**ICANN Transcription**
**IGO Work Track**
**Monday, 21 June 2021 at 15:00 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.
Attendance and recordings of the call are posted on agenda wiki page: https://community.icann.org/x/mwrQCQ
The recordings and transcriptions are posted on the GNSO Master Calendar Page: http://gnso.icann.org/en/group-activities/calendar

TERRI AGNEW: Good morning, good afternoon, and good evening. And welcome to the IGO Work Track Call taking place on the 21st of June 2021 at 15:00 UTC. In the interest of time, there'll be no roll call. Attendance will be taken by the Zoom room.

If you're only on the audio telephone, could you please identify yourself now? Hearing no one, we have no listed apologies for today's meeting.

All members and alternates will be promoted to panelists for today's call. Members and alternates replacing members, when using chat, please select Panelists and Attendees in order for everyone to see your chat. Attendees will not have chat access, only view to the chat access.

Alternates not replacing a member are required to rename their lines by adding three Z's to the beginning of your name, and at the end in parenthesis the word "Alternate" which means you are automatically pushed to the end of the queue. To rename in Zoom, hover over your name and click Rename.

Alternates are not allowed to engage in chat, apart from private chat, or use any other Zoom room functionalities such as raising hands, agreeing, or disagreeing.

As a reminder, the Alternate Assignment Form must be formalized by the way of the Google link. The link is available in all meeting invites towards the bottom.

Statements of Interest must be kept up to date. If anyone has any updates to share, please raise your hand or speak up now. Seeing or hearing no one, if you do need assistance, please e-mail the GNSO secretariat. All documentation and information can be found on the IGO Work Track Wiki space. Recordings will be posted on the public Wiki space shortly after the end of the call.

Please remember to state your name before speaking. As a reminder, those who take part in 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. Good morning, good afternoon, and good evening, everybody. Welcome to the post-ICANN71 IGO Work Track Call. I hope everybody—those of you who were involved in ICANN last week—are rested and recuperated after a long week of meetings. For those of us in the European or close to European time zone, it wasn't actually too much of an imposition. But for those on the west coast, certainly the States and on East Coast,

not great. Anyway, we're here now. And thank you all for making the effort to join the call.

Today we're going to go through the document which Mary and Steve and Berry sent out last week—at the beginning of last week or the end of the week before that, even, I can't remember—which has been in the Google Docs. I dropped it as the 14th of June. And it was sent out, also, as a PDF.

But before we do that, Berry has put up, just so that everybody knows, the GAC advice from ICANN71 which doesn't really have any effect on what we're doing but is advice to the Board to maintain the current moratorium on the acronyms pending the conclusion of this work. Not any particular relevance to our work, but worth knowing that that is there.

Also, we are due … Berry, I think at the beginning of August is our deadline for our initial report, I believe. And if that's the case, then we've got how many more calls out after this one? Three or four?

BERRY COBB: Hi, Chris. It will be six calls, assuming that our last call will be on the 2nd of August, and we published the initial report for public comment.

CHRIS DISSPAIN: Okay, but effectively we don't want to really be bashing about on a report on that call, do we, on the 2nd? So, let's say five.

BERRY COBB: Preferably not.

CHRIS DISSPAIN: I appreciate that. Everyone had a busy week last week and I … And thank you, Paul, for your notes in the chat about the straw being proposal on the super panel. And if anyone does want to help him, I'm sure that would be brilliant. I don't think it's going to interfere with our discussions today. That hasn't happened yet, but it would be fantastic if you could pull it together. And I do appreciate that last week was just hectic, more hectic for some than others.

Okay, before we start to go through the document which is—if we could get that up in front of us on … Thank you. I just want to check in to see if anyone has anything they want to say or any opening comments anybody wants to make before we start to go through the document. There are no hands up, so I will proceed.

I don't think we need to worry about the problem statement. Let us move to proposed solutions and let's look at, first of all, number one. And number one is the suggested way forward that Brian and Paul and Susan put together in a small group and that we discussed on our last call two weeks ago. Everybody seemed to be reasonably comfortable with that and believed that they could live with it as an addition to the addition to the UDRP rules—a modification, rather, to the UDRP rules.

Kavouss, your hand is up. Go ahead, please.

KAVOUSS ARASTEH: Yes. Good morning, good afternoon, good evening. Yes, unfortunately, I was not able to attend your last meeting, but I have some comments on the little (b). If you allow me at some time, I want to raise that comment. Thank you.

CHRIS DISSPAIN: Well, now's as good a time as any, Kavouss. You're talking about 1(b) or the 1(i)?

KAVOUSS ARASTEH: 1(b), "… an 'intergovernmental organization' having received …"

CHRIS DISSPAIN: Yes, please.

KAVOUSS ARESTEH: Can I go?

CHRIS DISSPAIN: Please go ahead and make your comment. Yes, please do.

KAVOUSS ARASTEH: It says, "… participate as an observer in the sessions and the work of the United Nations General Assembly …"

I would like to add that sometimes an intergovernmental organization is invited not directly to General Assembly, but to its committee.

And then, also, I would like to add "General Assembly, it's various committee or relevant committee and to specialized agencies of the United Nations."

Sometimes in the governmental there are observers in a specialized agency. You have several, so I would like to add that one.

No. Before "specialized agencies" [inaudible] General Assembly, its relevant sessions or committee" because General Assembly has several committees. Yeah. "… its relevant sessions/committee." Please replace "or" by a slash. In English, oblique stroke, yeah.

Now "… committees or in any of its specialized agencies." Yeah. This is something [happens]. Sometimes these intergovernmental organizations are attending as an observers, whether you call them an observer or whatever, in the specialized agency meetings—WHO-ITU, WMO, and many others. Thank you.

