

**ICANN
Transcription**

**IGO-INGO Access to Curative Rights Protection Mechanisms meeting between interested Working Group members and David Taylor (a partner at the Hogan Lovells law firm, who is a Nominet panelist and veteran ICANN community participant) as well as Nick Wenban-Smith (Nominet's legal counsel)
Tuesday, 12 December 2017 at 18:00 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-12dec17-en.mp3>

AC Recording: <https://participate.icann.org/p81ygnodaog/>

The recordings and transcriptions of the calls are posted on the GNSO Master Calendar page <http://gnso.icann.org/en/group-activities/calendar>

Attendees:

George Kirikos
Petter Rindforth
Paul Tattersfield
Philip Corwin

Guest Speakers:

David Taylor
Nick Wenban-Smith

Apologies: Osvaldo Novoa, Paul Keating

ICANN staff:

Mary Wong
Steve Chan
Berry Cobb
Dennis Chang
Terri Agnew

Coordinator: Recording has started.

Woman: Thank you. Good morning, good afternoon and good evening and welcome to the IGO-INGO Access to Curative Rights Protection Mechanism Working Group call with guest speakers David Taylor and Nick Wenban-Smith taking place on the 12th of December 2017. We will not be doing a roll call today.

But if I could 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 any background noise. With this I'll turn it back over to our co-chairs Petter Rindforth and Phil Corwin to start us off. Please begin.

Philip Corwin: Yes hello, this is Phil. I'll be very brief. I just wanted to welcome David and Nick for joining this call and for informing us about the Nominet appeals process. And we're all - while we're late in our work in our working group, this is something that was cited to us as a good example. And we're looking forward to learning more about that. Let me see if Petter has any brief remarks before we let our presenters begin.

Petter Rindforth: Petter here. I just writing in the chat just a welcome and thanks to you both for having a possibility to hear your presentation. And I know that we all have difficulties on finding a good time, but it would be very interesting to hear from you today to get some final input for our working group on this topic. I'll leave it over to you. Thanks.

David Taylor: Thanks Phil. Thanks Petter. So yes, David Taylor here. I can probably be quite brief as well because thanks for inviting me when you did invite me to talk to the group as a Nominet expert. Whilst I'm a Nominet expert, I'm not a Nominet appeal panelist.

And for my sins or not, I'm lucky that I've never had one of my decisions appealed, which may or may not mean that they're good decisions or they're just very non-contentious decisions. But because of that I haven't had them appealed, so I've got no personal experience of the appeal process, which is why I wanted to make sure that Nick was on because Nick knows this stuff inside out and can speak to it far better than I can. So hence me drawing on Nick to join the call, and I'm very glad that he could do it.

All I would say is that appeals really happen very rarely. When they do happen, we discuss them in the panelists' meetings. Under Nick's guidance all the panelists get together, and these are the cases. We look at it and we say why is there an appeal? How did that happen, and what were the reasons for it, and we drill down into it.

So that's where we do discuss them, but they are rare as a percentage-wise. I'm sure Nick will go into that as well. And they're also quite a bit more costly was the only thing. When I've advised clients on whether or not to appeal, compared to a normal case which is 750 pounds plus the VAT, an appeal is 3000 pounds, so it's four times the price, which may or may not be dissuasive.

But it's something you have to act quite quickly, within ten days. So that's really all I've got to say. So I'll hand over to Nick. As I say, he's head of the Nominet - he's the legal counsel for Nominet. He's been there for many years, and he's a guiding star for all of us panelists who are there. So with that sort of thing, I will leave it over to Nick.

Nick Wenban-Smith: Thank you David. I'll see if I can live up to that billing. I suppose where I start off is first of all the Nominet DRS is based very strongly on the UDRP. So anybody who has any passing familiarity with the (RP) will very quickly see a lot of strong similarities between that and Nominet's dispute process.

I mean there are some differences, but the similarities far outweigh the differences in my view. So the tests are expressed slightly differently and the definition of rights is slightly wider. And some of the procedures are slightly different I would say.

So for example, it's free to file a complaint, and then you get put through by default. If you respond to a complaint as a registrant you're defaulted into a mediation process which we facilitate with accredited mediators. It's obviously not compulsory. It's mediation, but actually there's quite a high

settlement rate because it's in the interest of parties usually to resolve their differences amicably if that's possible.

