of these issues and due to the interplay of these issues and due to a fact that they seem to, in one way or the other, open up the UDRP policy that this is something that must be part of a comprehensive review and that the IGO

Working Group strongly recommends referring this issue to the working group to solve because this IGO Working Group has come to the conclusion that there are possible policy changes that can be made but part and parcel of making them is – are changes to the policy that must be undertaken as part of a comprehensive review.

So I'll leave it there. I'd love to hear your thoughts on that.

Petter Rindforth: Thank you, Zak. Good question. I fully understand why you ask it especially as you may have not had the possibility to participate at the beginning when we discussed this issue. And before it turn it over to Phil that's definitely – have specific information as one of the co-chairs of the other working group you referred to.

First of all, I don't see this as a significant change of the policy but also this is a specific topic that relates to IGOs such and that we, in our working group, have been asked to make a solution on. And frankly, I see no – and I'll turn it over to Phil to comment on that, but my personal view is that if we come out with a very good solution for specific kind of disputes, including for example, final decision made by arbitration I see no reason why this could not be at least discussed and considered generally later on for – in the other working group dealing with specifically when it comes to looking at the UDRP and possible need for changes there.

But that said, Phil, you're next but on this specific topic.

Phil Corwin: Yes thank you Petter. And Zak, thanks for those remarks, though I'm a bit disappointed, I was hoping that with a fresh set of eyes you would come up with some innovative new approach to this issue that would unite the group and solve all our problems, but apparently not, that was facetious obviously.

Let me say a couple of things. In terms – and these are all personal comments, co-chair hat off. One, it is within our – if you look at our charter, and we could always bring the charter up and review it, we do have – it is within scope for this working group to recommend changes in the UDRP specific to the issue of effective IGO access to UDRP and URS.

Having said that, we haven't done it for any of the other issues on which we have very strong consensus within the working group. We certainly didn't go down the path that the IGOs and GAC have been urging, which is to create a

totally separate process for them in which domain registrants would have no access to de novo court review.

We didn't think there – for two reasons, one, we didn't find any broadly recognized right on which standing could be based other than trademark rights relating to IGO names and acronyms; and second, we thought it would be terrible ICANN policy to say that – to set a precedent for saying that ICANN was going to bar domain registrants from having access to courts under applicable law. We also question whether ICANN could effectively create such a restriction.

But so in the rest of our report, even though it's within scope to recommend changes in UDRP language, we haven't done so. This is the only one where we're contemplating a very modest change specific to IGOs to address a fact situation which deals with the IGOs largest complaint that they claim whether it's true or not, is inhibiting their use of the existing curative rights which is the mutual jurisdiction clause which they feel exposes their immunity in an unacceptable way.

So we're dealing – we're addressing a hypothetical situation with either Option A or Option C that may never occur; it would only – it's addressing a situation in which the domain registrant unhappy with the original decision by the panel exercises their right under the mutual jurisdiction clause to seek de novo court review and the IGO goes in and asserts immunity and the court notwithstanding their signing onto the mutual jurisdiction clause – the court would essentially be saying well, by showing up in court you've been true to your obligation to recognize our jurisdiction but we're going to hear your defense claim, and in this case we're going to grant it.

So Option A says that if – in that extremely rare, maybe never happen circumstance, the original UDRP decision is vitiated as no effect, it disappears as if it never happened and the domain registrant can continue operating their domain.

And the biggest – there's two big problems I see with that, personally, one, it's really kind of a blunt force instrument attempt to prevent the IGO from ever raising an immunity defense, and I think it behooves us to try to be balanced just as we are – have not sought to deprive registrants of their access to court, we shouldn't try to prevent complainants from raising a defense and let the court decide; that's been pretty much our approach on all of these things. It's let ICANN decide what's in ICANN's remit and let the court decide what's not.

The other problem is that while we all know there are sometimes mistaken UDRP decisions, or at least I'm well aware of that, I think the majority of decisions are correct but I've seen some very highly questionable decisions, but this raises the possibility that in a case where cybersquatting as actually exists at the domain, has been properly found by the panelists, that if the IGO nonetheless to its detriment successfully raises an immunity claim, the cybersquatting would continue. And I think that would be very tough sell to the GNSO Council which is where this report goes for review and approval.

I'm not concerned – I expect GAC and IGO opposition to our report no matter which way we go on this question. That's not my concern. My objective is to produce a report that gets majority and hopefully super majority support in Council.

So I'll stop there but circling back to your scope question, I do believe, and we can look at the charter, that we – that we have authority to address this issue, to make this one tiny change to the UDRP which whether we go with Option A or C as to what happens in a situation where an IGO successfully raises an immunity claim and that this is not an issue.

I don't think it'd be responsible for us with all the time we've put into examining this and reviewing the Swaine memo and the hours and hours of

discussion we've had on both sides of this issue to kick it to the RPM Working Group.

I think we need to take a stand one way or the other and finish our job in addressing this very low probability but not impossible event. So I'll stop there and I'm happy to hear from others. Thank you.

Petter Rindforth: Thanks, Phil. George.

George Kirikos: Thanks. George Kirikos for the transcript. Yes, let me just step back a bit because we need to look at what the underlying problem is, the problem is that we've identified is a problem with the UDRP in that it had an un contemplated scenario and our solutions – our proposed solutions A, B and C, well let's say just A and C because B is a hybrid of A and C, those solutions are just for the benefit of the domain owner; they have nothing really to help the IGO because Option A you know, sets aside the UDRP decision entirely so that obviously doesn't benefit the IGO per se because if the decision wasn't set aside, you know, they'd have the domain name because, you know, what if one – on the immunity in court and had won the UDRP as well, so the case would be over, the domain name would transfer.

Option C, on the other hand, also doesn't help the IGO because if the case had been, you know, if they won on the immunity issue in court, they'd have gotten the domain name already and so Option C says, well you have to go through yet another procedure, arbitration, to decide this.