CHRIS DISSPAIN: Thank you Kavouss. I'm not an expert on this and I don't … That sounds pretty broad to me, but maybe someone else who has some understanding of the way that this works, perhaps …

Both Susan and Brian, I know, were involved in the drafting of this. If either of you would like to comment on what that might mean and whether that is a material change to the grouping of organizations that would be entitled to a presumption that they are an IGO. Because if I read it …

I mean, Kavouss, I've got no idea if I'm reading this correctly or not. And I may be reading it incorrectly, but it seems to me that at the moment, as it's currently just been amended, it would mean that any organization that is invited to attend, to participate as an observer in any sort of sub-committee or any agency of the UN would be considered to be an IGO for these purposes. I don't know if that's right or not.

So I'm not saying it's wrong. I'm just asking if anyone else has any input. I don't see any other hands, so maybe we need to take it offline as a suggested amendment and work …

Brian, go ahead.

BRIAN BECKHAM: [inaudible] do a quick audio test.

CHRIS DISSPAIN: Say that again, Brian.

BRIAN BECKHAM: I just wanted to do a quick audio test.

CHRIS DISSPAIN: It sounds reasonable at the moment.

BRIAN BECKHAM: Okay, good. Thanks, Chris. Hi, everyone. Look, to be honest with you, I would frankly defer to Kavouss here, it seems like a

reasonable suggestion. I can only add that in terms of WIPO, of course, like the UN, we have an annual General Assembly. But then we have different bodies with different competencies.

So, for example, we have a Standing Committee on Patents who would look at making amendments to patent laws around the world, or we have a Standing Committee on Trademarks, etc.

And so, certainly from the perspective of our organization, I can understand—as I understand Kavouss's intervention—that an organization that would, for example, be admitted as an observer to the Standing Committee on Trademarks in WIPO might not have a reason to follow the meetings of the General Assembly which would go more towards budget, personnel matters, setting the agenda for treaty discussions for subsequent years.

And so, to that extent, it seems to make sense so as to allow for room for organizations that may have reasons to follow certain committees within—at least at WIPO—the normative framework versus the General Assembly framework. I hope that helps a little bit. Thanks.

CHRIS DISSPAIN: Okay. Paul, I see your hand. Just one second. I just wanted to look in the chat. Okay, we'll come back to that in a second. Paul, you go ahead and then we'll come back to the question in the chat.

PAUL MCGRADY: Thanks, Chris. I just [don't know what this] definition means anymore. We had a [stable] on and now I don't know what it means. So with this capture that would not have otherwise been captured by [another] definition, I think that would be an important thing to know so that we can understand what the changes mean. We use "session" twice. We use "session" [inaudible]. Now we have "session/committee." What's the difference between those two kinds of sessions?

[Or you can] [inaudible] the questions to [inaudible] then hop back on and [take us for a] deeper dive about who this would be capturing. Thanks.

CHRIS DISSPAIN: Thanks, Paul. Reasonably hard to hear you. You're a bit chopped up today, but I think I got the gist of it. Could we get rid of what's up on the screen right now so we can have a look at the document again, please? Because that doesn't really help me, that UN System thing. If we could go back to the text, please. Thank you.

Kavouss, are you were able to provide an example, perhaps, of an organization that would be covered by your suggested change that wouldn't be covered by the rest of (a), (b), or (c)? Kavouss, go ahead.

KAVOUSS ARASTEH: Yes. I mentioned a standing committee. I put "relevant." Relevant to dealing with the subject. We are not talking on the past. We are talking about the future. Something might happen. There might be a standing committee in which there is an invitation to an

intergovernmental organization. So you can delete "sessions." You can just put "relevant standing committees or any of its specialized agencies."

As I mentioned the specialized agencies, there are meetings that intergovernmental organizations will attend and then they are an observer. Sometimes they are as non-voting members, but "observer"
you call them. So this happens.

So we have many intergovernmental organizations attending, for instance. If I take the ITU, the International Telecommunication Union; there are intergovernmental organizations like [inaudible], and so on and so forth. They have an acronym and they may attend. Or they will attend as an observer or non-voting member in a particular area.

So I put it in general. And the only thing, agencies put as the general … Especially I used the comma "as the case may be." After the "specialized agencies, as the case may be."

CHRIS DISSPAIN: Okay. Thank you, Kavouss, for clarifying. I think what I'm going to suggest we do is that, rather than draft and get down this deep into the weeds on a call, that we take away the text that you've suggested, have a look at it as a group. Maybe have Paul think about it a bit more—given that he and Brian and Susan drafted the original—and over the next few days see if we can either say yes or explain why anyone is uncomfortable with it.

I’m not sure there's much to be gained by word smithing it right now, but thank you for the suggestion, Kavouss. It's appreciated and, yes, we'll leave it in there as proposed additional text and see if we can agree it online. Okay. Thank you for that.

So, back to the overarching point now, which is that this piece, leaving aside the change to the text a minute, let's just talk about the fundamental principle of it. The proposal is that a description of an IGO Complainant is added to Section 1 of the UDRP and URS rules, and that an IGO Complainant is defined as (a), (b), and (c)—possibly be amended.

And that, additionally, the rules are changed to say—and this is (ii)—“Where the Complainant is an IGO Complainant”—so it fits the definition under (i) (a), (b), or (c)—"it may show rights in a mark by demonstrating that the identifier which forms the basis for the [complaint] is used by the Complainant to conduct public activities in accordance with its stated mission (as may be reflected in its treaty, charter, or governing document).”