And it's only really where they go through the process and mediation fails is that the party filing the complaint has to -- as they would for a UDRP -- file a fee to have their complaint looked at in the light of the policy which is similar to the UDRP policy and in the light of the response made by the domain registrant.

And if - as with the UDRP is an administrative process of fundamentally - there's no physical hearing. It's a paper-based exercise based on the submissions and evidence put forth by the parties against the tests which are set out in the policy. Eventually - it's not bad faith registration. It's called abuse of registration, but it's very similar.

Now certainly as an administrative process - and this is perhaps where it's sort of the philosophy of it becomes quite interesting. As an administrative process as administered by Nominet as a private company, you'd have thought that we have a huge amount of discretion as to how we operate our procedures.

And that is true. There is a huge amount of procedural discretion. But fundamentally I think that Nominet wants to be brought into any disputes about the merits or demerits of the decisions made by the independent panelists.

So there is - and I think this is a very strong principle of English law, and I don't know about other jurisdictions - but for procedural (fanish), there needs to be a root whereby injustices or just plain mistakes can be escalated and rectified where necessary.

So that's why for as long as I can remember there has been -- since at least 2002, so that's before my time at Nominet -- there's always been a recourse

to some sort of appeal mechanism. And that incidentally is something that if Nominet realizes that there's been a disastrous mistake, Nominet could itself invoke the appeal mechanism.

And over the years there have been some appeals. So the initial decision is always made by a single panelist. That's the appeal is always heard by three panelists. And since 2008, we have had a - sort of an appeal board based of six individuals who are long-standing very experienced panelists with quite a lot of credibility in the UK disputes community.

And they hear all of the appeals. And the previous chair of the appeals panel was Tony Willoughby. It's now Nick Gardner. And he and two other panelists or if he's conflicted or busy there's enough other panelists. They have three of them look at it.

We'll conduct if the losing party is unhappy with the decision, he will conduct - you know, they file an appeal notice saying why it is they think the first decision is wrong. And the winner of the first decision will then file a notice explaining why they think the first decision was correct.

Now procedurally they are not at this stage supposed to introduce new facts, evidence, and things not before the first panel. So it's supposed to be essentially a repeat hearing de novo for the appeal body. This has been tested over the years and there are in fact now some quite limited circumstances for example where fraudulent evidence has been put forward by one party in the first hearing.

And then obviously if that is turned out to be shown to be fraudulent or there's allegations of fraud, then those are allowed to be heard at appeal. And essentially it's supposed to be quite limited, the grounds to which you can introduce new evidence.

But the appeal decisions over the years have proved quite useful. We get about 700 complaints a year. We have about 12 million domains in Dot UK and about 700 disputes a year, so it's a very, very small number of total number of domain registrations which lead to disputes.

Of the number of disputes we see to full decisions, it's probably only 250 a year, probably about a third. And this year we've had in fact three appeals of those, so about 1% of the first tribunal, first panel decisions get appealed. Some years in fact there have been no appeals. Some years there have been as many as five or six. So it varies a little bit.

And in general the rate of upholding an appeal -- that's to say that the first decision is found to have been wrong -- is around sort of 30%. So every - usually if you have three appeals, two of them will agree with the first decision, and one of them will disagree.

And sometimes it might not be sort of a philosophical disagreement. They just have found they weighted things differently in terms of the factual basis in submissions put forward. Sometimes they did have slightly different arguments put forward at the appeals stage than were put forward at the initial stage, which may have tipped the balance in a close case.

And sometimes they have said actually we disagree with the panelists' interpretation of the policy. And that leads then to sort of a bit of a shift over time with how certain types of cases would be assessed. Sometimes the lower tribunals will (unintelligible) panels in future.

So, you know, in general I would say it's a proportionate and necessary point of administrative (fanish) that when you subject parties to this sort of administrative process - and I think in particular of a losing registrant because the opportunities for a losing registrant to go to the UK courts or to other courts I think are pretty limited.

