ICANN Transcription

EPDP Specific Curative Rights Protections IGOs

Monday, 30 August 2021 at 15:00 UTC

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TERRI AGNEW: Good morning, good afternoon, and good evening, and welcome to the EPDP Specific Curative Rights Protections IGOs call, taking place on Monday, the 30th of August, 2021 at 15:00 UTC. In the interest of time, there will be no roll call. Attendance will be taken by the Zoom Room. If you're only on the telephone, could you please identify yourselves now?

Hearing no one, we have no listed apologies for today's meeting. All members and alternates will be promoted to panelist. When using chat, please select either "panelists and attendees" or "everyone," in order for everyone to see your chat. Attendees will be able to view chat only.

Attendees not replacing a member are required to rename their line by adding three Zs to the beginning of your name and, at the end, in parentheses, the word “alternate,” which means that you are automatically pushed to the end of the queue. To rename in Zoom, hover over your name and click “rename.” Alternates are not allowed to engage in chat, apart from private chat, or use any of the other Zoom Room functionalities, such as raising hands, agreeing, or disagreeing. As a reminder, the alternate assignment form must be formalized by way of the Google link. The link is available in all meeting invites, towards the bottom.

Statements of interest must be kept up-to-date. If anyone has any updates to share, please raise your hand or speak up now. Seeing or hearing no one, if you do need assistance, please e-mail the GNSO Secretariat. All documentation and information can be found on the EPDP wiki space, including recordings and attendance.

Please remember to state your name before speaking. As a reminder, those who take part in the ICANN multistakeholder process are to comply with the Expected Standards of Behavior. With this, I’ll turn it back over to our chair, Chris Disspain. Please begin.

CHRIS DISSPAIN: Thank you, Terri. Greetings, everybody, and welcome to the call. As you can see, the agenda is up on the screen. This is how we’re going to run the meeting today. We’re going to start with the brief discussion on URS. Mary’s going to take us through an overview of that and then we’re going to check with you all to see if anybody

has any specific issues that they want to raise. Then we're going to move on.

As our baseline document, we're going to use the document that Berry sent out the other day, which contains … I believe, if I remember correctly, it contains Brian's amendments from last week and Mary's changes on top of that. We will go through, specifically, first of all, the recommendations—that's 2.1.1 and 2.1.2—to see if we can agree the wording of those.

As we go through them paragraph-by-paragraph, I will ask, obviously, all of you for comments. But we'll check in specifically with Justine, and Alexandra, and Jay to see if they—all of whom have, one way or another made additional comments—to see that there is anything that they have in respect to, specifically, those two items in the document.

If we have time, we will go and we'll address the rest of the document. But if we can nail those two things, then the surrounding bits and pieces—the preamble and all the other stuff—can possibly be dealt with on the list. But we'll see how we go. The most important thing, however, is to nail down this URS thing and then to look at 2.1.1. and 2.1.2 because they are obviously the substantive and the most important parts of the document.

So Mary, can I call on you to start with, just to give us an overview of why we have URS on the agenda and what it is that we need to agree?

MARY WONG: Thank you, Chris. Hi, everybody. I think, as everybody recalls, the original PDP on Curative Rights did consider both the URS, or Uniform Rapid Suspension, as well as the UDRP. Our work has focused largely on the UDRP. So the question here for the group, before we go to public comment, is whether there is any reason not to also include the URS in the recommendations that we are formulating.

And in that regard, I'll keep it brief. But for purposes of the transcript, in case anyone else needs to review this outside of the group, as everybody knows, the URS is based quite substantially on the UDRP when it was developed for the new gTLD program. For our purposes, and to answer the question whether or not we should extend the recommendations we're formulating to the URS, we thought that it might be helpful to point out a few specific differences between the URS and the UDRP to see if, in your view, as the EPDP Team, this does make a substantive difference or not.

These differences between the two proceedings include the following. First, as the name implies the remedy under the URS is a suspension, not a cancellation or transfer of the domain, should the complainant prevail. The suspension is also immediate. So in terms of the remedy and the timing, there is a difference there. Secondly, which is perhaps less relevant to our purposes, the burden of proof on the complainant is higher under the URS than the UDRP.

The next two points might be slightly more relevant. Or the last one I'm going to make may be most relevant. The third difference that we thought to highlight is what you need to show as a

complainant under the URS is slightly broader, in the sense that where the UDRP is limited to trademark rights for with the domain name is identical or confusingly similar, for the URS, because it was developed for the new gTLD program, in addition to trademark rights, strictly speaking, it also covers marks that are protected by a statute or a treaty, for example. And while that has, to our knowledge, not been tested, we thought that that was a difference that we should highlight for this group, considering what we're discussing.

Finally, perhaps the most significant for purposes of our discussion, the URS, unlike the UDRP, has an inbuilt internal appeal mechanism. And either party can bring the appeal to the dispute resolution provider, who will appoint an appeals panel to review the original decision.

So, Chris, there we are. Essentially, from the staff perspective, the most significant difference is probably the inbuilt appeal mechanism, potentially the breadth of the grounds, and of course, the fact that the imposition of the suspension remedy is immediate.

CHRIS DISSPAIN: Thanks, Mary. Just for my benefit, if recommendation one, which deals with the definition of the IGO complainant is there, does anything in recommendation two actually need to refer to the URS? Because the URS itself has already got a bunch of built-in safety measures, etc. It seems to me that what we're saying is if you deal with recommendation one and the status of the IGO, then URS is a standalone system because it still has UDRP

underneath it. Maybe I've misunderstood. Do you want to just respond to that briefly before I go to Justine, Mary?

MARY WONG: Sure, Chris. And as Jeff has said in chat, obviously, there is that court option for both parties. In this case, most likely the respondent as well. And you're absolutely right, Chris, that the URS does not preclude the UDRP. So it is in addition to, in that the complainant can go to the UDRP, even after the URS and the court proceeding is available.

CHRIS DISSPAIN: Thank you, Mary. Jeff, can I just check in with you? If I got to court, am I going to court in respect to the URS or am I going to court in respect to simply just dealing with the thing in court? What would I be going to court for? For the court to hear the finding of the URS panel? Jeff? Jeff, your microphone is unmuted but I can't hear you. I can now see you as well but I can't hear you. You could mime.

JAY CHAPMAN: It looks like we lost Jeff altogether.

JEFF NEUMAN: You guys can't hear me?

CHRIS DISSPAIN: I can see him.

JAY CHAPMAN: There he is.

CHRIS DISSPAIN: We can hear you now, Jeff. There you go. Well done. Go ahead, Jeff.

JEFF NEUMAN: Sorry. I don't know what happened there. I'm going to turn my video off, just because I think it's getting in the way. The other difference is that the URS decision in implemented immediately. So if the name is suspended, that means that as soon as the registry—not the registrar—but as soon as the registry receives notification that there's a finding in favor of the complainant, then the name is suspended. By "suspended," what actually happens is that the name servers are changed to point to a landing page at a provider that says that this name was subject to the URS.