So, does anyone on this call … And I acknowledge that we have some people who are not on the call, so it is not going to be (a) binding or (b) close off the issue. But does anyone on this call have a problem or anything that they want to say about this suggested way forward that is concern as opposed to saying, “Yes, I agree with it”? Does anybody disagree with it or anybody have any comments to make?

Jay.

JAY CHAPMAN: Thanks, Chris. I just have a general question and that is, I mean, I'm just not familiar with what we're describing here. And I asked the question in the chat, so is the list—the bucket of IGOs that would be defined under this—can we quantify who that is today if we wanted to? Is it capped? Is it limited? Is it finite? Or is it liquid? Are there new additions? I'm just generally curious how that how [works].

CHRIS DISSPAIN: Fantastic. Great question. Who amongst us would like to answer that because they know what they're talking about? As opposed to me making it up, pretending I know what I'm talking about.

Susan, you've turned your camera on. Is that encouragement for me to ask you to say something?

SUSAN ANTHONY: Yes. Am I still being muted?

CHRIS DISSPAIN: Just hold on for one second, Susan. Okay. I think the mute button has been … I think whoever needed to be muted have been muted, so go ahead, Susan.

SUSAN ANTHONY: I just wanted to say that this a definition for the UDRP panelist or panelists to use. It is not a list per se. We're trying to get away from a list in favor of a definition. Is the group finite on any one day? Yes, I would imagine it is. But as IGOs ebb and flow,

hopefully do more flowing than ebbing, the list—if you will—list of qualified IGOs could change. This not a list per se. This a definition.

CHRIS DISSPAIN: Yes. So, effectively, if I understand it correctly the intention that you three came up with was that if I was the IGO, I would put in my complaint and I would say, “I am allowed to do this because I am (a) or I am (b) or I am (c), or I’m a combination of these things.” And then I would have to show the panelists that was in fact the case by some form of …

I mean, me just making a statement isn't going to be enough. Presumably, panelists would need to rule, if you will, that I am in fact those. Is that correct, Susan? Is that the intention?

SUSAN ANTHONY: That was my intention. I believe that is correct.

CHRIS DISSPAIN: Good, okay. So, Jay, it's not that there is a finite list. But just before I let you off the hook, Susan, are you able to comment as to whether new organizations appear on a regular basis that would fit into this definition, or is this a fairly rare occurrence? How does it work?

SUSAN ANTHONY: I would be surprised if it were to occur on a regular basis. I think it is a rare event. I would, however, defer to Brian Beckham who may have seen more [regular] events that I.

CHRIS DISSPAIN: Fair enough. Thank you, Susan. Jeff, I'll be with you in a second. Brian, can you just fill in that detail for us on that?

BRIAN BECKHAM: Yeah, thank. I will try. And I was trying to type this in the chat quickly. Maybe I'm getting slightly confused, but I think this actually a separate question when we're looking at [sub-2]. This actually talking about the evidentiary standard that an IGO would show in order to demonstrate its rights [inaudible].

CHRIS DISSPAIN: No, sorry. My apologies. I think we've gone back to 1 which is what Jay's question is about—who is entitled to call themselves an IGO; could this be a never-ending list, an ever-expanding list of people—I think.

BRIAN BECKHAM: Yeah, sure. I guess I can only say that we've discussed this at quite some length in the past, including in the prior working group. Yes, in theory, it's not finite. There could be a new IGO created next week.

I will just remind us that that requires the coming together of countries or states to create an IGO to undertake public activities

for the benefit of those states and its stakeholders. And this is not something as routine as going to your state Chamber of Commerce and paying $20 and filling out a two-page form to get a business entity form.

So in theory, yes, it's possible that there are new IGOs created. Although I could certainly be wrong, I'm not aware, at least, of any having been created since this work was originally undertaken. I think this language harkens back to the Beijing meeting some years ago. So I think it's a slightly hypothetical question. And even if there was an addition, I think we're talking on the order of count on one hand versus scores and scores of additions.

And by the way, I would just add as somewhat of a footnote that when we look at the UDRP, the list of trademark applications and registrations annually grows by the order of millions per year, and that's certainly something that has to be contended with in the UDRP system. But again, I would just remind …

So just to recap. Yes, in theory it's not finite. But in reality, I think if … Let's say for all intents and purposes, we could treat it that way. But at the end of the day, I would just recall that not only would an IGO have to meet this definition. They would have to show use of their identifier. And then they would also have to show bad faith on the part of the registrant. So just to say that this is part of a package of criteria.

CHRIS DISSPAIN: Thank you, Brian. Immensely helpful. I'm going to Jeff in a second. Just let me restate the question. So, does anyone have

any comments to make apart from saying, "Yes, it's okay and I'm fine with it"? Any comments or any negative things to say? Or any questions about 1 (i) and (ii)?

Jeff, go ahead.

JEFF NEUMAN: Thanks. This not negative at all, but as a panelist or, for that matter, as a registrant, how does one verify that either (a), (b), and (c) exist? I don't think it's … You know, it's one thing … I understand that we don't want to create a list. I total understand that. But are there links to go to that have a list of these that can get updated however they do their updates?

But I don't think it's fair to have a panelist who most likely is not an expert in intergovernmental organizations. They may be an expert in intellectual property and can evaluate things like common law rights, but can we put somewhere in here how one [verifies] these elements? Thanks.

CHRIS DISSPAIN: Anybody want to … Kavouss, your hand is up? Do you want to ... Yes, Susan, one second. Kavouss, did you want to respond to what Jeff said, or is it a separate point?

SUSAN ANTHONY: I want to say something, but not exactly responding. I will say I have no problem to the list, but the problem is that who amends or updates that list and how frequently it will be updated. You

remember we talked of the GAC list, for instance, 2013. And people say that has not been amended since then. Then we said that, yes, 2019 was [inaudible]. But who will have to update that and how frequently?