And it's only fair that if something has gone wrong, while they want to have the decision reviewed, that there is a low cost, low risk resolution mechanism for that to be escalated. And yeah, I think the numbers, the reputation, and the integrity (unintelligible) largely bear out that this is actually quite a good administrative process.

And it's important for the way the stakeholders are so transparent. And yeah, it just means that you can get a repeat hearing if you think that there's been a manifest mistake or miscarriage of justice at the first time round.

Did that make sense everyone? Sorry (unintelligible). I'm happy to - all the paperwork is available on the screen there. You will see that the appeals part of it is down I think in Section 20-odd. Where is it? So here. So I don't know if you can read that.

So each party has the right to appeal. It's a fairly - (unintelligible). Anybody who's interested can read it. There's a sort of a time limited process for filing your appeal notice, the word limits. And there is things likely as I've just described hopefully. So yeah, repeat complaints are not reconsidered as you'll see.

You can't just start again the process. You have to appeal it. So yeah, I mean, it's fairly simple but quite an effective fail-safe mechanism I would suggest. So obviously you can expect me to be an advocate and supporter of it.

How it translates into your curative rights thing is something I'm not entirely sure what the problem is that you're trying to solve by this, but I'll be happy to answer any questions there are, see if I can help in other ways. Is that good enough for now David? You can feel to chip in all the things I should have said and forgot to.

David Taylor: Yes thanks Nick. That saves me as an introduction going through the whole process there. So I think we just open it up for questions and see what you want to discuss and how this might or might not be useful.

Mary Wong: This is Mary from staff and I see that we do have some hands up. Phil and Petter we're happy to run the queue, but as chairs please feel free to do so. And Nick I don't know how much you've used of Adobe Connect. Presumably quite a lot, but we normally would just go in order of the hands. So right now we would have George, then Petter, then Paul Tattersfield.

Nick Wenban-Smith: Yes I can see the hands and I can see the order. I don't know, can I - no, I don't know if I can move the queue up, but I'm sure - I guess George you're first. Feel free to go.

Philip Corwin: This is Phil. Since Petter has his hand up, I'll run the queue from this point on. Just - so George go ahead.

George Kirikos: George Kirikos for the transcript. I had several (unintelligible) with the procedure. From the rules, am I correct in saying that there's no in-person hearings, there's no cross-examination of (unintelligible), no discovery of documents?

Nick Wenban-Smith: Oh yeah, that's...

George Kirikos: ...several of the procedures (unintelligible).

Nick Wenban-Smith: No, that's exactly correct.

George Kirikos: And...

Nick Wenban-Smith: It's a repeat (unintelligible) of the first stage.

George Kirikos: And my second question has to do with the section 20.13, which talks about how the DRS won't prevent the other party from submitting the dispute to a court of competent jurisdiction.

I was wondering how you reconciled that paragraph which is, you know, seemingly provides both parties recourse to the courts with the decision in the Roth v. Emirates case, where - which I just sent a link to in the - sorry, Toth v. Emirates, which I posted a link to in the chat room, where the domain name owner was found to not have a cause of action to bring a court case.

And so doesn't that mean that from the domain name owner's perspective, that the DRS is the final word and they can make decisions that are non-appealable in the courts? Thanks.

Nick Wenban-Smith: So yes, in essence in the Toth v. Emirates case, which tested this point, yeah, the Emirates the airline, it was about Emirates.co.uk, the domain name. And clearly it's not really a question about whether Emirates the airline has rights. It's a question about whether the registration in the hands of the domain registrant Mr. Toth was an abusive one according to the terms of the policy.

And then I think it was one of these quite difficult close cases but in the appeal space - so this was a case which went through the one (panel) member. And then it went to the appeal stage. And it was really - what happens after the appeal stage, which was the - there's a question which the UK courts were being asked.

And in this case it was the domain registrant, Mr. Toth, who lost the appeal stage. And he wanted to essentially go to the courts to appeal the appeal as it were. And the courts found that of course if you have a cause of action in law, you can go to court. So...

And this is perhaps an inherent asymmetry between a domain registrant and a trademark holder because the tests are whether you win or lose a DRS case is not the same as trademark infringement. And he - in this case - and there have been plenty of examples where a Nominet decision would uphold a finding of abuse of registration but it couldn't really be ever a trademark infringement.