So Option A and Option C are both not to the benefit of the IGO, these are both procedures that we're proposing to assist the domain owner in order to have improved due process.

And so my understanding of what Zak is proposing is that one of the points I kind of made earlier in the email list, and I don't know whether we've talked about it on the call in depth, but that UK court cause of action issue is very

interrelated to this immunity issue because they both have the same underlying cause i.e. if you have two parties in a dispute, call them Party X and Party Y, Party X suing Party Y is not exactly the same procedurally as Party Y suing Party X in the same dispute.

For example, in this IGO case, we have – if there was no UDRP they'd be the complainant in a lawsuit but because of the situation and obviously as a complaint in a lawsuit they can't assert immunity because they are the complainant after all, the plaintiff. Where the UDRP interferes with things though is it flip flops the rolls of the plaintiff and the defendant. The domain owner suddenly becomes a plaintiff in a court case where they're challenging the UDRP outcome, and now the IGO is the defendant in that lawsuit where they can assert immunity – immunity that they couldn't have asserted before so there's like a procedural quirk due to that flip flop of the roles.

And this happens also not just in the context of an IGO, it happens in you know, the context of the cause of action issue which Paul Keating brought to this working group's attention many moons ago where UK courts are saying that some domain owners can't even bring a cause of action to challenge a UDRP decision, that a UDRP decision is final. That was the yoyo.email case for example that I sent to the RPM PDP mailing list. And I think he brought other cases to our mailing list's attention.

And so they both have the same root cause. And so I think what Zak is saying is that because they had the same root cause our attempt to try to solve it for the IGOs is maybe overlooking the fact that that root cause should be addressed rather than trying to fix it piecemeal for, you know, in this case IGOs, in the UK context for, you know, certain jurisdictions, that we should have an overall solution that handles the root cause directly rather than symptoms of the underlying cause.

And this actually goes to the Option Number 6 that is on the agenda for today. Phil Corwin on the mailing list suggested that I try to focus it – or

refocus it to only be on IGOs because this is the IGO PDP Working Group, but if you think about it, it's really you know, another software bug or whatever in the UDRP itself.

And so it would make – it would make sense to solve the problem completely, you know, for IGOs and for non-IGOs. And so we kind of get into this – this dead end or, you know, maze where we're trying to focus it only on IGOs even though it affects more than just IGOs and that might be hampering our thought.

And so my preference has always been to, you know, solve it completely. That's why Option A, in my view, solves the problem completely. But if we want to look at it at the underlying cause you know, in the context of all the affected parties, then it might make sense to defer to the RPM PDP group with a strong recommendation and pointing out that these linkages exist.

And before I end my little speech here, I want to bring attention to the mailing list message that I sent today about the windcreek.com tribal immunity. That touches upon our work. There they found the limited waiver of immunity and so while it's not an IGO case, I think it's very relevant to our work and we might want to discuss it now or discuss it in a future call.

But it seems to give guidance that the old Option Number 3, the limited waiver, is probably what the courts will find. Of course all courts may not find the same thing, they might make different determinations, and so it makes sense to, you know, get an overall solution that plugs all these little edge cases. But the findings of the court seem to be very reasonable in my view. Thank you.

Petter Rindforth: Thank you, George. Petter here. And as said, we have a specific topic in our working group and there's nothing – if we can come out with a good solution that will also work to solve other topics in other working groups, that's fine even if the specific topic we are thinking about here will probably start within a

year from now. So right now we have this specific solution to create for –  
respective to the URS and the UDRP when it comes to IGOs.

Yes, Zak. Sorry, I see your hand is up but I can't hear you.

Zak Muscovitch: Sorry about that. As much as it appears this working group wants to find a consensus to put in the final report, I don't think that it's disputable that there isn't going to be one based upon those initial poll results and based upon the comments that have been made by members.

And so what I'm thinking is that it may be preferable for this working group to rather than propose a solution that doesn't have unanimous support and barely has 50% perhaps support, rather than that, outline the possible solutions that the working group has come up with and then refer them out for comprehensive review determination to the RPM Working Group.

And excuse me. Like just for example of why that may be necessary, more than from a practical perspective, under Option C, for example, I imagine that the UDRP would be revised to include a provision that says something to the effect of, an IGO can – if they decide not to bring a UDRP though a nominee or agent, can bring the UDRP without agreeing – without necessarily agreeing to the jurisdiction of a court and being allowed to assert sovereign immunity in the court action. So there would be a revision to 4K to accommodate the IGOs current concerns.

The corollary of that is that if the registrant wants to go to court and they're also relying on the 4K, perhaps as it's currently drafted now, in order to overturn the IGOs win at the UDRP, then they could run up against a national court such as in the UK that says you don't even have a cause of action or even need to get to the immunity argument, it could be dismissed on that basis.

And so in order to have some balance between the IGOs interests in opening up the language of 4K, shouldn't there be some balance from the registrant's perspective in also revising 4K but then again, as other people pointed out, we're just here to speak to – find solutions for the IGO specifically.

But how can you find a solution just for the IGO specifically when it necessarily involves the consideration of other stakeholder rights and not something that is beyond the remit of the working group?

So getting back to what the practical perspective is, it may be an interest of even most people that supports C to come out with a consensus from the working group that doesn't get behind one of the proposals on a totally unsatisfactory 40%, 50%, 60% basis and instead say, these are the options that the working group investigated, they're all viable, but they necessitate substantial changes to the UDRP and the balance that it's achieved over almost 20 years and therefore, a comprehensive review is required before we open up and tinker with one particular aspect.

Petter Rindforth: Thanks, Zak. And before I turn over to Paul I guess that it's also Mary's comment in the chat room that we may want to be somewhat cautious in relating to the US Tribal immunity case that was just handed down as federal US law about tribal sovereignty is very different from states or when immunity and IGO jurisdictional immunity.