So we have to also [inaudible] that if you do not raise that question, I have no problem. It's good. To say that, okay, intergovernmental [inaudible] by a treaty having a list of that, who they are, that you're asking to be updated. And so that is another [inaudible]. Thank you.

CHRIS DISSPAIN: No problem. Thank you, Kavouss. Susan, go ahead, please.

SUSAN ANTHONY: Yes. I just wanted to say that the updating of the list, I believe, is an issue that would fall outside this particular working group. But that's my initial reaction because what we're trying to do here is simply to provide a definition not a list.

And to reassure Jeff, I think that the answer is not on the—or the burden does not fall on the poor, beleaguered panelist to try to figure this out. The onus is on the complainant to say that, "In fact, I meet one of these." That it is entirely fair of the panelist or panelists to say, "I'm sorry. I don't understand how. Could you provide me with information and explain this to me?" And that is the way I think it would work.

CHRIS DISSPAIN: Jeff, does that make sense to you?

JEFF NEUMAN: Partially. Only partially. And I appreciate that, but I guess, again … As a panelist for the UDRP, I know that if someone provides me with a certificate from the U.S. Patent and Trademark Office or the EUIPO or wherever, that is verifiable. Most of those are publicly available. I can go as a panelist to double check if I wanted to, to make sure that they're telling the truth and that it's ...

So I appreciate that it's the complainant's burden, but the panelist does—at least as a panelist, I do. I like to verify that the information that's given to me as a panelist is true. So, if someone just said these things, I would want to go to them and research or at least have some confidence that this true.

But I don't know how I would verify that someone's received a standing invitation to participate as an observer in the work of the UN General Assembly unless it appears on a link. Or how would I verify that it conducts its public activities in accordance with its mission/charter as reflected in its charter?

Or, actually, that's number two. Sorry. I'll stay on number one. Sorry for going to number two. Thanks.

CHRIS DISSPAIN: No problem. Mary.

MARY WONG: Thanks, Chris. Hi, everybody. As I put in the chat in case someone missed it or you're on the phone, as far as we know there is no single, authoritative global list. Probably not a surprise to anybody.

To Jeff's question, and while the staff is obviously not expert in this area, our understanding is that, as Susan says, this is a definition not a list. As Susan says, this for the complainant to raise to the panelists, and our sense would be that it shouldn't be too difficult to verify that a treaty actually exists and that the complainant in question was established by that treaty.

Similarly, our understanding is—and some of the IGO participants on the call can probably verify this—that in order to receive a standing invitation to participate as an observer in the United Nations, we assume this is along the lines of being a permanent observer. And I believe that some kind of resolution or at least some kind of formal documentation out of the General Assembly—something similar to that—is required.

So hopefully that's helpful. We can do a little bit more digging, but we understand the issue here and this is just some information for you, Jeff, and everyone. Thanks.

CHRIS DISSPAIN: Thank you. Kavouss.

KAVOUSS ARASTEH: Yes. As it was mentioned by Susan and by Mary, I don't think that it's difficult to say that [inaudible] invited an observer. If you go to

every session of any organization having meetings, they have lists of participants. And that list of participants can contain also a list up observers, giving the address, e-mails, and names, and so on and so forth. That is quite clear.

Or treaty. If there is a treaty, the treaty clearly, as one of its elements has membership. And then you have to have access. You don't need to search for that. I don't think that we need to, I would say, drill into the poppy. It's quite clear. We [inaudible] definition and that is sufficient. The list is available always. You don't need to look for that.

If I look into the organization, I see they have this list of participants and giving the status of the participants—whether they are signatory, whether they are voting, whether they are observer, whether they are what. And that is quite clear. And sometimes, even in the treaty, there are articles referring to the status of these things. Thank you.

CHRIS DISSPAIN: Thank you, Kavouss. Brian, I'm going to come to you in a second.

I'm not convinced that it's this group's job to provide a panelist with notes on what they should take as being satisfactory. If we have a definition that we're comfortable saying it means that someone is an IGO, if they meet these criteria, then the level of evidence that they need to provide is the level of evidence that is necessary to satisfy the panelists in the same way.

The level of evidence that they're going to need to provide of their public activities is in (ii), and also that when it comes to proving that their complaint is justified.

Brian, over to you.

BRIAN BECKHAM: Thanks, Chris. And I will—just because I've already typed it out and I think it would be useful to be recorded. I'm a little confused at the problem that we're proposing to address here by Jeff's question. I understand the desire for specificity or criteria or assistance to panelists, but I would say that when we look at the UDRP, there are sort of two main points that touch on this which I think are relevant.

One is that in the actual policy itself, it says the requirement is that your domain name—this is speaking to the registrant—your domain name is identical or confusingly similar to a trademark or service mark in which the complainant has rights.

And then the UDRP rules—and this is talking about the content of a complaint, what's supposed to be in there. The complainant is required to "… specify the trademarks or service marks on which the complaint is based; and for each mark, describe the goods or services, if any, with which the mark is used."

So, again, I think this a matter of when we're looking at things from a policy creation perspective. Obviously, the dilemma is that we'd want to be specific enough to be of assistance to people who aren't frankly part of this group and will have to wrestle with this down the road. But at the same time, to the extent we're more and

more prescriptive, then that sometimes ends up having unintended consequences.

So I think if we look at the UDRP framework—and I'll put the two specific citations in the chat just so people can see them—we can see that in UDRP cases, certainly it's up to complainants to prove up their rights. Sometimes they do that by attaching trademark registration certificates. They would provide the registration number at a national office. If it's an unregistered right, there's a whole range of criteria that they would provide to show how their mark is seen as a source identifier to the consuming public.