So when a respondent goes to court, like the UDRP, they are basically asking the court—at least in the US—for a declaratory judgment that they do have rights to the name. So that's really the court option. And also, like the UDRP, I guess if a URS is filed, the respondent could, rather get to a decision of the URS, the respondent could file a case in court and try to get the URS case put on hold while that court case is pending.

CHRIS DISSPAIN: Okay. Kavouss and Paul, I can see you. I'm going to come to you in one second. The question that I'd like us to think about, unless I'm completely off-piste here is … I understand that the registrant or whoever can go to court. The question is given that there is an in-built appeals mechanism, is it then therefore necessary to have the arbitration thing as well in respect to the URS, in other words, court appeal or not? Jeff, do you want to quickly address that and then I'll go Kavouss and Paul.

JEFF NEUMAN: Yeah. I think the appeal in the URS is very lightweight. It is not like a reexamination with new evidence, and hearings, and things like that, the would be in what we would think of as the arbitration. It's really a quick review of the current record. So it's very different. The appeal there is for obvious mistakes and it goes to the same provider but it's not a full due process kind of arbitration. So I would argue that there still would likely need to be an arbitration, especially if in the URS, there is that mutual jurisdiction—if there's no agreement to the mutual jurisdiction.

CHRIS DISSPAIN: All right. I might come back on that point in a second. But for now, thanks, Jeff. Let's go to Kavouss and then to Paul. Kavouss, please go ahead.

KAVOUSS ARASTEH: Yes. Good afternoon, good morning, good evening. Good day to everyone. I understand we are dealing with two things. One, we're dealing with the URS, Uniform Rapid Suspension, and UDRP,

Uniform Domain Name Dispute Resolution Policy. It was said that URS was mainly put in place, or created, or whatever, for the new gTLD and then people, in a different way, explained differences between URS and between UDRP.

URS, from its abbreviation, it seems that it's rapid. That means that this decision, as mentioned by someone, is implemented immediately. URS does not require to be—that the complainant are associated to the trademark. URS does not require certain actions, such as examination, hearing, and pata-ti, pata-ta.

So having said that, views of different people, I would suggest that at least for record, we have established or described differences between the two. And then, we say that because of the circumstances, the URS may be a more, or relatively more, appropriate course of action to be taken.

But—there is a but—someone mentioned that URS does not exclude application of UDRP. Did I misunderstand that? Or URS has not included the UDRP? Which one is that? Because people are saying different things.

CHRIS DISSPAIN: You can use both if you—

KAVOUSS ARASTEH: Sorry. I am not finished.

CHRIS DISSPAIN: I was going to answer your question. You can use both.

KAVOUSS ARASTEH: No. You can answer my question once I say, “Thank you very much.” And now I say thank you very much. Go ahead.

CHRIS DISSPAIN: Thanks, Kavouss. The answer is you can bring a claim in the URS for the rapid suspension of the name. And you can then, subsequently, if you wish, bring a UDRP claim. The two things are not mutually exclusive so therefore, you can do both. The only remedy under URS is suspension.

And it’s the key. As you quite rightly stated, the key is the use of the word “rapid.” It’s supposed to be quick and it’s supposed to achieve the removal of the domain name—effectively, to stop it resolving—in a very short period of time. The major fight, if you will, would be over the domain name itself in UDRP, which we’ve already discussed. Does that explain it to you, Kavouss?

KAVOUSS ARASTEH: Yes. You can explain it to me. It is not only me. It is everybody. I would suggest that if it doesn’t bother you, we should have some sort of, I would say, not definition but description—differences between the two. The first one you said, they are mutually exclusive. And that is one. And there were other things mentioned—that decisions are implementable or implemented immediately for URS. So I would suggest that if it doesn’t bother you and everyone or ICANN staff, if you have a description of differences between the two. Thank you.

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

PAUL MCGRADY: Thanks. I think it's worth saying out loud, just for the record, that at least from my point of view, all of this time we have been talking about, when we go to the court, not about some sort of appeal to a court. In other words, we're not limiting anybody that the only thing they can bring to a court is the four corners of a UDRP or URS decision. But rather, they can seek relief from a court based upon whatever law they want to see that court apply. So we do tend to throw around a court appeal or whatever as if that's a process. It's not really … At least in the US, the courts don't give UDRP decisions much weight at all.

So I just thought I should say that out loud so that nobody's surprised later if they thought we were talking about something much more limited. Thanks.

CHRIS DISSPAIN: Thank you, Paul. Understood. My take on it is this. We've tried all along—and it's been challenging for both, if I can use the term, sides of this discussion—to create a system that is very specifically tailored to dealing with one specific problem and not to overstep into areas that are not necessary to solve this particular issue or into areas where we think it might nice for the UDRP itself to change.

My question to you all is if we were to say … If the IGOs are in a position to be able to use the URS, why do we need to insert an appeals mechanism, if you will, or an arbitration mechanism for a URS decision? We're doing it in respect to the UDRP to solve a very specific problem. But given that there is already an appeal mechanism in respect to the URS, it seems to me to be a step too far, probably, to be trying to do that for an arbitration in respect to a suspension when the use of the UDRP is open to the parties, should they wish to do so.

I'm very happy to listen to anyone who violently disagrees with me or anyone who wants to say that they agree with me. Paul, is that a new hand or your old hand.

PAUL MCGRADY: It's an old hand but I'm going to take advantage of it and just ask you a question for clarity. Are you suggesting no change to the URS at all?

CHRIS DISSPAIN: I'm saying that the definition in recommendation one works. That needs to go in because, obviously, that is about getting in. But my question is whether the introduction of arbitration is a necessary remedy to fix the specific IGO problem, which it is in respect to the UDRP, but doesn't seem to me to necessarily be the case in respect to the URS, given that there is a built-in appeal and you can then move on to the UDRP if you choose to do so. Alex and then Jeff. Alexandra, please go ahead.

ALEXANDRA EXCOFFIER: Yes. Chris, this is off the top of my head. But I tend to agree with you. URS is supposed to be rapid. And if we go into either arbitration or a court discussion on the merits, then that's not rapid. There is a built-in appeals process. What does need to change in the URS is, like you said, maybe the definition of an IGO and also the removal of the mutual jurisdiction provision.

There is still a provision which says that anybody is free to go to court. That's still there and I don't have any particular objection to that, just like anybody is free to go to a UDRP following a URS decision. It's only suspension. It's not a permanent decision on the domain name.

So I tend to agree with you that we do not need to build in a huge dispute resolution process in the URS. But those two elements—submission to mutual jurisdiction and, perhaps, a definition of an IGO or clarify the aspect Mary did mention, that it's not just trademark. But I think it does say that you need a trademark. Maybe I read too quickly but those questions should be answered but not the arbitration path. Thank you.