And similarly there have been cases which would have been trademark infringement which were not found to have been abusive. So it's a different test.

But if you have a separate cause of action then you could use that to go before the courts. And certainly the sort of causes of action that Mr. Toth tried in that case were questions of bias amongst the panelists making the decisions. And some other points around which had there been a finding of facts -- for example the appeal panel was poisoned or tainted by conflicts and bias -- then I think English law would have given him a cause of action.

But those weren't findings, and I think as it came to the - when it came to the court hearing -- I was there for the court hearing -- he withdrew those allegations because there clearly wasn't any basis for them. So there are limited situations where you will have a cause of action.

And I think it was also left open to the courts that there's a procedure in the UK courts known as the judicial review which is where you're undertaking a quasi-public function that those decisions can be reviewed by any party with - any party with sort of understanding to bring a claim that they had been adversely impaired by a capricious or unreasonable or otherwise unlawful decision of the public authority.

I think the balances and opinion is that sort of action is available to somebody who loses at DRS even at the appeal stage. But the tests for overturning it are quite high, so it's probably not a very favorable type of action. So yes, I

think in summary that was kind of an interesting case to test the reviewability of an appeal decision by the courts.

The sort of reasons why you don't have a cause of action is that the Nominet process is a purely contractual mechanism for a complaints procedure to be taken advantage of by a rights holder against a domain name registration. It doesn't have any statutory basis or any legal basis other than the registration contract.

And, you know, if you think about the sort of questions that you talk about in terms of well how do you compare the process of an administrative review of written submissions and written evidence through a process like the UDRP or the DRS versus the court process of evidence, discovery without prejudice, cross-examination, physical attendance.

You've got questions of jurisdiction which are - you know, many of our disputes are across jurisdictional so you would even not be very clear as to which - well I mean obviously there are treaties and rules around a complex set of laws between different jurisdictions and formal court proceedings. And all of that would need to be taken into account.

And that's not within the scope of the lightweight low-cost, low-risk from both parties in terms of cost exposures and time that our administrative process is designed to be put in place for. So it was a very long answer but hopefully that's answered the question.

Philip Corwin: Okay, so I think Petter now is up.

Petter Rindforth: Thanks.

Philip Corwin: I didn't hear any...

Petter Rindforth: Petter here.

Philip Corwin: ...follow-up from George. Go ahead Petter.

Petter Rindforth: Thanks. Yes I guess you may know we in our working group, we are discussing related final way to solve the main disputes with arbitration also including three panelists. So I have two practical questions to you. One of the things that have been discussed is that the best way to solve disputes are - costs a lot compared to civil court. So one question to you is what are the costs for the parties and how does it - how is it sold between the two parties?

And also another comment that have came up during our discussions is that court - traditional court action is more neutral and that panels in this type of disputes solution can be not - can be involved in some way or interested in one of the parties and therefore not be as neutral as the traditional court. That's the two questions about that.

And my third simple question is that how many cases have you dealt with related to IGOs, intergovernmental organizations? Thanks.

Nick Wenban-Smith: Okay, thank you. So I had the three clear questions. So first the costs, well there are the panelists' costs which are paid for by either the complainant party or the appeal being party. And the costs are 750 UK plus VAT, which is 20%. So that's 900 pounds including tax for the first decision.

And then it's 3000 pounds, which is essentially 1000 pounds which goes to each of the three appeal panelists that appeal decisions, plus VAT again. So that would be, what, about 3600 if you include the 20% tax.

And Nominet administers the process for nothing. We absorb that cost as part of the general overhead of legitimately operating on a first-come first-served open registry system. I think that's how we see it is fair.

There's sort of one or two (cents) that every domain registered goes towards the administration of the complaints and procedure like this so you can have open registration. And so I think that's all on the costs. The parties pay their own (unintelligible).

Phil Corwin: Okay and thank you. And now Paul Tattersfield.

Paul Tattersfield: Hello. I have two very different questions if I may. You mentioned the 700 disputes a year leading to 3 appeals and 250 determinations. What happens to the other 450 cases and are they all sold in mediation? The second question is...

David Taylor: (Unintelligible)

Paul Tattersfield: Sorry?

Nick Wenban-Smith: No, go ahead.