So this is the type of thing where the UDRP, which is kind of our bass point, starts at the high level and then some of these details are actually fleshed out over time through case law.

But I guess I would just conclude by saying it seems to me that we've kind of really mapped over the high-level criteria from the UDRP basis to the exercise here. And while I understand the desire for more specificity, it seems that the further we try to undertake [that effort], the more we end up rehashing some of our prior conversations and finding ourselves in a sticky spot.

So I guess, all that to say, it seems to me that we have a good way forward. And I will leave it there, personally. Thanks.

CHRIS DISSPAIN: Okay. Anyone else before we move on to the next part of the document? All right. So the work to be done on this section, then, is about the suggested change from Kavouss to see whether or not we can do that, whether we're comfortable with that, and

whether we're sure that it fits with what it is that we meant to be included. And we'll be doing that, as I said, offline.

So, let's move them to Item #2 which is How to Recognize IGO Jurisdictional Immunity While Preserving a Registrant's Right to File Proceedings in a Court of Mutual Jurisdiction.

Now fundamentally, unless I've misread this—and, Mary and Steve, you can correct me if I'm wrong. But fundamentally, the basic are the same whether you choose Option A or Option B, from the point of view of the of the process. So let's go through Option A and see if that makes sense to everybody, and then work through to Option B and see if there are separate points in Option B that we need to bring up.

Actually, no, let's do it the other way around [inaudible] balance. Let's do the Binding Arbitration first—because that is the one that we've actually discussed in some detail—and go through that first and then move up to Option A afterwards.

I know this is painful, but I'm going to go through it and see if anybody wants to comment on bullet point by bullet point.

"In communicating a UDRP or a URS panel determination to the parties where the complainant is an IGO, the provider shall also request that the parties indicates whether they agree that any review of the panel determination shall be conducted via binding arbitration."

So to be clear, this means that if it's the IGO that's won and the registrant wants to bring court proceedings, this does not prevent them from doing so at this stage. It gives them an option to agree

to go to binding arbitration. I think I've got that right. I think that's what this intended to do. And if I put it wrong, then Mary and Steve, please speak up.

Who would like to comment? Or does anyone have any comments to make about that particular bullet point as a principle? So, you don't have to agree to go to arbitration at the beginning. You wait for the result of the panel, of the UDRP process. And when you've got the result, you're asked if you would like a review of the panel determination by binding arbitration.

Nobody has any comments about that one, it would seem, at this stage. Good.

Jay, go ahead.

JAY CHAPMAN: Thanks, Chris. So, again, I just want to comment about the process in terms of the steps to take. And this seems to assume that, at the end of the UDRP process—at that point, within some time period—the decision has to be made. And I continue to want to press on the idea that we should allow the registrant, as a matter of just fairness and course, the ability to go to court before having to make the decision as to whether or not they want to choose to have things decided by an appeal. Thanks.

CHRIS DISSPAIN: Okay. Does anybody want to speak in support of what Jay has just said? Mary.

MARY WONG: Thanks, Chris. I'm neither supporting nor objecting. We're simply trying to help.

CHRIS DISSPAIN: No, of course not, Mary.

MARY WONG: Yeah. Jay, I don't know if this answers your question, and we'll probably get this. It goes to the bullet points. But just briefly, we have a final bullet point in this process which tries to clarify that either party will have the right to file court proceedings up to the point where you inform the provider that you agree to submit to binding arbitration.

So there is an overall time frame. This can't drag out. But in this case, the registrant can certainly go to court up to the point it says, "I agree to arbitration." And obviously, it doesn't have to agree to arbitration. It can just file court proceeding.

CHRIS DISSPAIN: Yes. So, hang on a second. Yes, that is right, Mary, and thank you for bringing that up to Jay. I think what you're saying is, no, you want to be able to not say anything about arbitration, go to court, and if you lose—either because the IGO says, "We're not subject to your jurisdiction" and the court agrees or there is a hearing and you lose—then you can choose to go to arbitration. Is that what you're saying?

JAY CHAPMAN: Yeah. That's a great distinction, and I appreciate that, Chris. I'm speaking specifically to the instance where the registrant takes it to court, the court says, "We're not going to hear the case." Just for that specific instance. Not an instance where the registrant goes to court and loses at court. I don't foresee that as … Again, we're trying to protect the registrant's right to go to court.

CHRIS DISSPAIN: No, no. I get that, and you do have that right, in this suggestion, because you can say, "I don't agree to binding arbitration." But what you're saying is, and I get your point. What you're saying is that if the court undertakes a substantive hearing, it actually hears the [evidence]—as opposed to it merely has an application from the IGO that says it's not subject to the jurisdiction—it actually hears your application in full and finds against you, then you're happy to be bound by that.

But what you're not happy to do, you're saying, is to have the IGO come along and win the argument that they are not subject to the jurisdiction and that to be an end of it. You then want the right to go to arbitration. That's correct, is it?

JAY CHAPMAN: That's correct.

CHRIS DISSPAIN: Okay. So let me ask again if anybody else wants to speak in favor of that, specifically. Okay. So, currently the situation—

JAY CHAPMAN: [inaudible].

CHRIS DISSPAIN: Go ahead, Jay.

JAY CHAPMAN: Sorry, Chris. Paul asked the question. So, the IGO gets to pay twice. I mean, I suppose it makes perfect sense for the registrant, if they go to court and they can't get jurisdiction and they can't get a substantive decision at that point, then it would make sense for them to pay for whatever just the costs are. I don't know about fees in terms of representation. I don't think that would be appropriate.

But just in terms of paying the basic fees for the appeal, the arbitration, the panel, whatever it might be. I mean, that's perfectly fine. That would make sense for the registrant to have to cover those costs.