CHRIS DISSPAIN: Thank you. A couple of things. First of all, I just want to be clear. I'm not pushing a particular way. I'm just asking questions. That's the first point. Secondly, if I can push back ever so slightly on what you just said, Alex, you were right that it's supposed to be rapid but the rapidity comes in the remedy—in other words, the suspension. And that is rapid. And any appeal, be it through the appeals mechanism of the court or arbitration, would be in the

face of it still remaining suspended. But nonetheless, your point is taken. Jeff, go ahead, please.

JEFF NEUMAN: Yeah. Thanks, Chris. It's precisely because of that point that I disagree with Alexandra and the position, not that you took but that you were asking about, I guess. Look. If the URS is going to allow IGOs to not have to consent to mutual jurisdiction, then you're going to still have to provide a way to address the merits of the URS, or of a rehearing, let's say. And that can only be done under what we've been discussing as the same way as in the UDRP, which is an arbitration. And like you said, because the remedy is implemented immediately—there's not this 10-day waiting period that's in the UDRP—as you said, it is still rapid. They get the remedy right away.

And we can't really say that because it's just a suspension, that it's not really the same type of effect. In fact, for actual businesses, let's say, if someone is taken offline, the effect of a suspension can be just as great, if not greater, than a transfer. So I think that to say that we're not going to provide registrants or respondents with any way to have their substantive claims be addressed is just a mistake. I just think that we should, to the extent we can, treat it all as the same so that we don't create confusion and we don't strip registrants' rights away in the sake of expediency. Thanks.

CHRIS DISSPAIN: Jeff, that's very clear. Thank you. And just for my benefit, it's right, is it, that I, as a registrant, I can't bring a UDRP in the face of a URS?

JEFF NEUMAN: Correct.

CHRIS DISSPAIN: So my name is suspended for 12 months and could, if I understand it correctly, be suspended for a further period of time under certain circumstances. And I cannot launch a full UDRP. Only the complainant can do that.

So what I hear you saying is because of that, I'm therefore stuck in a loop. If the IGOs are not subject to the jurisdiction, then the minor … I'm going to call for the sake of discussion. It's a shorthand of the way you characterized it. The minor appeals mechanism that exists might be helpful. But at the end of the day, if I can't have my day in court because the IGOs aren't subject to the jurisdiction, then I need to be able to have a remedy that deals with the substantive points. Is that a fair summary of what you've said?

JEFF NEUMAN: That's correct. That's a fair summary. Yes.

CHRIS DISSPAIN: Thanks very much, Jeff. That's very helpful. Kavouss, you're next.

KAVOUSS ARASTEH: Yes. Thank you very much. And thanks, Jeff. I understand that whenever we refer to suspension, whether it's rapid or not rapid, suspension has a lifetime. You cannot suspend it forever. So we should see the subsequent action. So rapidly, you suspend. And then, for how long [and what to do that]. When you say UDRP, you are not talking of suspense. You are talking of resolution. That means finding, possibly a solution.

Still, I am of the opinion that we need to have a description between the two, advantages and drawbacks, irrespective of how and why the URS were created. And then, after that, we say that the applicability of that to the IGO cases which facilitate the issue of the IGO—the problem of IGOs that they are not so much talking associated with trademark.

Still, I am of the opinion that we need to be quite clear. It seems that we are not clear. One, suspension. We don't know the lifetime. And second, we don't know the actions after the suspension is going to happen. You said that they are mutually exclusive. That means once you go to the URS and suspend it, according to you, we cannot go to the UDRP. Or if it is suspended, after some time, you could go again to the UDRP. Then my question is what was the advantage of going to the URS and then going to UDRP again? These are the things that is not clear. Thank you.

CHRIS DISSPAIN: Thank you, Kavouss. And I acknowledge that we need to … When we refer to the URS in the document, as you've said, we need to be clear. So I'm conscious of the time and I don't want to spend a lot more time on this. What I'm going to ask is that Mary and the team take the input that we've had in the last 25 to 30 minutes and see if you can knock together something that deals with the URS—as Kavouss has suggested, being clear on the definitions and putting together—effectively, letting URS sit beside the UDRP in the same way. And let's have a look at that when it's done.

Just for clarity, in the chat here … So Jeff, sorry to bug you again. But let's just say, for ease, I've got one year left on my registration. You're saying if the name has been suspended, I have an option to renew at the end of that suspension?

JEFF NEUMAN: No. You, as the registrant, do not have the option. But the complainant that successful has the option to pay the current registrar to extend the registration for one year. And as Justine says, it'll still be in the "name of the registrant" and it will still point to the landing page of the provider, saying, "This name was one in a URS," or whatever the language is. But the current registrant does not have the right to extend that.

CHRIS DISSPAIN: What happens if I've got a five-year registration?

JEFF NEUMAN: Then I still believe it will go to the end of then-current registration whilst the complainant can still pay for another year.

CHRIS DISSPAIN: So the suspension is not just for 12 months. The suspension can be for the full term of the domain name license.

JEFF NEUMAN: It's the remainder of the then-current term.

CHRIS DISSPAIN: The balance plus one year. Yeah. That makes sense now. Okay. Super. Thank you. All right.

Let's move on for now to 2.1.1 and 2.1.2. If we could get 2.1.1 up on the screen, please, that will be helpful. I know that this is fiddly but we're going to go through it paragraph-by-paragraph and we're going to see if there are comments that have been made by anyone—by specifically Jay, and Alexandra, and I think Justine. Justine, you're very welcome to say something. You were kind enough to provide comments, if you think that they're relevant to this. Plus, of course, anybody else. But I know that we've received those ones. I don't know if they're relevant to this particular section.

Let's have a look. This does not look like the document. Oh. It's because you've got the crossings out included in the document, whereas the one I've got in front of me doesn't. That's fine.

Okay. So recommendation one. “The EPDP Team—” that’s us— “recommends that the UDRP and URS rules be modified in the following two ways: add a description of IGO complainant to section one. IGO complainant refers to an international organization established in a treaty and which possesses international legal personality; or an intergovernmental organization having received a standing invitation to participate as an observer in the sessions and the work of the United Nations General assembly; or, c, a specialized agency or distinct entity, organ, or program of the United Nations.”

Does anybody want to make any comment about that? Mr. McGrady, please go ahead.

PAUL MCGRADY: Thanks, Chris. What’s a specialized agency and what does it add that wasn’t already there? So whoever added that is, if you could give us definition and tell us why it’s different from a distinct entity, organ, or program of the United Nations. Thanks.

CHRIS DISSPAIN: Thank you, Paul. It was added, I think, last week or the week before after a long discussion which Kavouss started and which involved a number of other people. But Mary, please go ahead.

MARY WONG: I see David’s got his hand up. And Brian has put a link the chat to the United Nations FAQ. You’ll notice here that in the comment from staff on the side, we have suggested at least adding a link to

the org chart of the UN that will show what are the specialized agencies, where they sit, and what are the other organs and programs of the United Nations.

CHRIS DISSPAIN: Super. And I think Jeff is suggesting, obviously, that we put that in as a footnote. But, Paul, I was going to go to David in a second but did you want to say something else? Paul?

PAUL MCGRADY: I'm sorry. No. That was an old hand. Yeah.