Okay, thanks. Paul.

Paul Tattersfield: Paul Tattersfield for the record. I think the problem is more from the mental and Professor Swaine was wrong in his report, and this has influenced the way people are looking at the problem. I believe Professor Swaine was wrong on two counts; he incorrectly transposed the IGOs rights to immunity when they are the initiator of the initial dispute, initial proceedings.

And he references the mutual jurisdiction clause as a concession. It's not, it's a benefit because if the IGOs were to initiate the same matter in the judicial proceedings, they'd be required to raise not only judicial immunity but it also have to waive immunity from execution. So this is a benefit rather than a concession.

The best way to perhaps demonstrate it is to say if the IGO chose to initiate judicial proceedings to defend its rights, can you envisage a situation where an IGO who has initiated the court procedures subsequently to those same proceedings can successfully claim immunity? I believe the answer is no.

In the reverse where a trademark holder initiates judicial proceedings against an IGO, can you envisage a situation where an IGO can successfully claim immunity? And I believe the answer is yes.

Where the TM holder's choice of jurisdiction is that the – is that of an IGO member state, sorry. What Professor Swaine does is transpose the rights enjoyed in the second scenario onto the former and this is simply incorrect. In judicial proceedings, it is not possible to do so and neither should it be allowed in an administrative framework which is there to just expedite judicial proceedings.

Petter Rindforth: Thanks, Paul. And I see still both Zak's and Paul's hands up but I presume it's old hands. So let's proceed. We have – yes, Paul, was it something you want to add?

Paul Tattersfield: Sorry, Paul Tattersfield for the record. Is nobody prepared to say that's wrong? I mean, can we go back and ask Professor Swaine on this? Because I'm either wrong or he's wrong.

Petter Rindforth: I rather would like – in that case we'll have some time to just read through what he said again. I don't think we have time to go back to him and get any specific comments.

Paul Tattersfield: I've asked this several times on the – in the chat room and on the mailing list over the months and really nobody's really commented on it other than from a critical perspective to say that we might not be able to explain it well enough for the Council to agree.

I mean, the situation – it's pretty fundamental and it really needs to be addressed before we go any further because anything else that we put on top of this is just adding complexity to try and fix – well it's effectively a (unintelligible) process and the pure logic behind it just means that it's not the right way to go. Thanks.

Petter Rindforth: Thanks. We have Phil.

Phil Corwin: Yes, thank you. Phil for the record. One, I want to say I'm very encouraged by the very constructive dialogue we're having on this call. A couple other thoughts, one, you know, the main thing we – whatever Professor Swaine kind of said indicta the main thing we looked to him for was an answer on the question of what's the generally recognized scope of IGO immunity claims, you know, and around the world and he basically said it really depends on which country you're in and what analytic approach; that there is no uniform recognition of IGO immunity.

And that answer was very useful because the IGOs seem to be claiming that their immunity was absolute everywhere and we found out that the situation is a lot more nuanced than that.

Second, as to the availability of court review, while – we might – it might be nice if ICANN would encourage nation states to pass laws similar to the Anti Cyber Squatting Consumer Protection Act, which is the major law used in the US to challenge UDRP decisions, ICANN has no authority to compel nations to pass similar laws and of course the rights of particular – if the right of a registrant is based on domicile then they're out of luck unless they do what so

many sophisticated domain registrants do, which is they'll use a registrar based in the US so then under the mutual jurisdiction clause they have access to the ACPA if there's ever a UDRP they want to question.

And third, whatever – I really do think and this is where I'm putting my co-chair hat back on, is that whatever the final outcome of a final consensus call on the options before us, I would rather see this working group say well, in our final call we got 40% support for Option A and 60% for Option C and so there was a slight consensus for C but there's very strong opposition, which really is not a very strong consensus for getting that through the final adoption by Council and Board, but at least – again, I think we have a responsibility to speak to this issue, if not for this issue of this working group would have been done six months ago.

The RPM Review Working Group has a very full plate and is never going to devote the time to this issue and get into the details that we have. And frankly, it's – it is an IGO specific issue for a very hypothetical maybe will never happen scenario. And let's just you know, talk it out, establish positions and then we'll have a final consensus call and whatever the upshot is that'll be in our report. And whoever comes out on the losing side of the final consensus call has rights to file a minority statement as to why they thought the slim majority was wrong.

But anyway that's what I wanted to say and let's continue the discussion.  
Thank you.

Petter Rindforth: Thanks, Phil. George, may I ask you to make just a short comment on this so that we can proceed on the agenda and you will have possibility to come back again on those topics as well. But, George.

George Kirikos: Yes, I'll be brief. You know, Phil raised a question of, you know, registrants having to choose their domicile to make sure that the right of appeal exists, you know, the US has the ACPA, etcetera.

First of all I think that address the problem incorrectly because the UDRP was not supposed to cause these issues in the first place, the UDRP was supposed to not interfere with the underlying legal rights of any party. That was kind of the bargain that was made when the UDRP was proposed and adopted.

But now we're finding, you know, that some of these assumptions are not correct, that's the UK cause of action, this IGO edge case that we're citing, the in rem option Number 6 case, things like that. So all these edge cases are situations caused by the UDRP interfering with those rights that both parties would have had in the absence of a UDRP.

And so when Phil's saying that the solution is, you know, for national legislation – sorry, national legislatures to pass laws like the ACPA to create those causes of action etcetera, that's entirely incorrect in my view, we have to take the underlying law as the standard and the UDRP shouldn't be affecting those underlying laws. That's, you know, that's like the GDPR, you know, we don't tell Europe to not pass the GDPR for the privacy, we, you know, accept those laws and work within those laws.