CHRIS DISSPAIN: Understood. Thank you for that. I've got Brian and then Mary and then Paul. Brian, go ahead.

BRIAN BECKHAM: Yeah. Thanks, Chris. I was trying to find the link to the e-mail from the archive where Berry had shared the high-level process flow of what happens if a registrant looks to go to court, and the different possibilities there which, again—just to remind—didn't even capture the full range of potential complexities. Yep. There you go. Thank you, Berry.

I think, first of all, maybe I had skipped a step, but I thought we had previously agreed—and this was part of unlocking the dilemma from Recommendation 5 that we were looking to address—that you kind of chose what you were doing here. Right? If you wanted to go to court, fine. And then if the court says, “Well, I don't have jurisdiction to entertain this case,” well then, the original UDP decision will be implemented.

But if the registrants—particularly being mindful of the potential complexity/time costs, as we can see on the screen—would say, “Oh, boy. That looks awfully complicated. Let me just try this appeals or arbitration process.” Then that was basically the fork in the road that they chose to go down.

If we didn't agree on that, I apologize. But I thought we had kind of put that behind us and we were looking more at the modalities of the arbitration versus the internal appeals process. Thanks.

CHRIS DISSPAIN: Brian, thank you. I’m not sure that we actually “agreed” on anything per se, but we certainly did have that discussion. And it seems to me … I mean, the current situation would be that unless

you're going to have a situation where only the registrant has the right to agree to go to arbitration …

What would you do in a circumstance where the registrant said, "I'm off to court," and the IGO said, "Fine. You're not agreeing to arbitration, then?"

"No. I don't have to. I'm going to court."

And then the IGO makes their claim about jurisdiction and wins that. And then they come back and the registrant says, "We can go to arbitration now," and the IGO says, "Well, no. I don't agree with that. I'm not going to arbitration." You've just lost in court and you've just lost …

There are difficulties on both sides of this fence. If you push it to the very, very edges of the edge cases where things get really challenging. Mary and then Paul.

MARY WONG: Thanks, Chris. I think I was probably going to say something similar to what you just summarized. And just think about the current situation which is under the current UDRP that the registrant does, if it loses, always have the right to go to court, just as the IGO Complainant can raise questions about immunity. And as we know, under the current situation, that is problematic for reasons that we've discussed.

But in the current status quo, there is no post-court arbitral process, if you like. So I think one thing to think about with respect to Jay's question is whether building in that arbitration component

after the IGO established immunity actually broadens what would otherwise have been the case in the current situation.

CHRIS DISSPAIN: Okay, super. Paul.

PAUL MCGRADY: Thanks, Chris. Yes. [inaudible]. Sounds like I am [double] [inaudible] somewhere.

CHRIS DISSPAIN: I think you've joined us on both the telephone and on video, so it may be that you should be talking on your telephone rather than on your video.

TERRI AGNEW: Paul, it looks like both are muted now, the computer and telephone.

CHRIS DISSPAIN: Okay. Maybe the telephone is unmuted.

PAUL MCGRADY: Can you hear me now?

CHRIS DISSPAIN: Absolutely, Paul. Clear as a telephone [inaudible].

PAUL MCGRADY: Okay, great. Sorry about that. Hey, so I get what Jay is trying to say. And, of course, it's his job to try to negotiate the best outcome for responding to lose. But this entire arbitration notion doesn't really work unless there is a pain point for both parties that would get them to agree.

So at the time a decision comes down, the pain point is the uncertainty of how a court will treat a complaint filed in the court. Will they say, "Yeah, I don't really recognize your immunity, IGO. So, we're going to have a court case here and you can either participate or not." And if they don't participate, then that's pretty good. It looks pretty good for the losing respondent in the UDRP.

Or could say, "Yeah, we don't have jurisdiction here because you're an IGO." And that looks pretty bad for the losing respondent. That uncertainty is what would make the two parties, right after a decision is made, agree to binding arbitration. If we remove that pain point, then there's no reason for the losing respondent to agree to binding arbitration at the beginning. Nor is there any pain point for the IGO who's successful in getting a case dismissed because, without a pending lawsuit under the UDRP rules, a decision will simply be implemented.

So I understand what Jay wants to do and I'm sympathetic, but the arbitration provision without that pain point remaining in place is just window dressing. It doesn't really do anything. I hope that's helpful in terms of why we need to make the decision point up front. Thanks.

CHRIS DISSPAIN: Okay. So bracketing—not ignoring—but bracketing, for the moment, Jay's point about the process. And that won't be forgotten. We need to come back and address it, but let's move on. Otherwise we'll be running out of time.

Paul, is that another and or is that you still your old hand? I think that's your old hand. Super. Thank you, mate.

The second bullet point. "The request shall include information regarding the applicable arbitral rules, which shall be those of …" to be discussed.

Do we have any suggestions as to which arbitrary rules we could use for this purpose, and perhaps then a reference to people who could have a look at them? Did we have anything in mind?

Mary.

MARY WONG: Hi, Chris. So, the staff has not taken a close look at these rules and, obviously, again we're not experts. But useful starting points could be the International Centre for Dispute Resolution (ICDR) or perhaps the WIPO rules which also have to do with online forms of arbitration. And UNCITRAL has come up as well in the original PDP Working Group.

CHRIS DISSPAIN: UNCITRAL? Yeah. I remember that. Brian, do you have any particular comments to make? Or shall we just asked Mary to

send out the various different sets of rules to look at? No comments from you. Okay.

Well then, let's have the WIPO and the international ones out. Okay, Paul, you're suggesting that we don't. Well, okay. If we don't make that decision, who would make that decision? Would it be part of implementation or would it be a choice at the time?