CHRIS DISSPAIN: No worries, Paul. Super. Thank you. David, please go ahead.

DAVID SATOLA: Thank you, Chris. I was quite happy with the definition that you read out, Chris, that included the specialized agencies. The World Bank is a specialized agency of the UN. ITU is a specialized agency of the UN. UNHCR is a program. So I think the definition accurately captures the various types of entities that are part of the UN system. That, I think, is quite accurate in that regard. Over.

CHRIS DISSPAIN: Super. Thank you very much, David. Anyone else? All right. Thank you very much, everybody. Number two—ii, sorry. "Add the following explanatory text to UDRP Rules, section blah." And I'm going to assume that we can check those to make sure they're

okay. “Where the complainant is an IGO complainant, it may show rights in a mark by demonstrating that the identifier which forms the basis of the complaint is used by the IGO complainant to conduct public activities in accordance with its stated mission, as may be reflected in its treaty, charter, or governing document.”

Now, I’ll remind everybody that this was put together by a small team and has been in the document for quite some residual time. Does anybody have anything they would like to say? Okay. Marvelous. If we could scroll down to recommendation … Jay has a question, “Do we need to specify ‘identifier?’” I don’t think so. I think that’s an acceptable expression to deal with the acronym. But Paul, or Brian, or Susan, or anyone else that was involved, if you’d like to comment on that, you’re welcome to do so. Paul, please.

PAUL MCGRADY: Thanks. I don’t think we need to define it further because it makes sense within the context. It’s the identifier which forms the basis for the complaint. I think that the average complainant’s attorney on the URS or UDRP side will know what means in its context.

CHRIS DISSPAIN: Jeff asks, “Is that broader than an acronym?” To which the answer is yes because, presumably, the name is included as well, although those are reserved, aren’t they? So in fact, we don’t need to worry about that. But is it broader than an acronym, Brian?

BRIAN KING: I just wanted to complement what Paul said. Just to recall that this was … Paul, Susan, Anthony, and myself had worked on this definition sometime back. And this was effectively a proxy standing in for "trademark." So the identifier is meant to be the moniker by which the IGO is known publicly. So it could include the full name. It could include the acronym.

CHRIS DISSPAIN: Right. But unless I'm very much mistaken, Brian, the full name is reserved anyway, right? Anyway, as Mary says, we use the word "identifier" in the consensus policy that covers … Okay. Cool. Excellent. That's deal with that one.

So let us now, as I said, move on to 2A if we can. Right. "If the GNSO Council approves the recommendation set out below, then the EPDP Team recommends that the original recommendation five from the IGO-NGO Access to Curative Rights Protections be rejected." Does anybody have any issue with that? Good.

Recommendation 2B. "The EPDP Team recommends that IGO complainants, as already defined, be exempt from the requirement to agree to submit mutual jurisdiction when filing a complaint under the UDRP or URS." Now, I know that these recommendations all hang together. So I know that your agreement to that might be dependent on what happens in 2C. But just for the moment, as it sits, does anybody have an issue with that? Mary, please.

MARY WONG: Thank you, Chris. I think Jay may have just put a comment in chat about that. You'll notice that we did not have square brackets around the acronym URS in recommendation 2B. In effect, this means that the mutual jurisdiction requirement would not apply to IGOs if this recommendation goes through. But as you said, it hangs together with 2C. But I just wanted to explain why there are no square brackets around the URS for this particular part of the recommendation.

CHRIS DISSPAIN: So, Jay, does that make it clearer for you that it sits as a whole, and so therefore, doesn't need to be bracketed.

JAY CHAPMAN: Well, kind of.

CHRIS DISSPAIN: Do you want to talk to that?

JAY CHAPMAN: Yes. Thanks, Chris. Hello, everyone. I get it. And I understand we've had these discussions in there. But I don't know. We say they're all interdependent. That makes sense. But 2B is the monumental adjustment and then 2C is the result of that. So I don't know why we wouldn't let everyone know, for purposes of public comment, that 2B is obviously an issue that we are wanting to be discussed and commented on specifically, as opposed to

just saying, “Here’s where the group has agreed.” I don’t think we’re there yet. That’s my point. Thank you.

CHRIS DISSPAIN: Brian?

BRIAN KING: Yeah. Thanks, Chris. I think the point is mainly that if we don’t have a 2B, then there’s no need for the two options under consideration under 2C. So I understand the point Jay’s making, that this is all a contingency. But if we go down that path, then I guess we’re bracketing the entire report.

So I don't know if there’s a way to accomplish … I think we’ve been reasonably clear that this hangs together. It’s a report. We’re looking for comments. Here’s two options we’re asking for specific feedback on. But I don't know if there’s a way to make that a little bit more clear. Otherwise, I think the risk is that if we start bracketing this, then we’re going to end up with a lot of brackets in the report. We could, for example, go back and bracket the definition that we’ve just been looking at.

CHRIS DISSPAIN: So, thank you, Brian. Before I come to you, Jay, my understanding is that we put brackets in where we believed there was an alternative. So we said, “There’s this proposal and there’s that proposal.” That said, I take Jay’s point. And also, Brian, you said the same thing—seeing a different solution.

So perhaps we could try and tackle that in the introduction, in the preamble, in the executive summary—wherever it's appropriate to do so—where we make a very clear statement that we're seeking comments on stuff, as you have asked for, Jay, without actually using the brackets in a different context in the recommendation itself. I'm fine with your point about making it clear that we're seeking comment. And I think we can do that, as I said, in the request for comment. Jay?

JAY CHAPMAN: Sure. Thanks, Chris. I understand. But again—and I'm with Brian on this one—it would be nice if we could find something. I think coming out and saying … We don't have any brackets with regard to 2A, right? We're good there. But with regard to 2B, coming out with statements that, "Here's what we recommend …" I don't feel like we've gotten there yet. And again, I have no intention of bracketing the entire report. I just want to make sure that we're clear on where we—

CHRIS DISSPAIN: Sorry. Are you seeking to make it clear that this recommendation is—just that you, for the moment—you are not, at this stage, content to say, "I agree to this recommendation." Was that what you're saying?

JAY CHAPMAN: Yes. That's what I'm saying. Short of saying, "We recommend …" Again, I'm still in the position that I've been the whole time on behalf of the BC, which is we're wanting to consider everything.

We still have more things to discuss. That's the context of all this. Thanks.

CHRIS DISSPAIN: Okay. So if we can deliver that message in the introduction to the document, then I think that seems to me to be fair. As Paul has said, these are draft recommendations in a draft report. And I stick by my point about the brackets. And I hope everyone accepts that because I want them to be used very specifically for a particular purpose. But I acknowledge your point, Jay. As I said, I'd quite like to deal with that by making a note in the report that says, "We're not necessarily agreed on all of this. We're waiting to see the comment." Is that fair enough?

JAY CHAPMAN: Fair enough. I appreciate the solution. Thanks, Chris.

CHRIS DISSPAIN: Thank you. Okay. Mary, Steve, Berry, please take a note and we'll find a way of dealing with that.