Secondly, Phil just talked about how this is an IGO-specific issue, and that, you know, we've given the, you know, the focus on that. But it's actually not an IGO-specific issue and I kind of keep raising that in the chat room to see whether people even acknowledge that the underlying root cause is identical to the UK situation where X suing Y is procedurally different than Y suing X because once you recognize that, and I don't see anybody speaking that that's wrong, I wish people would acknowledge that, then all these linkages become apparent.

And so it makes sense to have that global solution considered, you know, perhaps in the RPM PDP where it's not isolated to just IGOs, where it's a solution for all these situations. You know, my preference obviously is to do it

in our PDP where we can just go for Option A but if that isn't able to get a consensus then it makes more sense to handle it in the RPM PDP where all these problems that have the same root cause are addressed simultaneously. Thank you.

Petter Rindforth: Thank you, George, and thank you for your clarification to start with, that was one of your shortest comments. Thanks. If there – looking at the chat and Mary had noted when it comes to the consensus topic that the GNSO procedures allow for full consensus, consensus, strong support but significant opposition, (unintelligible) and minority views and generally only proposed recommendations that receive either full consensus or consensus. The most – for the most part of the working group's agrees and a small minority disagrees are adopted by the Council and Board to become consensus policies. So thanks for that clarification.

Okay, I'll go over to Question Number 2. And that's – oh yes, before that I see Mary's hand is up.

Mary Wong: Thanks very much, Petter. This is Mary from staff. So I just wanted to follow up a little on the comments that I put in the chat that Petter's kindly read out to recall the different consensus levels and as such the different types of possible results for this working group on this particular topic.

It's also possible, of course, for this group to make a recommendation that isn't necessarily to amend the UDRP or to adopt arbitration or anything affirmative like that which is what some of these options get at.

But as I think we started to note last week, the working group could consider recommendations that include, you know, a general proposal to say the RPM Working Group to take a look at this topic when they get to the UDRP. That would be a very general recommendation.

In addition or as part of a recommendation like that, the group could also request that ICANN monitor the results or any cases or claims that are filed by IGOs in the meantime to determine if that – this is indeed a problem at a date certain in the future and then, you know, either reengage this PDP or refer it to the RPM Working Group.

These are just things that staff is throwing out there as possible avenues that this group can also consider if indeed we end up in a situation where we don't have clear consensus on this topic. Thanks, Petter.

Petter Rindforth: Thanks, Mary. And Petter here and I've put on my personal hat, as I said initially, I definitely wish that we can make some kind of at least majority conclusion with, as it looks, some minority comments also but come to some kind of conclusion, recommendation from our working group to finalize our work.

And I see no (unintelligible) to in those recommendations also reach out to the other working group if we think that's something that we have concluded may also be a good thing to consider generally when it comes to the URS or the UDRP. But again, I definitely want us to step forward to the end and come to a conclusion on our work that is a topic of our working group and not just push it over to another working group.

Jay, your hand is up.

Jay Chapman: Thank you, Petter. This is Jay Chapman. So I just – having heard what we've heard so far, Zak and George and Paul, I mean, this makes sense to me. And it's just with regard to this one specific issue with regard to the recommendation and these, you know, the Option A through C plus the Option 6 that's out there, that's the only specific thing that we're – that I really have this issue with that I believe that it actually makes sense that perhaps we should defer to the larger working group because the implications of what

we're talking about here go beyond IGOs you know, as George has kind of spoken about.

And so it's not – it's not trying to get rid of, you know, it's not trying to you know, completely wreck the report, we're just talking about this one particular issue and, you know, given that it has this, you know, there are some you know, some implications that extend beyond just IGOs,

I think for that reason it makes sense to actually just defer this one specific issue to the working group who's going to be working – and yes, I understand when Phil says, well, you know, we're just talking about a really narrow issue, well, we are and, I mean, we are according to our charter, but in effect the decisions we're going to make are going to have implications beyond that. And that's always been an overriding concern of mine.

So we have – I think we have full consensus on almost every other portion of our report so far except for this one thing. And so I'm just wanting to make sure it's on the record that I'm throwing my weight behind the idea that we do defer this particular issue to the RPM Working Group. Thanks.

Petter Rindforth: Thanks, Jay. Paul.

Paul Tattersfield: Paul Tattersfield for the record. I don't think we need to defer. I think if we can answer my question either I'm wrong or Professor Swaine is wrong. Thanks. Bye.

Petter Rindforth: Thanks, Paul. Okay, I hope that we will have some kind of time still for more open discussion on the topics before we end today, but we have a couple of more questions to go through. So I'll proceed with that.

And we have already talked about Question 2, and as you know, that was some kind of mid-version that would – that tried to find some way for Option

C to be accepted also by those of you that wanted to have Option A as I understand it.

And you can see that there's a pretty clear majority that does not support it, but it says here that Option B is theoretical constructed that simply builds more complexity to top of Option C. And there are also other comments generally stating that this is a bit too complicated.

And also my personal view on this is that we need to find – well I wanted to find a solution that could be related to all IGO cases and all domain names related to that, not to – it will be too much complicated to split up the groups depending on the date of registration or creation.

Phil.

Phil Corwin: Hey, Petter, thank you. Phil speaking. Yes, at the risk of disrupting this discussion, and my quick comment on Option B is that it had very little support and quite a bit of opposition, I don't see that changing so we probably don't want to – we can spend as much time as we want.

But I just want to kind of – I'm still a bit confused by the discussion we had. And I take a keen interest in this as one of the co-chairs of the RPM Review Working Group.

I'm just not clear on what the issue is and it – if the group has consensus for this, so be it, but what would you be asking the RPM – what issue would the RPM Review Working Group be asked to look at? Would it be the issue of the fact that domain registrants in all nations don't have access to court review under specific laws?

I mean, and what's – the upshot of that, that a UDRP should only be available against registrants that – I guess I'm just looking for clarification as if there is

a provision in our final report recommending the RPM Review Working Group look at something, what is it going to be asked to look at?