Paul, if you're talking we can't hear you though your phone seems to be unmuted.

PAUL MCGRADY: Thanks, Chris.

CHRIS DISSPAIN: There you go. Got you now.

PAUL MCGRADY: I guess my question is, will there be an IRT for this work or are we the IRT? Are we making policy and implementation?

CHRIS DISSPAIN: No. There'll be an IRT.

PAUL MCGRADY: Right. So I just think, this to me, we should just rearrange this and say, "IRT to select panelists" because it's just going to bog us. I don't think we'll be able to do that between now and August, is what I'm trying to say.

CHRIS DISSPAIN: I think that's fine. Thank you. That's the perfect response. That's good. All right.

Bullet point three. "If the UDRP or URS provider receives an affirmative response from both parties within seven days"—so both go, "yep, we'll do arbitration"—"it shall promptly inform the parties and the relevant registrar who shall stay the implementation of the decision until it has received official documentation concerning the outcome of the arbitration or other satisfactory evidence of a settlement or other final resolution of the dispute."

That should be a no-brainer. I don't think there should be any problem with that. I do have a question, however. Now this is drafted on the basis that most parties have to agree to go to arbitration. What would happen if the winning party refused to agree?

Mary.

MARY WONG: So just to note, Chris, that on the premise and the assumption that you would need both parties to agree in order for anything to proceed in this scenario, then the [flat] answer would be, then, that there is no arbitration. And if there is no court appeal filed and notified within the specific number of days, it would be as things would otherwise be in the UDRP.

CHRIS DISSPAIN: Well, that doesn't make sense. Brian, to answer your question, I'm talking about agreeing to go to arbitration.

So if I'm the IGO and I win and the registrant says, "I want to appeal, and I'm prepared to do so in arbitration," and the IGO says no, then what?

Brian.

BRIAN BECKHAM: Yeah. Thanks, Chris. This is just sort of an assumption from our discussions, especially because IGOs had been familiar with arbitration and had been supportive of this.

I guess we could basically bake that into the model to say, "In lieu of the paragraph [inaudible], the court jurisdiction clause, and by submitting to a dispute under this UDRP model, then an IGO would agree to any …" however we phrase it—"appeal to arbitration, should losing registrant wish to invoke that option."

So, just to build it into the process.

CHRIS DISSPAIN: So that needs to be covered because I think it's clear that the IGO can't get around this by refusing to go to arbitration and then going to court and saying, "I'm not bound by your jurisdiction." That just won't work. Okay, good.

Mary, Steve, and Berry, I guess you've taken a note of that and we'll get that sorted out. Okay. So that's bullet point three.

And then bullet point four. “Within a number of days of the notice of appeal, the provider notifies the other party and the relevant registrar, and the implementation is …”

Hang on a second. Why is that different from three? What’s going on? Maybe I’m misreading that. What intended to be the difference between bullet point three and four, Mary?

Jeff.

MARY WONG: Go ahead, Jeff.

JEFF NEUMAN: I was just going to say that one is the … Well, I guess they're both notification, but … No, they’re probably ...

CHRIS DISSPAIN: [Probably the same number]?

JEFF NEUMAN: No, the first is notifying the provider and the registrar. And then the provider then notifies the respondent? Well, I’ll back off. I don't know.

MARY WONG: So if it helps, I think this was something that we probably carried over from Option A and it is somewhat duplicative because you notice that here it says, “notice of appeals.” So, essentially, we are

trying to cover the various steps, and we can go back and look at the previous bullet point to make sure that you've got the notification to the parties, the registrars, and then back to them. We'll check.

CHRIS DISSPAIN: So if you could ram those two bullet points together and make sense of them into one simple series of steps, that will be very helpful.

Did somebody want to say something? No, okay. Thank you, Mary.

And then the next one is five. "The registrant shall not be permitted to transfer the disputed domain name during the pendency of the arbitration." Again, shouldn't be difficult or challenging for anybody.

And then, "In addition to the specific arbitral rules to be applied"—which we've said is in implementation now—"the following general principles shall govern the proceedings." And this is our attempt to make sure that the proceedings are a good replacement or a good alternative to your day in court.

"The arbitration shall be conducted as a de novo review; the parties are permitted to restate their case completely anew and make new factual and legal arguments and submit new evidence." So, exactly as would happen in a court of law.

"The tribunal should consist of one or more neutral and independent decision makers who should not be identical or

related to the panelists who rendered the initial UDRP or URS decision." Again, that makes perfect sense to me.

And then thirdly, "Both parties should be able to present their case in a complete manner. The tribunal should, for example, have the authority to allow for, or request, additional written submissions, and it should be possible to hold in person hearings (which may be conducted online).

Brian, go ahead.

BRIAN BECKHAM: Yeah. Thanks, Chris. Just quickly, since I saw it flash up. Jeff, the Expired Domain Deletion Policy probably would cover that, and we have that come up sometimes in UDRP cases. And the registrant or the complainant can pay the renewal fees.

I was just going to make a suggestion—or, sorry, a question. I made a suggestion in the chat about number two. We might want to specify either one or three because if it says "one or more …" I appreciate that this old language we're borrowing from, but I don't think the intent was that we just kind of wing it and say it could be two, it could be four.

CHRIS DISSPAIN: I want five.

BRIAN BECKHAM: Why not. Certainly, an odd number is important if there's going to be—

CHRIS DISSPAIN: Absolutely.

BRIAN BECKHAM: I think [inaudible] majority. But it says also there “who should not be identical or related to the panelists who rendered the initial.” I wonder if there, just as a matter of drafting economy, we should say something like “who should not be the initial panelist” or something.