2C. "The EPDP Team recommends that the following be added to the UDRP and URS—" we'll deal with that subsequently— "to accommodate a review of an initial determination under the UDRP."

Now, let's deal first with the italicized text, which is a note. "The EPDP Team continues to deliberate on the text and final concept for recommendation 2C. While the EPDP Team is in general

agreement that arbitration is an appropriate solution, it has not yet reached agreement on two specific aspects relevant to such an option—one, whether the option to arbitrate will remain available to a registrant following the outcome of court proceeding initiated by the registrant in light of an IGOs jurisdictional immunity from process; and two, what should be the applicable choice of law for any arbitration that the parties may agree to?

"As such, the text that follows reflects proposals submitted by EPDP Team members on these specific issues, as indicated by the square brackets around the relevant proposals."

Does anyone want to make any changes or suggest any changes to that text? It seeks to explain why we've got square brackets around stuff.

KAVOUSS ARASTEH: Chris?

CHRIS DISSPAIN: Yes, Kavouss.

KAVOUSS ARASTEH: Yes. I am not talking about the italic part. I'm talking about recommendation 2C. In the second line, we say, "a review of an initial determination." Determination on what? What to be determined, initial determination? Are you referring to a term used in UDRP or URS as determination or this determination is the general work that is used here? What do you mean by initial

determination? Which determination and in what respect? Thank you.

CHRIS DISSPAIN: Thanks, Kavouss. The answer to that is that it refers to the decision of the UDRP panel but I don't know whether or not the term “initial determination” under the UDRP is an accepted phrase. So thank you for raising that. And we’ll take that away and have a look at it and make sure that we are clear. I’m clear that is what we mean but I want us to be clear in the text so thank you for raising that now.

KAVOUSS ARASTEH: Another question. Still, “or URS” is in the square bracket. I know that you are discussing this and Mary mentioned about the square bracket. So what is the situation of this “or URS” being in square brackets?

CHRIS DISSPAIN: We’re going to deal with that subsequent to this call, Kavouss, and make sure that we, as you have suggested, add a clear explanation of the way that the URS works and our recommendations would affect the URS. So for now, we’ll just leave it there.

KAVOUSS ARASTEH: My last question. If someone did not agree with recommendation 2B, what is now the situation? This is a [inaudible] to one disagreement?

CHRIS DISSPAIN: No, no. It's merely going to be … These are draft recommendations and it's going to be made clear in the preamble or at the appropriate point in the text that the agreement of members of the EPDP working group is subject to all public comments that are made, reconsidering everything after the public comments have happened. I'm just paraphrasing, Kavouss, but those sorts of things will be made clear. It's not that there isn't agreement. It's that some people are not ready to agree yet because they're waiting to see what the public comments have to say, which is, after all, what public comment is for.

KAVOUSS ARASTEH: My anxiety is the following. The one who opposed this recommendation 2B, in the public comment, they come back saying that does not accept that and we start to rediscuss and open this discussion again. That is my anxiety. I have seen that in many, many cases of the Accountability, Phase 1, Phase 2, ICG, and many other things, and Implementation Oversight Team, and so on and so forth, that we decided on something but somebody who disagreed with something at the meeting, but does not want to pronounce that very clearly, then at the time of the public comment, maybe mobilizes one or two other people and coming back, saying, "No. This is not acceptable." So we will be back on square one. Thank you.

CHRIS DISSPAIN: Thank you, Kavouss. Frankly, that's always a risk in public comment. It has nothing to do with the members of the working group or the EPDP, as such. It has to do with the very nature of public comments, which is that it's open to comment by the public. And the BC, the IPC, all of the other parts of the ICANN community, including the GAC, may decide that they wish to make comments disagreeing with the recommendations.

I think the key point is that we make it clear that these recommendations hang together as a group and as a bunch of recommendations and that agreement from the team is dependent on that and the way that public comment—on what is said in the public comment.

I'm conscious that we do have a suggestion for a change in the chat. Jay, rather than me trying to sort my way through that, can you turn your microphone on and tell us what your suggested change to the italic text is, please?

JAY CHAPMAN: Sure. Thanks, Chris. So language like whether an option is going to remain available is a lot different than what actually has been proposed in this group, which is we're not going to allow—we're going to bar the registrant, the respondent, from being able to seek a substantive determination. So that's why I made the adjustment to the language that I did. I thought it was clear, more to the point, and describes what actually has been discussed in here. Thanks.

CHRIS DISSPAIN: Jay, I take your point. And please accept this as a friendly comment. I am very keen to find wording that is level and could not be treated as incendiary by people. And I'm sure you'll appreciate that the use of words like "barred …" When it is an option, it's an option to go to arbitration if you wish to do so. Whilst it may be strictly accurate, it is not necessarily the most helpful way of putting it in order to receive level-headed, sensible public comment from the community.

I'm not adverse to wordsmithing at all but I don't want us to spend our time beefing up the negativity, or lowering the positivity, or indeed, the other way around, in fact. I hope that that makes sense and you understand what I'm saying. That said, I'm not saying no necessarily. I don't want us to get specifically into wordsmithing. What you're talking about is the change in the text rather than the actual substantive point of the explanation. Jay, back to you to make any comments you'd like to make.

JAY CHAPMAN: I understand. If "barred" is the word that is problematic, I guess we could come up … "Prohibited?" I don't know. If there are other things that are a little bit more neutral, I'm happy to do that. But I just think that the language, as it was written, was a little bit … I don't know. Why will it continue? I don't know. It just gave a perception that seemed negative towards the respondent.

CHRIS DISSPAIN: I understand that and I appreciate that point. And I think what we could do is take that in as a general point and see if we can look at the balance of the changes. You've made two types of changes in your document—not that I've had much of a chance to look at it. But I would argue that some of them are wordsmithing—rhetorical changes, in the true sense of the word rhetorical. And some of them are substantial and go towards particular points. So I'm very happy to ask the staff to take in your wordsmithing changes and see if they can find a happy medium, if you will, between both sides of the fence. Brian, go ahead please.

BRIAN KING: Yeah. Thanks, Chris, and thanks, Jay. I fully appreciate. And I've only had a chance—apologies—to quickly skim Jay's e-mail before the call. I appreciate that there's a give and a take here but I have to agree that the framing, particularly using the word "barred," is not helpful and paints this in a certain way—in an advocacy-oriented way—whereas the original language, which I claim no pride of authorship, "will remain available" is about as neutral as it gets.

So again, I appreciate that we could probably wordsmith every sentence here 15 times over and that's not the point. But I do think that … And I will say, for the IGOs, when we made a pass at this, we made a very concerted effort to remain neutral. We could have done a lot more advocacy and really tried to steer clear of that. I appreciate some people may interpret that slightly differently. But I have to agree with you here, Chris, that this is one instance, the use of the word "barred," which I don't think we would happily

accept, if that works for everyone, to come up with something more neutral.