Paul Tattersfield: Okay. Second question is if an IGO or state was a defendant, could they ever cite immunity so that the UDRP case couldn't be heard? Thank you.

Nick Wenban-Smith: So the first question is of the total body of disputes which are brought, what happens to the ones which don't go to decision? Sometimes parties resolve it in mediation, which is about half of the cases.

And then the rest of them, the decision - the parties may not have agreement as between themselves, but the party which is bringing the complaint decides that it does not pay the fee for the experts and so the case is timed out and closed without going any further. So that's basically the sort of the options which happen there.

In terms of IGO, I have no recollection of an IGO case. I don't think we've had any - no, we have. We've had Olympic - when the London Olympics

were taking place. So we had lots of protected terms in the Olympic regulations around London 2012.

And we certainly had some Olympic domain registrations. And they were brought through the Nominet DRS process and they went through like any regular case. The complaining party moved to have rights in the terms of the domain names. There were 12 domain names which had been registered by this one individual.

And there were different variations of various words and expressions which the London organizing committee of the Olympic games expressed rights in. I don't know whether that's the London organizing committee or whether that's an IGO process but certainly they were Olympic registration terms.

And they went through like a regular case and it wasn't appealed. So yeah, it's just like we just treat you like any other rights holder.

Paul Tattersfield: Thank you.

Philip Corwin: Okay, this is Phil. I'm going to recognize myself as next in line. A couple of comments. One, I was going to note, and I see that George has put in the chat room that just noting that the Olympic committee is a non-governmental organization so it wouldn't be in the same class as an IGO.

What we know from input from the IGOs is they don't object to the UDRP or to an arbitral appeals mechanism. The immunity claim only comes up in regard to being subject to the judgment of a national court. So I don't think immunity would ever arise in this type of procedure.

My question was when the dispute is resolved by mediation without going to a panel, is there any cost? And if there is a cost, what is that cost compared to the full dispute resolution process?

Nick Wenban-Smith: There's no cost.

Philip Corwin: No cost.

Nick Wenban-Smith: We charge nothing.

Philip Corwin: The mediation is cost free. Okay.

Nick Wenban-Smith: Yes.

Philip Corwin: Okay. I'm going to lower my hand. Paul Tattersfield I think if you have another question you need to lower your hand and get back in line. And George is up next. So George.

George Kirikos: George Kirikos again for the transcript. Yes I just wanted to follow up on Phil's question about mediation. I guess the mediations are confidential but do you find that there are processes whereby the settlement involves things other than the transfer of the domain name? For example people might be accused of infringing the trademark by various parts of their Web site.

Do you find that the settlements involve taking down those parts of the links but retaining ownership of the domain name? In other words, if the court - if there was a court case, the judge would have discretion as to the remedy? They'd be able to say well you could pay money damages; you can stop the infringement but keep the domain name.

Do you find that that happens more in mediation whereas if it actually goes to a full dispute or appeal the only remedies that are available are transfer of the domain name or non-transfer of the domain name. So do you find that's limiting compared to the courts? Thank you.

Nick Wenban-Smith: Thank you for that question. Yes we do get quite - I mean, obviously most of the settlements are a straight transfer sometimes for a cash

consideration, sometimes the cash consideration less than what the decisions you would have been. So effectively it gives certainty in lower costs than going through the panel process.

Sometimes it's through considerably in excess of the panel fee I think where the claimant has realized that actually they're not going to win on the basis of the policy but the parties between themselves realize that there's a willing seller and a willing buyer and they're able to come to some sort of agreement.

But we do get - I mean for example we had a couple of brothers who were in business and they fell into a dispute over the domain name. And it was resolved actually by them going to have lunch with their mother. And the brothers agreed that one of them would keep the domain name under the condition that he never spoke to the other brother again ever.

So you do get - you kind of get free goods and distribution disputes. Sometimes you have a distributor that there's an outstanding dispute and there'll be a sort of non-monetary creative solution which probably wouldn't have been achieved through a court process.

We've had like free rides on a motorbike and visits to theme parks. And another very common one actually is a donation to charity.

Philip Corwin: Okay, thanks for that. George, did you have another question or was that it?