Because up until now we've been discussing what would happen in situations where registrants do have access either because of domicile or another nexus under the mutual jurisdiction clause to get that de novo court review.

So I'll stop there but before we leave the prior conversation I just – I'm a bit confused in my own mind as to what it is that the group would like referred – the bigger issue to the RPM Review Working Group. And I see George has hand up so maybe he can clarify that for me. Thank you.

Petter Rindforth: Thanks. George.

George Kirikos: George Kirikos again for the transcript. Maybe if Phil stays off mute so we can have a conversation, that would help, I mean, the transcript a little bit crazy, but if we can kind of get some real time interaction that might move things forward.

I've tried to raise this on the mailing list and also in a chat, but do we agree that there's the same underlying issue here, that X suing Y is not the same as Y suing X?

And that is what's causing this issue because in some cases you know, this assumption that de novo review can occur, and that was the, you know, the entire basis of the UDRP being adopted, that it wouldn't interfere with the legal rights. That's really the underlying problem and it affects, you know, this IGO example, it affects the UK example, it affects that Option 6 kind of example where, you know, the choice of how you want to sue is being interfered with by how the UDRP is worded.

They're all kind of interrelated. I don't know, Phil, or Petter can, you know, as spokespeople for Option C, because I don't see anybody else on the call

speaking up for Option C, but can we agree that that is the underlying issue that Option A, B and C is trying to address and that they're all interrelated? And so what would be referring to the RPM PDP is not this IGO-specific issue, it's an example of the problem but the problem is much deeper.

And I think that's what Zak is trying to propose that because the problem is deeper and affects, you know, all these other – all these cases trying to solve it piecemeal is that's where it's getting us into trouble as a PDP; we're trying to solve it piecemeal and that's why Option 6, you know, for example, trying to solve it piecemeal gets, you know, into crazy kind of wording to try to, you know, isolate its IGOs, that's where, you know, it might benefit greatly by having more eyes upon it and fresher eyes. Thanks.

Petter Rindforth: Thanks. Zak.

Zak Muscovitch: Right. Thank you. So just as a preliminary matter, I come from this hope – come to this rather – hoping that this working group would be able to reach consensus on everything, not – and as Mary pointed out, there's variations and lesser degrees of consensus possible.

But it might be possible to have consensus amongst this working group on everything rather than say – rather than have, you know, a 50/50 or 60/40 split of people so committed to their positions. That's just a preliminary matter.

But then in terms of Phil's broader question is, you know, what could in theory be proposed to the Rights Protection Mechanisms Working Group, you know, if we look at Option C for example, which I have in front of me, here if a complainant succeeds in a UDRP the losing registry proceeds to file suit in a court of mutual jurisdiction, just stopping right there.

The reason that the registrant will have the right to proceed to a court of mutual jurisdiction is because Paragraph 4K of the UDRP, as it's currently drafted, enables the registrant.

But when I – and I've been looking at that Paragraph 4K for close to 20 years, and in my mind it was always pretty clear, to be frank, that when UDRP says you know, the UDRP is not intended to prevent a party from going to a court of jurisdiction for independent you know, or judicial determination, or something to that effect, it was always clear in my mind as a practitioner that a court would accept that it was a de novo proceeding or at least a judicial review but a court would never deny the party the right to have some kind of review or hearing in court.

So it's shocking for me that that UK yoyo case came to a different conclusion on that issue. And it's only one case but it was a high court in the UK. And I've spoken to solicitors and barristers in the UK, they say that that decision gets a lot of respect. On the other hand, different facts could come to a different conclusion in my view.

But the problem is that if we look at Option C and the registrant then goes to a court of competent jurisdiction in the UK, and gets shut down there because a court won't hear subsequent review a of UDRP decision, then that would make this Option C fairly untenable.

And so what that means to me is that in order for Option C to have some efficacy, for it to be workable, we would need to rephrase the mutual jurisdiction clause as well as the provisions relating to a party's right to go to a court of competent jurisdiction. And so now we're into a situation where we're not just talking about IGOs discrete issues, are we? We're talking about broader UDRP drafting issues.

And so it's impossible for me to see how we could deal with the IGO issue discretely and make a recommendation that doesn't affect greater drafting

issues and even the broader balance that the UDRP drafters tried to achieve that parties would be looking at in the working group.

So what this working group has achieved as an outsider up until now is remarkable. It's come up with a bunch of consensus positions and it's also come up with a bunch of tenable proposals to the solution.

And so to me it would be an achievement for this working group to say, listen, we've achieved consensus on all these issues. This one, the participants have intractable positions, some of them feel that this is a solution – one of these is a solution in and of itself; others feel that necessarily impacts other provisions of the UDRP that can't be properly addressed here.

Therefore, we've outlined and investigated possible solutions but ultimately which one, if any of these are selected, must be part and parcel of the broader UDRP reform initiative. That's what I would propose would be a successful outcome given the participants' intractable positions about which one is best. Thank you.

Petter Rindforth: Thanks, Zak. So...

Phil Corwin: Yes, thanks. Phil for the record. Two quick comments. One, it's clear that there's a significant number of participants in today's call who believe we should not take a position on either Option A or Option C but should say that there's really a bigger issue that needs to be resolved more universally.

And I'm not trying to be difficult, I would ask that those folks put in writing exactly what they would propose for this working group to communicate to the larger RPM Review Working Group, and, you know, for discussion next week. So, you know, take a couple of days, put something together.

But, you know, I'd like to see in writing exactly how that would be framed and what the request would be of the other working group. I'm open to looking at

that, but I understand the concerns but I'd like to see actual language that frames that argument and would post a request saying that because of this, this or that or these issues we can't really deal with this in a narrow sense, these issues have to be addressed in a broader sense. So I'd like those folks on the call with that position to put something together in writing that we could discuss further next week, certainly not today.