CHRIS DISSPAIN: Thank you, Brian. For both of you, this is why when it comes to the actual wordsmithing of the report, that is, in my view, a matter for Mary and the team to work on, to come up with wording that is as inoffensive to everybody as humanly possibly but still carries the meaning that we need it to carry and conveys the message that we need it to convey.

So as I said, let's not spend any more time on those wordsmithing changes for now. We're acknowledging that points of been made. Jay, completely acknowledging that your e-mail from a couple of hours ago makes a number of suggested changes. They will be looked at and Mary and the team will deal with the document so thank you for that.

Okay. I'm conscious of time. I really want to try and get through this today if we can because we need to move on. So let's go to the binding arbitration following initial UDRP panel determination and deal with that. "When submitting its complaint, an IGO complainant shall also indicate whether it agrees that the final determination of the outcome of the UDRP proceeding shall be through binding arbitration, where the registrant also agrees to arbitration." So that I don't think is much of a challenge for everybody. That should be a no-brainer.

Then we have paragraph ii. "As provided in paragraph 4(k) of the UDRP, the relevant registrar shall wait 10 business days before

implementing a UDRP panel decision rendered in the IGO complainant's favor and will stay implementation if, within that period, it receives official documentation that the registrant has either initiated proceedings in court or agreed to arbitration as described below." Are there any substantive comments on … Justine, please do go ahead. Yes. So Mary has put a note in the chat but you go ahead, Justine.

JUSTINE CHEW: Sorry. Yeah. I was going to put down my hand as soon as I saw Mary's comment. You didn't give me a chance to put down my hand. But my comment pertains to i but she's going to help me address that so that's fine. Thank you.

CHRIS DISSPAIN: Super. Thank you, Justine fantastic. So that was ii. Iii, option for consideration. So here we go. "In communication a UDRP or URS panel decision to the parties, where the complainant is an IGO complainant, the provider shall also request that the registrant indicate whether they agree that any review of the panel determination will be conducted by a binding arbitration. The request shall include information regarding the applicable arbitral rules, which will be determined by the Implementation Review Team. Existing arbitral rules, like ICDR, WIPO, UNCITRAL shall be considered." Bearing in mind that this is an option for consideration, does anybody have a problem with that wording? Good.

Then we have, “Where the registrant initiates court proceedings and the IGO complainant …” Alexandra, please go ahead.

ALEXANDRA EXCOFFIER: As I said in my e-mail, I don’t think the brackets are correctly placed here. I don’t think this is the option for consideration. I think the whole thing is either the registrant decides whether to initiate proceedings in court or agree to arbitrate. If they agree to arbitrate, then this whole thing is correct. If they decide to go to court, then that’s the issue. Let’s say they lose in court, based on jurisdictional immunities. Then, you have the two options, which should be bracketed. One, that’s the end of it. Two, they have the right to request arbitration. That’s where the brackets should go, not here. This is not the option. This should be …

CHRIS DISSPAIN: You’re suggesting that three is effectively agreed. Well, agreed [inaudible]. Nothing’s been agreed.

ALEXANDRA EXCOFFIER: If there is arbitration, this is what is agreed. And if they go to court … And these are not options for consideration for bracketed text. These are choices for the registrant. And then, the bracketed text should be at the end. What happens if they do go to court? If they go to arbitration then that’s ... That sounds like [inaudible] to me.

CHRIS DISSPAIN: Mary, do you want to address that we … Thanks, Alexandra. I appreciate the point. Kavouss, I'm going to come to you in a second. Mary, do you want to address the point that Alexandra has just made?

MARY WONG: Yes. And thank you, Alexandra because in looking at this, we were wondering whether we needed to put brackets in different places. I think part of this is because some of this language basically grafted onto the original text. So our sense was that we would look at this again, once this call is over, make sure that the brackets are in the right place because, as you say, there's a particular sequence to this. So that helps, Chris. We can do our best to make sure that they are in the right place.

CHRIS DISSPAIN: So thank you. Understood. Let's agree that the brackets need to be revisited but that the text itself, we're okay with at the moment. Kavouss, please go ahead.

KAVOUSS ARASTEH: Yes. A point of clarification. In iii, if you read from the third line or fourth line, "shall also request that the registrant indicates whether they agree that any review of the panel determination …" So we have panel here. And then, after that, we have binding arbitration. So we have both. Am I right?

CHRIS DISSPAIN: Yes, Kavouss. There is the original panel's determination. And then, you can elect to go to an appeal, if you will, via binding arbitration.

KAVOUSS ARASTEH: Or court? Where is the court?

CHRIS DISSPAIN: Further down.

KAVOUSS ARASTEH: Oh. Further down?

CHRIS DISSPAIN: Yes.

KAVOUSS ARASTEH: Okay. Further down. Thank you. Thanks.

CHRIS DISSPAIN: Thank you, Kavouss. Okay. So now we're moving to the paragraph that is … Yeah. That's the next one. So, "Where the registrant initiates court proceedings and the IGO complainant does not waive its privileges and immunities, and if the result is that the court is unable to proceed further, the registrant may submit the dispute to binding arbitration within 10 days from the court order declining jurisdiction over the IGO by submitting a

request for or notice of arbitration to the competent arbitral institution."

That is the first of our choices. So this is the choice, that if a registrant chooses to go to court and the court says, "No. We can't hear this," then they can still go to arbitration. That's, if I may be permitted, the Jay choice. Does anybody, given that it's a choice … I'm not asking you to agree to it. Does anyone have a problem with the text? Good. Oh. Mary. Yes. Go ahead.

MARY WONG: Thank you, Chris. I know the colors make it hard. But we had a question about whether we are looking at 10 business days because I believe, under the UDRP, it does specify 10 business days. So assuming that is the intent, in the interest of consistency, we would add the same language.

CHRIS DISSPAIN: That's fine. And Jay, you said—I'm guessing you mean from the beginning of the text, "where the registrant exercises its right to judicial review in court," rather than, "the registrant initiates court proceedings." I don't have a problem with that if that's the point that you're making and I can't see why that would be an issue for anybody. Jay, do you want to talk to that or have I got that right?

JAY CHAPMAN: Can you hear me? Sorry.

CHRIS DISSPAIN: Yeah. Go ahead, mate.

JAY CHAPMAN: Okay. Thank you, Chris … I just wanted to make clear … The other part, yes. That was the way I would want to start that—I suggest we start that paragraph. And then also, just to be a little more specific, as opposed to "and the result is unable to proceed further …" Again, just for specificity's sake, maybe say, "and the result is that the court finds that the IGO is not subject to the jurisdiction of the court."

CHRIS DISSPAIN: All right. That sounds to me to be a sensible change. But let the team look at that because that is, in effect, what we're saying, is it not? Alexandra, please go ahead.

ALEXANDRA EXCOFFIER: It's not so much that they don't have jurisdiction over the IGO. It's that they don't have jurisdiction because of the immunities. I think it's a difference because jurisdiction can be … The court can not have jurisdiction because of other issues—the IGO is not linked to the forum and things like that. So I think it's important to leave the immunities aspect in the clause.