George Kirikos: I did have one more question. George Kirikos again for...

Philip Corwin: Okay then go ahead.

George Kirikos: ...the transcript. Can you talk a little bit about how those six DRS experts that are chosen for the appeal board are chosen and what accountability

mechanisms exist if they found to have made, you know, very wrong decisions? How are they held accountable? Thank you.

Nick Wenban-Smith: Okay, I think that is a very interesting and good question actually because what is important to Nominet ultimately is that - industry runner of the - we reorganize the whole panel. The whole thing needs to be held up and have integrity.

So we have around 40 panelists in total. And so the first decisions they take their decisions in strict rotation. So there's a queue and they take the next decision which comes up. So all the panelists need to be able to handle all of the types of decisions including the easy ones and the more difficult ones.

And so that's the first process. And every year I have a review personally with each one of the panelists. I go through and I get feedback from them and from staff and I read through the decisions. And also we'll take account of the review panel as well.

In terms of the review panel, this is not a job for life. And so there are sort of policy control processes. I will not - and I will fight very hard for the right for a panelist's decision to be a panelist decision and there not to be any pressure from any direction as to how they find their decisions, which way they uphold or reject a complaint. That's totally up to them.

But there's obviously a requirement for disclosure of interests and conflicts. And they mustn't take a case to which they might be considered to be conflicted. And that includes obviously the appeal stage, and that's partly the reason why we have at least six people who can hear appeals because it sometimes happens that you get well-known international companies which everybody's heard of.

And sometimes there are broad dealings or questions which make panelists uncomfortable. But even if they don't think they have any actual conflicts,

they think that there might be a perception of conflicts, and so they take quite a sort of a conservative approach to that.

But ultimately you are relying on people's honesty to clear that conflict. And you are relying on the transparency of the process that all the parties involved, all of the decision makers, they're all on the record. And the way that everything works these days, people are pretty quick to shout out and to point out if there is any bias or (course of) dealing or impropriety.

And so that is that sort of oxygen or the transparency, sunlight or the disinfectancy (sic) - there's an expression isn't there - for a good honest - keep people honest and make the process very transparent. And we have 360 reviews.

And if I feel that the feedback of the panelists is weak, not so much we disagreed with their decisions but they made mistakes or they were late in returning their decisions or their decisions were badly reasoned and full of things which made other people find it difficult to understand the logic then that gets marked down. And if they do that too often then they get deselected from the panel.

So I should say that before I worked in Nominet I did work for an outsourcing company where we did a lot of outsourcing work. And one of the central principles was a very strong quality control mechanism.

So I tried to under my watch with the Nominet DRS to try to in-build not from Nominet side of things in terms of administration but in terms of the way that decisions are reviewed read by senior panelists for comments prior to publication that there are clear reasoned decisions without mistakes but also these are not - Nominet doesn't hold the pen in any of these things. These are all dealt with by independent parties in Nominet.

Philip Corwin: Okay, thank you for that. And we've had some chat about mediation. David I see your hand up. Go ahead please.

David Taylor: Yes thanks Phil. Actually I was going to pick up on mediation chat there which George brought in because I think that is a very interesting thing and certainly from the Nominet perspective, so not talking for Nominet but using the Nominet process I think the mediation is a very valuable part of that process.

And it was something actually -- if we go back and delve into the URS and the IRT which I was on back then -- we sought in many ways to model the URS on the Nominet process because it was a fast way of going about things and there was aspects which we thought could be brought in to help trade the URS. There's quite a bit of history which ties in there.

And at that point it was something which I had raised about whether we should have a mediation aspect to the URS. And also there's been - you know, there's articles out there which talk about a mediation aspect of the UDRP.

So from - you know, it goes both ways and is complicated. I think that it potentially can bring about resolution early on. And I think a lot of the people who registered domain names clearly don't want to have the domain names. They don't actually want to have to deal with or file a response, which is why you get a lot of non-response rates.

But if you actually get a (teething) situation like the two brothers having to talk to their mother living in different countries in that same situation in UDRP, that sort of case would be ideally resolved by mediation and wholeheartedly welcomed.