Having said that, I think even if there is a bigger issue – and let me say this, even if ICANN could somehow wave a magic wand today and suddenly in every national jurisdiction in the world there would be a law similar to or maybe even better than the ACPA that a domain registrant could use – could be assured would provide access to de novo review of a adverse UDRP decision simply on the basis of their domicile, it would still leave the question of what happens if that litigation is filed as an appeal, a de novo appeal?

And the original complaint was brought by an IGO and it asserts immunity with the likelihood that different national courts might rule on the question of whether it had waived its immunity when – and when it filed the complaint and if not whether it had immunity under that national law. I don't think it would eliminate the issue we've tried to deal with here.

So I'll just stop there, but I think on you know, the bigger issue of – if it's the consensus of this group not to take a position on A or C, but to say there's a bigger context that needs to be addressed, I'd like to see specific language setting that up for discussion on next week's call. Thank you very much.

Petter Rindforth: Thanks. George.

George Kirikos: George Kirikos again for the transcript. Yes, I think what Phil is proposing is a step forward. I just wanted to go back a little bit more about what he was saying that, you know, expecting legislatures around the world to make these changes in their laws, etcetera, I think that's addressing the problem incorrectly.

Like wouldn't he agree that the UDRP was only a – sorry – was only adopted because it wouldn't interfere with existing legal rights? Like the starting point shouldn't be that the UDRP is set in stone and you know, national laws have to react to it; it should be the other way around, the law exists and the UDRP should be carefully designed to not interfere with those rights.

And right now we're coming up with these scenarios, you know, the IGO case, the UK case, etcetera, where because of the way the UDRP is worded, these situations are arising that do cause that interference with the UDRP, sorry, with the underlying law. And so our response should be to make it consistent with those underlying rights, not the other way around. Thanks.

Petter Rindforth: Thanks, George. And before it leave it over to Zak and Nat, Zak, you will have your voice heard in one second and then I want to just go through Question 3 so that we have gone through all these A, B, C topics and then we also have George recommendation to discuss before the end of the day's meeting, so just so that we'll all know what we have still on our agenda. Zak.

Zak Muscovitch: Yes, I just want to address Phil's point, which is well taken in my view that – that as much as any working group or ICANN would want to revise provisions of the UDRP policy to enable a cause of action, ultimately as Phil pointed out, it's up to the national courts to determine whether there is a cause of action within those national courts. Right? And I agree with that.

The question though then becomes whether there can be greater guidance or direction given to a court to encourage them to a review cause of action. So for example, right now, and as I previously mentioned, probably according to the drafters even way back in 1999, there was a clear direction to the court that nothing here in the UDRP is intended to impede a party's right to go to court. But yet at least one court that we know of has not followed that direction or it wasn't clear enough.

And so nothing can be done when a court is going to say we're just not going to follow it because under our national law no cause of action exists. But it can be possible perhaps to draft a provision that makes it even clearer than how we drafted in 1999 that not only is there a right to a party to try to go to court but that the UDRP is premised on a party having a right and we expect – this is not drafting language obviously, people, but that we expect a court to review this and it's part of our procedure.

So and that relates to my main point which is that anything that is done in terms of fashioning one of these solutions necessarily involves a redrafting of other than the three part test, perhaps the most key provision in the entire UDRP.

Petter Rindforth: Thanks, Zak. And as said, before I turn over to Nat, just wanted to end this presentation of this part of the agenda. So Option C that we also have discussed briefly and you see on the screen the description of it was a little bit longer where a complainant IGO succeeds in a UDRP URS proceeding the losing registrant proceeds to file a suit in a court of mutual jurisdiction, and the IGO subsequently succeeds in asserting jurisdictional immunity, the registrant shall have the option to transfer the dispute to an arbitration forum meeting certain pre-established criteria for termination under the national law that the regional appeal was based upon.

And then there were also some more details – solutions included in that. And well that option received support of nine of the 14 members that voted on Options A, B, C. Three did not support it and two others could live with this option.

And we had some comments maybe specifically from those members that did not support this option, some comment as to – comment on Option A and this option imposes further burden upon the registrant following an action by the IGO, etcetera, etcetera.

And I noted also from the ongoing email discussion we have between our meetings that there have been some questions raised from members that does not support this.

So I'll just make some personal comments as I voted for this option. And as said these are my pure personal view but it's based on my experience as panelist in different kind of dispute policies. And actually I'm signed up for seven different of these dispute resolution procedures and some of them are in fact hardly never used, the same that we probably will see here with very limited number of cases.

But also based on my conclusion on our discussions and arguments from you members that are not supporting this option but the other solutions, as well as Professor Swaine's conclusions and comments, and I – can I give you just a little bit of a European point of view because we have discussed during our meetings referring to a lot of what are US-based cases and what will happen in the courts there.

So let's take Switzerland for instance, probably the most neutral country in the world that joined the United Nations first in 2002. But there are – I don't have the specific numbers of it, but I think there are around 30 IGOs that are based in Geneva and in addition to that a number of IGOs sub organizations.

Let's say that one of these discover that someone has registered their acronym or name as a domain name using it in a (unintelligible) way and let's also say that the registrar is based in a country that is under investigation of the said IGO, could be anything from political, economical, educational, humanitarians or nuclear war kind of topics.

And the courts in that specific country are owned by some private family or group that rules that country from the – for the moment. And such case will indeed not be handled in a neutral way.

Another possibility is of course to take the national court in the country of the domain holder, more of the same problem may arise there or it may be a court in a country where Internet is not well developed and the judges have no full experience of these kinds of disputes.

I've seen that in – when you have local Internet related disputes in some small country court in some countries where you actually have to start with explaining why a domain name is – and the history of such.

So a final arbitration procedure, as I see, with at least one arbitrator chosen by the complainant will at least be a decent possibility to have the case handled by experts that have knowledge about the topic. And where both parties can point out a neutral panelist that they believe will have enough experience on their respective topic and point of view.