CHRIS DISSPAIN: I agree. My gut feeling is that … I'll come to you in a second David. My gut feeling is that "the court is unable to proceed further" is actually quite wooly wording. And speaking as a lawyer,

I wouldn't be comfortable with that wooly wording. If it was replaced with a clear understanding of what it is that the court is unable to do, that would be helpful, I think. David, please go ahead.

DAVID SATOLA: Thanks, Chris. It was my wooly language so I'll take responsibility for that. But what I was trying to do was cover what I think are going to be a variety of situations across countries and across IGOs. So again, just speaking from the perspective of the World Bank, the Federal District Court in the District of Columbia is the only court that has jurisdiction over World Bank in the United States.

So it's not a question of whether it has jurisdiction or not. It does under federal statute. It's a question of whether we were going to waive our immunities or not. If we're not going to waive our immunities, the court still has jurisdiction under statute. It's just not going to proceed with the case. So it's not accurate in our situation anyway, to say that the court is—whatever the alternative language was.

And rather than go to all 199 countries and figure out what the situation is with immunities and the hundreds of IGOs, I do think we need some kind of generic language. I'm not wedded to my wooliness but I think we need some more generic language because the way that it's posited just isn't correct. Over.

CHRIS DISSPAIN: I understand completely what you're saying. It seems to me that the key points are—I'll come to you in a second, Jay. The key points are the registrant has initiated the proceedings. The complainant does not waive its privileges and immunities. And the result of that is that the court won't hear the substantive case. It's really just a function of us finding wording that deals with that. Again, I'm not sure that drafting it on this call is going to be helpful and we're going to run out of time anyway. But I think it's important that we recognize the issue. Jay, go ahead, please.

JAY CHAPMAN: Thanks, Chris. We've been discussing this as—and for years now, this has been discussed as—a situation where it's a lack of jurisdiction. And I appreciate Alexandra's suggestion that we add on the tagline, "due to these specific purposes." I totally understand and would be okay with that. And I appreciate what David's saying. Certainly, he knows the World Bank's business better than any of us. So I'm just saying that we've been talking about this from the perspective of it's a dismissal, based on lack of jurisdiction, due to the things that have been said. So I think we should just stick with that. Thanks.

CHRIS DISSPAIN: Thank you, Jay. Mary and the team will work on the wording. But the essence of it, as I understand it, is that what we're saying effectively is that because of the IGO privileges and immunities, the court declines to hear the substantive case. And in essence, that's the result. But we need to make sure that the wording is accurate and clear. Jeff, go ahead.

JEFF NEUMAN: Yeah. I'd like to bring up an issue that's been going on in the chat. I think it actually protects IGOs as well. I think we should not be talking about waiving privileges and immunities but stick to the language in the UDRP. So I think we should be saying, "where the registrant initiates court proceedings and the IGO complainant does not agree to mutual jurisdiction, and if the result is right," because it's not a given that an IGO that does not agree to mutual jurisdiction … Or sorry. It's not a given that an IGO that agrees to mutual jurisdiction is, in fact, waiving its privileges and immunities.

I know that's a legal opinion and probably a good one. But I would hate for this document to be some sort of admission that prevents IGOs from, in the future, trying to make an argument under the current status. So I think that's … Plus, I think to reader who's reading this, if they know the UDRP, the word "privileges and immunities" isn't in there. So to the extent we could stick to the language of the UDRP and not mention the words "privileges and immunities," I think we're all better off. And I understand the legal opinion we're getting here from the IGOs. I'm a little confused as to why they want to—

CHRIS DISSPAIN: Thanks, Jeff. We're clearly not going to solve this on this call. Jeff, can I give you some homework please, as soon as you can, to put a suggestion together which others can shoot holes in, discuss, agree, wordsmith, and see if we can come up with something that is acceptable for that particular phrase? Thank you.

JEFF NEUMAN: Sure. And I'm happy to work with Brian or anyone else if they want to.

CHRIS DISSPAIN: Sure. Well, you start it and get something out. That'll be very, very helpful. Susan and then Brian.

SUSAN ANTHONY: This question is probably more directed to David. I want to make sure that I understand because we've been going back and forth in the chat on the process, on the procedures. And all of a sudden, I'm feeling wooly myself. The question I have, David, is whether you agree to mutual jurisdiction or not … Well, maybe I should just park that to one side, as Jeff's going to look into that and advise. But when an IGO goes before a court, is sued in court, and raises that is immune from the proceeding under its privileges and immunities, a court may or may not agree. Am I correct?

CHRIS DISSPAIN: David, would you like to address that straightforward question from Susan before I go to Brian?

DAVID SATOLA: Sure. I'll try. So we go to court all the time. And when we do, by doing so, we waive our immunities and we accept the decision of the court. We get sued all the time. And sometimes we agree to

go ahead with it and sometimes we don't. That's just the way immunities work. And it is the choice of the IGO whether to waive them or not.

So when we enter into a commercial contracts—and we do all the time. Like everybody else, we buy paperclips, and chairs, and stuff like that. All of our commercial contracts are arbitration. So we have a well-heeled, well-worn, well-tested presence in the commercial marketplace when we're acting in a commercial capacity. And we do it through arbitration. We don't submit to the jurisdiction of courts for dispute resolution.

And again, we think that because the running of our domain is so essential for our business, that there's no court in the word that's going to say, "Oh. Operating your domain is not part of your mandate." It is. So I don't know why we would want to waive our immunities in that instance. I know that wasn't probably as straightforward a response as Susan had requested.

SUSAN ANTHONY: What you're saying, I think, David, is you wouldn't agree to waive your immunities. I was just curious whether a court would say, "I cannot agree with your position." But your response would be, "The operation of this domain, which corresponds to our IGO acronym, that is being operated, for example, in a fraudulent manner very much goes to the core of our mission and does fall within our privileges and immunities, which it is our right to waive if we so wish. And here, we do not so wish."

DAVID SATOLA: Right.

SUSAN ANTHONY: Okay. Just wanted to make sure I understood this because I had a moment of wooliness.

DAVID SATOLA: As an aside, there was an interesting case with the Inter-American Development Bank in the early 2000s where … They have nearly identical privileges and immunities to us. And the District Court said, in dicta, we think that you guys did something wrong but we recognize your immunities and we're going to send it back to the lower court—in this case in, I think it was Belize, to determine the case. But they were basically saying they would like to have not recognize the immunities but they refused to take the case because the IADB didn't waive its immunities.

So it's a very complicated and somewhat nuanced area. And that's, I think, why we're having this special consideration for IGOs under this work track. Over.

CHRIS DISSPAIN: Thank you, David.

SUSAN ANTHONY: Thank you.

CHRIS DISSPAIN: Thank you, Susan. We are 10 minutes away from the close of this call and we are going to run out of time. I'm not going to stop Brian and Jeff. I'm going to go to them in a second. But we are going to run out of time and we're not going to be able to complete the text. So I need five minutes, just to wrap this up and explain where we are with next steps. But, Brian and Jeff. And David, your hand is still up. If that's a new hand, I'll come to you as well. But please keep it brief. Brian?