I suppose the key issue from memory - I can't remember why the mediation aspect of DRS was dropped out but I do recall sort of discussions about

those issues with this will further lengthen the process. And if we have to go through a mediation which somehow adds two weeks to a process which is a 40-45-day process where it's being used and valued absolutely worthwhile.

But if it's then used to hinder and keep bad domain names live for further two weeks, you've got to look at those issues and those ones coming in. So I think I'd just ask Nick because I can't remember on this exactly how long the mediation takes but it's a very quick turnaround in co.uk. And I think that's something which is obviously helped by the fact there's one jurisdiction, everyone speaking English, et cetera, et cetera.

And you start going through a mediation which is - you know, bear in mind this mediation is not won actually by e-mail. You have the conversations, the whole language issues in the UDRP which come into bear, make it something which, you know, at the (unintelligible) provided might be a little less willing to be operating at no cost because bear in mind this mediation is paid for by Nominet.

And I would be surprised if ICANN would turn around and say, "Oh yes, we'll pay for the mediation part of the URS or the UDRP."

Philip Corwin: Yes thank you for those extra comments David. I don't remember why mediation was dropped from URS. I suspect it was because URS is supposed to be a very rapid process and that would add time. But I think it certainly merits some consideration when the RPM review working group gets to UDRP.

Maybe not mandatory mediation but certainly strong encouragement where the parties may be able to resolve things, maybe not for free but at a substantially lower cost and proceeding to a dispute formal hearing before - you know, consideration by panelists. And Nick I see your hand up.

Nick Wenban-Smith: Yes just wanted to say that obviously mediation is voluntary. You can't make people mediate. And so we kind of nudge them into mediation, say your mediation period starts now. You have a period of 20 days to complete mediation. That can be extended by meeting of both the parties.

But if one party is clear at the outset that this not going to be a case which is going to be mediated successfully they just say, "No, we're not having mediation," and it's shut down within a day or it doesn't even get started at all. So it is obviously a voluntary process and necessarily time limited.

Philip Corwin: Okay, thank you. So we're at the 45-minute mark. It's been very informative. Do other members -- certainly if David or Nick have anything further to say -- but other members of the participants in the call have any further questions or comments?

Well I don't hear anyone. I don't see any hands, so good. Do our presenters have any final remarks before we wrap up? And Nick go ahead. I see your hand.

Nick Wenban-Smith: Hi. I was just going to say one of the reasons why it's such an important part of the UK system is that the cost of using the courts is absolutely prohibitive for most normal people. So I was going to say in the Toth case, Mr. Toth had to pay Emirates' costs and this is a six-figure sum to be clear.

And he knew it going into it thinking that that was going to be the outcome because he started in a lower court where there's a cap on the limit of costs. But it went up through the appeals stages of the lower courts and it's actually (unintelligible) point.

And it ended up being a very, very, very expensive outcome for him as a private individual who just happens to have the good fortune or maybe the bad fortune of owning a really nice and interesting domain name. And it really - I can't emphasize enough one of the drivers in terms of (over) policy is

the difficulty in cost for most normal people of using the courts which is why we think it's absolutely imperative for there to be a sort of cost efficient alternative.

Philip Corwin: Okay. Well yeah I would agree certainly. I don't know how the UK court costs compare to the US, but it's good to have an alternative for this type of dispute that doesn't bankrupt the parties. So do - any further comments or questions on this very useful call? David noted then France is cheaper. Well that would be for Dot FR I guess.

But let me lay -- and Petter may want to chime in -- thanks very much David and Nick for presenting this. I don't know if staff was taking any notes, but I think a couple high level - maybe we can start our regular meeting this Thursday with just a quick two-minute recapitulation of the key points about the appeals process that - Nominet for those members of the working group who weren't able to join on very short notice.

And with that I have nothing further to say. I defer to my co-chair Petter to see if he has any closing words.

Petter Rindfoth: Yes, thanks. As I said at the beginning I supposed it would be (unintelligible) presentation. So thanks.

Philip Corwin: Okay and I think with that we can conclude the call and give everyone back 11 minutes of their life between now and the top of the hour. So thank you and good-bye.

Woman: Thank you everyone. Once again, the meeting has been adjourned. Thank you very much for joining. Please remember to disconnect all remaining lines and have a wonderful rest of your day.

END