But we can also see the same problem from the domain holder's point of view, I mean, in the original UDRP a domain holder loses the case and they take it to a national court and the IGO claims their immunity. So the Alternative 1 is that the court accepts the immunity claim and the case is over; the domain holder's voice is shut down.

Alternative 2 is that the court accepts the immunity claim but the court could be based in a country or close to the IGOs office that the domain holder may have – for right or for wrong questions or reasons to question the neutrality of the court.

But again, if the case instead is solved finally by a three member panel neutral so the domain holder can choose one panelist that have knowledge of the domain holder's business area and can understand the domain holder's point of view, then I think it's good for both parties because they can be sure that at least the final group that will decide on the case have knowledge and understandable of the topic.

And still independently of a national court of arbitration, none of the parties can be 100% sure of course of the outcome. But as I see it, the arbitration is at least for both parties most neutral way. So having said that, I'll turn over to Nat.

Nat Cohen: Hi, I'm just checking that my microphone is working and that you can hear me?

Petter Rindforth: Yes, we can.

Nat Cohen: Hello? Oh okay great.

Petter Rindforth: We hear you. We hear you.

Nat Cohen: So this is Nat Cohen. Okay, thank you. So my thoughts on this have changed since the survey. I voted for C – Option C in the survey. I no longer support Option C and given these options, would now vote for Option A.

My views have changed – I saw Option C as a politically necessary compromise perhaps but I no longer view it that way. D – my thinking now is that the – I mean, the underlying rationale for this working group is unsound in that the rationale is that the requirement that a complainant be subject to judicial review under a court of mutual jurisdiction is an optical to IGOs accessing the remedies provided by the UDRP due to their desire to maintain their sovereign immunity.

I think we've seen that that's actually not an obstacle and certainly going through a nominee or a licensee would get around that even if they can – and they seem to be able to do it directly. So we have everything that sort of flows from this underlying assumption is itself going to be tainted and flawed when the underlying assumption is flawed.

And I think that's why we are you know, going around so much in circles and why we keep on – this whole thing keeps collapsing back to a sense of, you know, that there really isn't much of a problem that needs to be solved.

Option C with the arbitration is kind of a band aid placed on top of this creating a whole other structure on top of a poor foundation. And when one thinks bigger picture as I think you know, Zak and George have been talking about as well as others, that there are interrelated issues with mutual jurisdiction access to the courts, other groups that might assert some kind of immunity, this – it seems that we are dealing with an issue that is not a discrete issue related to IGOs and creating complicated lengthy, you know, it's going to require very lengthy and many – maybe years of work to build an arbitration proceeding just for them.

It's better to – that we deal with core issues, core problems and that stretch beyond this IGO issue and that the RPM Working Group is the appropriate place for that. That said, Option C does not disappear, it remains as – it's been left out, it remains to some extent it remain an option for the RPM Working Group that that is the best solution but I think there are some core reforms or revisions that can be made that would address not only this, the problems that we're seeing here but tackle it at a deeper root level. So that's my current view and I'll stop there. Thank you.

Petter Rindforth: Thanks, Nat. Petter here. And well maybe it depend on which jurisdiction you're based but my personal experience is that arbitration proceeding is much quicker than going to a civil court to an action. And we also had a possibility in – that recommendation C, although I can't find it specifically now, but that the parties could agree from the start that they go directly to an arbitration proceeding and skip the court to make a final decision quicker. Thanks. Phil.

Phil Corwin: Yes, thank you. Just some quick comments. I'm – remain a supporter of Option C. I think whether members of this working group believe that

tarnishing an IGOs perceived immunity is or is not a real problem it's kind of irrelevant. There's no way to prove the correct answer and the reality is that WIPO and major IGOs say within ICANN that it does inhibit their use of these curative rights processes. So I think – in that context in the ICANN context it's a real problem whether or not you believe it's a real problem in the real world.

I like Option C because I think it respects the limits of ICANN's authority where it doesn't try to deprive registrants of their access to national courts, nor does it try to deprive IGOs of their ability to raise defenses including an immunity defense in a court. It doesn't determine the outcome.

And what I like about Option C is that the problem we've found is that under current UDRP policy, if a case was brought today, a UDRP, domain registrant lost, registrant appealed, IGO successfully asserted immunity, court case dismissed, that would lift the stay on the execution of the UDRP decision and the underlying domain would be extinguished or transferred.

So Option C is an attempt to assure that the domain registrant has a meaningful right of appeal if their court option is foreclosed by the court granting the immunity decision.

And last thought, again, I'm doubtful that the RPM Review group, given its very, very full plate, will ever give as much attention to the specific nuances of IGO issues as have been – as this working group has devoted itself to. Having said that, I think that this working group could certainly make a recommendation based on things it has discussed that the full Review Working Group consider access to arbitration as an alternative to court access, particularly there's mutual consent of the complainant and respondent.

It wouldn't solve the problem of some registrants not having access to court based on their own national laws but it would – it would probably be worth looking to. I'm not saying it should be adopted, I'm saying that would be

within the scope of the full RPM Review Working Group if there's sufficient support from its members. So I'll stop there and defer to others. Thank you.

Petter Rindforth: Thanks, Phil. And I see George hand up and I presume you will make some comments on this but I'd also give you the last, well, more or less the last five minutes also to talk a little bit of your Option Number 6. So, George, go ahead.

George Kirikos: George Kirikos again for the transcript. Yes, I just wanted to say that I think we would see the RPM devote considerable time to this issue of the availability of de novo review. I already addressed that – sorry, I already introduced the topic onto the RPM PDP mailing list and we've had some discussion of it on that mailing list.

We haven't gone into it in detail because we're still, you know, going through all the charter questions, etcetera. But I expect that there will be very robust discussion on that topic in the RPM PDP Working Group with respect to the, you know, the yoyo.email and you know, this IGO case is yet another example of that.