BRIAN KING: Thanks, Chris. I wanted to just point out … And I appreciate the homework to try to come up with some language here so I certainly won't attempt to do that here. But I just wanted to point out, as a practical, logical matte. We're talking about, on the textual level, privileges and immunities, or mutual jurisdiction, or maybe some combination of the two.

But just to recall for whatever homework and further discussions is that, actually, this is recommendation 2C, which flows from 2B, which was already an acknowledgment that the IGO would have been exempt from the requirement to submit to mutual jurisdiction. Now, it maybe be useful to still somehow touch in that term in this option for consideration. But I just wanted to flag that as a practical matter. Thanks.

CHRIS DISSPAIN: Thanks, Brian. Jeff?

JEFF NEUMAN: Yeah. Again, I'm just a little confused with David's explanation. In fact, I know that the US Supreme Court did address immunities in, I believe, it was the last term of the term before that. And in that case, which involved phishing … I forgot exactly which IGO it was. It was something phishing-related. The Supreme Court said that they did waive their privileges and immunities with this commercial activity and remanded it to the lower court. But the lower court decided it couldn't exert jurisdiction because the activity complained of was actually in India.

So what I'm just worried about here is that there are some IGOs, like the HMRC in the UK, that have brought UDRP actions. And I don't know if they're willing to concede that by agreeing to mutual jurisdiction, that's automatically amounting to waiving all their privileges and immunities. So that's the language I'll work on. And I would think it's actually in the IGO's benefit. But anyway, I'll work on it and send it around.

CHRIS DISSPAIN: Good. David, did you want to briefly address anything that Jeff just said?

DAVID SATOLA: Thanks. Jeff, the case you're talking about, I think, is the Jam's case with IFC. It did involve a phisherman in India. The immunities issue before the Supreme Court was whether the IFC's immunities derive from its treaty or derive from the statute. IFC had incorrectly said it was the statute. The court said, "No. It was your treaty," and

that's why it was remanded. So it didn't really test the question that we're testing here.

We have decades of practice distinguishing between our commercial activities and our non-commercial activities, where if it's within our mandate, we get to decide whether to chose to go to court or not. If it's commercial activity, like buying paperclips, we submit to arbitration. And I don't see any reason why we should be different here. Over. Thank you.

CHRIS DISSPAIN: Okay. Thanks. We are most assuredly not, Paul. Thank you for your comment but we will not end up back at the beginning. The beginning is long-lost in the history of the past. And yes. I just want to acknowledge that point that Brian made, that HMRC, Jeff, isn't an IGO. It's UK government tax office. But anyway. Whilst they might like to be an international treaty organization, they're not.

This is where we are. We've made, I think, actually quite significant and substantial progress today and I'd like to thank you all for that. Now, we have a bit of a challenge. The challenge is that next Monday is a holiday in the US. It's actually a holiday here today but I am bordering on being a saint by giving up my bank holiday to chair this meeting. That's my personal assessment by the way. I wouldn't imagine anybody else has assessed my likelihood of sainthood. But we do have a holiday in the US next weekend. And staff and a number of our US colleagues will be not working next Monday.

I was going to say that we would fix the meeting for the following Monday and carry on then. However, I'm conscious that we're going to do some work on the list in the next few days and I'm also conscious that the team are going to deal with the wordsmithing issues that have been raised by a number of people, Jay and others.

So I have a question for you. Would you be prepared to meet next Tuesday instead of next Monday? That would be the 7th of September. If that's feasible, then we could put it in. I resisted it as a suggestion originally because I was concerned that people would have other meetings in place and would be unable to attend. Can I ask that if anyone is unable to attend a meeting at the same time next Tuesday, if they could let me know. Kavouss, please go ahead.

KAVOUSS ARASTEH: Yes. I don't have the agenda of the Oversight Team, IOT. Usually, it is Tuesday but I don't know whether the next Tuesday or Tuesday after. Could secretariat check please?

CHRIS DISSPAIN: Which one was that, Kavouss?

KAVOUSS ARASTEH: Implementation Oversight Team.

CHRIS DISSPAIN: Okay. All right. We can check that. Thank you.

KAVOUSS ARASTEH: I am a member of that.

CHRIS DISSPAIN: Yes. Understood. Thank you, Kavouss. What's the general feeling? We could do 14:00 UTC. I think it's worth us gathering if we can but I'm not going to push it if it's too inconvenient for people. Kavouss, we'll get back to you with the answer to your question.

KAVOUSS ARASTEH: Okay. Thank you.

CHRIS DISSPAIN: Appreciate the question. Paul?

PAUL MCGRADY: Thanks, Chris. I put this in the chat. I could do one hour that Tuesday but I would have to drop off for the last half hour. I have a standing call that I can't miss.

CHRIS DISSPAIN: Maybe we could shift it back half an hour. Okay. Here's what we're going to do. We're not going to spend any time doing it now. Mary, could you send a note out to the list this afternoon, suggesting that we have a call and maybe start it at 14:30 UTC, which is not too bad for the West Coast? Send it out and see if we

can gather enough people to make it worthwhile. In the meantime, everybody … Kavouss, we'll give the details of your meeting as well.

KAVOUSS ARASTEH: No. I resolved the matter. It is not 14:00, the meeting of the IOT and so on. But half an hour of meeting?

CHRIS DISSPAIN: No. Not half an hour. No, no, no. Starting half an hour earlier. That's all.

KAVOUSS ARASTEH: Ah. Okay. No problem. Half and hour early. Okay.

CHRIS DISSPAIN: Not a half an hour meeting.

KAVOUSS ARASTEH: Okay. Yeah. Because we need more time.

CHRIS DISSPAIN: We do, Kavouss. We do. Thank you. Thank you for that. Okay. So that's what we'll do. We'll send out a note saying, "This is the suggestion." And we'll call it within a day to make sure that it can work. In the meantime, the team is going to deal with the input from … Let's go 14:30 to 16:00, Mary. Two hours is too much to contemplate.

The team's going to deal with the wordsmithing stuff and come back with a fresh version that has accepted all the stuff we've accepted today, that makes suggestions in respect to changes, where wordsmithing has been required that is neutral and mutually acceptable to everybody, hopefully. And then when we meet, if we meet next week—and I'm assuming we will, next Tuesday—we will continue to go through recommendation 2C, nail that down, and then look at the surrounding text and any wordsmithing that there may be. And the URS point will also be addressed in the text of the document.

Really great work, everybody. Thank you all very much. Much appreciated. Jeff, you're first cab off the rank with the homework but hopefully we'll be able to get that dealt with on the list. Thank you all. Let's close the meeting. Talk again soon. Cheers, everybody.

TERRI AGNEW: Thank you, everyone. Once again, the meeting has been adjourned. I will stop the recordings and disconnect all remaining lines. Stay well!

[END OF TRANSCRIPT]