So they both have the same root cause and Phil keeps saying, you know, trying to come up with a solution that doesn't address that root cause like the arbitration Option C, doesn't really address the underlying cause, it, you know, it takes the cause as, you know, happening, you know, accepts that cause and, you know, perpetuates that cause and tries to then say, you know, well you're not going to get the court action and so we're going to give you arbitration or you know, Option A would be to vitiate.

But if we address the cause directly through the policy, having the policy directly take into account the – what wasn't contemplated back in 1999 when it was introduced as policy, then they'll have a global solution for all these interrelated issues. And I guess since I have the clock and there's only three minutes left I can talk about Option 6 briefly.

Option 6 is just about in rem versus in personam and while it, you know, wasn't directly contemplated when the UDRP was adopted, making that slight language change would be a way to avoid this issue entirely because the in personam case, you know, allows the IGO to assert immunity whereas an in rem case doesn't even get into that situation because if it they lost it would be against the domain name itself.

And so this was, you know, intended as a friendly amendment for Option C back when we were discussing the numbers, it was Option 1 and Option 2.

And then Option 3 was incorporated into Option 2 and Option 6 was intended to be incorporated into Option Number 2 as well, like Option C was supposed to incorporate all of them and then at some point, you know, Option 6 disappeared.

So Option 6 was intended to be friendly amendment but never got incorporated, so you know, I can offer it up again as a friendly amendment to Option C so that it was incorporated because that was my understanding of what was going to happen.

But if, you know, if it's not considered an – a – sorry – if it's not considered a friendly amendment to Option C then it should stand as a standalone option, you know, Option D or whatever.

But I think we already have another Option D on the table, namely, you know, referring the whole matter to the RPM PDP to look at the underlying causes of – maybe Option 6 becomes Option E and there seems to be a lot of support at least among people who have spoken today for that referring to the RPM PDP to look at the root causes.

And I think given the participation in this PDP almost all of us are in the RPM PDP, so all this knowledge that exists isn't going to be ignored, it's going to be passed onto that working group. Thank you.

Petter Rindforth: Thanks, George. Just a quick question back to you to clarify, can I take it that – do I take it correctly that you think that Option 6 is no longer something that we should further discuss? It's no need for it when we have the other A, C and the option to take this issue to – over to the other working group?

George Kirikos: No, actually I thought either Option 6 becomes a part of C, like initially when the options document was written by the co-chairs they had said that, you know – they being you and Phil – had said that all the options were collapsed into those three options, Options A, B and C, but Option Number 6 had disappeared.

So I think the intent was at some point for Option 6 to be a part of C but it was never actually referenced in the document. And so that's why it was being brought up again to either put it back into Option C where it belonged or have it as a standalone option that's separate so I've not withdrawn Option 6.

And actually to raise another point, Option Number 5, while we had discovered that it was unviable due to the fact that the UDRP providers had put in language that overrode the kink in the rules that Paul Keating had identified, i.e. the kind of waiver for – of the immunity of the providers where the complainant and the respondent did the slightly different certification...

Petter Rindforth: Okay, so the short answer to my question is that you still want to – you see it as the three option that we should discuss further on the next meeting?

George Kirikos: Right, it should either be incorporated into Option C or standalone as a new option at some point.

Petter Rindforth: Okay.

George Kirikos: But I thought long ago it was supposed to have been in Option C but somehow got missed.

Petter Rindforth: Okay. Thanks. And we are now one minute over time. Just I was going back to the chart. Yes, the Nominet – we tried to invite them to this meeting but we had no – they had no possibilities to make a presentation on this.

I'm not sure if we can still do it on our meeting next week. But we will create an agenda as soon as possible so that you can see what topics we still have for the next meeting.

Mary, please

Mary Wong: Thanks, Petter. So just a couple of quick things. One is that based on the discussion today, for the meeting next week, same day same time. It looks like we have two topics of discussion, one is Option 6 from George and the other is hopefully that those on the call today who are proposing making a more general recommendation to the RPM Working Group can circulate a proposal before then for discussion.

In relation to the question about Nominet, and I noticed that George has a question in the chat, David Taylor, who is very familiar of ICANN and the Nominet process and panelists, is not able to make a Thursday call.

He has suggested a call sometime on Tuesday to which we can invite the Nominet legal counsel if he or she is available and interested working group members. We would certainly record that call. In that case we can then close off that potential line of discussion that was begun some time ago.

So our understanding is that those would be the options and the suggestions for next week. But I noticed that Phil's got his hand up as well so, Petter, I'll just stop here.

Petter Rindforth: Yes, thanks. Phil.

Phil Corwin: Yes, and thanks, Mary, and I'll be brief in view of the time. Yes, I just wanted to echo that if next week – if George wants Option 6 to be included in a final consensus all either as an amendment to C or as a standalone provision, we're going to need specific language for the – set so we all – everyone in the working group if they're asked to indicate support or opposition knows exactly what the proposal is.

Similarly, there's clearly support among some members of the working group for not taking a decision on this – the issue addressed by Options A and C and sending some language to the full RPM Review Working Group recommending that they look at a larger question which the group – this group feels is a bar to reaching a final decision.

So I'd ask that we have language prepared over the next week that we can specifically address because we are getting down to the final weeks of this working group where we're going to have a consensus call at the end, a binding consensus call so we need very specific language so everyone knows when they indicate support or opposition exactly what they're addressing.

So with that I have nothing further and I thank everyone for a interesting and constructive discussion today.

Petter Rindforth: Yes, I echo that. And we'll meet again next week. Thanks.

Phil Corwin: Bye, all.

Julie Bisland: Thanks, everyone, for joining. Today's meeting has been adjourned. Operator, (Bridgette), can you please stop the recording? And everyone else, have a great day.

END