Also because it's not clear to me whether “or related” is meant to capture something specific. Again, it may be just old language. Just a suggestion there to streamline and be a bit more …

CHRIS DISSPAIN: Thanks, Brian. You’re right. I think there are bits of this that do need finessing if we can get across the principles that work on the finessing. But I agree. I mean, “who should not be identical” is not the right wording to say “can't be [someone who’s heard it before.”] But nonetheless, point well taken.

And you may well be right, but we should probably specify one or three. Three is certainly enough, I would have thought. Thank you for that.

And I’m sort of following the chat, and I know that there's some relatively substantive stuff going on in the chat. So Mary and Steve and Berry, if you could make sure that you capture that and

at least take it into account when you're playing around with drafting.

And then the last bullet point on this particular—on Option B—is "Either party has the right to file proceedings in a court of competent jurisdiction, up to the point in time when it informs the UDRP or URS provider of its agreement to submit to binding arbitration" which, of course, is Jay's point—or rather, the opposite of that is Jay's point.

So leaving that aside the point that Jay has made at the moment, is there anything in any of those bullet points that anybody wants to raise as an objection to them or a concern about the way that it's put together? Not necessarily wordsmithing, but a substandard material concern about the way that it's put together. No, okay. Excellent.

Now, if we could scroll back up to Option A. Brian, yes, go ahead.

BRIAN BECKHAM: Sorry, Chris. I don't mean to take us back, but I'll just mention in case it's useful here. I know, and during prior discussions, we had covered things like whether the … I know here it talks about de novo, for example. Previously, we had talked about whether there should be a mediation option, whether the burden of proof should be the same, the legal standard, damages, things like that.

So just a question of whether it's necessary to capture, even if it's at a high level here, that some of the procedural and substantive mechanics would be worked out without going into the particular details. The de novo review being one of them. But just to make

sure that we don't lose sight as we get further down the road, maybe, of some of those safeguards that we had discussed earlier.

CHRIS DISSPAIN: So, where are we for time? All right. Let's go down that road for a second because I'm not sure I understand. You're saying that there is stuff missing from this that you think needs to be there? Give me some examples of things that you think need to be there.

BRIAN BECKHAM: Yeah. We had discussed whether, for example, in the UDRP it's a balance of probability, standard of proof. In the URS it's a higher burden of proof—whether internal or arbitral appeals should have the same or different burden of proof.

We had discussed whether there should be a narrow roster of potential appeals panelists, whether there should be even the ability for a party to strike a potential proposed panelist, should there be evidentiary things. I think one of them that was mentioned earlier was the possibility of a phone conference.

So maybe these are details, but I think that the gist of it was just to build in some safeguards for the parties for this process.

CHRIS DISSPAIN: Okay. Mary.

MARY WONG: Thanks, Brian. Thanks, Chris. I think here the balance is between setting the framework with sufficient detail, which is part of the policy development process, and leaving some of the specific items to implementation with the IRT, as Paul raised earlier. And in between, one of the staff assumptions is that some of these details could actually already be answered by the set of arbitral rules that the group may agree to adopt.

So perhaps when we get there, we can take a look at Brian's point again to see if there's any additional details that are suitable for the policy phase that are missing. But that was the intension

CHRIS DISSPAIN: Well, hold on. Yes, I understand. I think we've agreed, at least in principle, that we're not going to designate the rules at this stage; that the choice of arbitration rules, whether it be WIPO or the International Centre and all that stuff, would be a matter for implementation.

But my overarching principle is this. The registrant needs to be comfortable, or it needs to be clear that going to arbitration is giving the registrant, in essence, the same as their day in court. If they were able to do that. And so that's why we said it’s a de novo review. That's why we said it can be in person. That's why we said it can be in writing. That's all we said a whole heap of things.

It’s not our job to write the arbitration rules, and I’m still not sure I understand what Brian may want to cover by safeguards. But let's go to Paul and see if that helps. Paul.

PAUL MCGRADY: Thanks. Can you hear me?

CHRIS DISSPAIN: Yes.

PAUL MCGRADY: Great. So, I don't know that I'm going to be able to help because I heard something that made me wonder. So when we were looking at URS standard of proof versus UDRP standard of proof. And so I guess my question is, what is the arbitration? Is it an appeal from the UDRP such set the standard of proof matters? Or is the arbitration, binding arbitration? And if so, presumably that arbitrator would have their standard of proof that they would need to make a decision based upon what they see in the evidence.

So I understand that the appeals panel, or the super panel as we've been casually calling it, would be basically applying the UDRP. But would the arbitration be applying the UDRP, or is that something else? Thanks.

CHRIS DISSPAIN: Thank you, Paul. And, Brian, I think that's kind of my question. Surely, if it's arbitration, it's arbitration and therefore the rules of arbitration apply. And you can designate that it's de novo. You can designate this that and the other. But you can't tell it to do it in a particular way. Can you?

Go ahead, Brian.

BRIAN BECKHAM: Thanks. So, the answer is kind of knowing yes or yes and no. So I'm just looking, for example, at the WIPO arbitration rules, and I think this maybe would help illustrate the point. It says under the Laws Applicable to the Substance of the Dispute, "The Tribunal shall decide the substance of a dispute in accordance with the law or rules of law chosen by the parties."

And so that gives flexibility to parties to arbitrations to choose the substantive and procedural rules and law that it thinks are applicable. Here, because we are working from a known standard—the UDRP—I would suggest rather than leaving this open, that we would at least prescribe at some level that we would expect that the principles articulated in the UDRP apply. If not, that the UDRP criteria would apply verbatim.

Otherwise, then there's potentially uncertainty for both the parties and the arbitrator of what standards they would be applying in those cases.

CHRIS DISSPAIN: So I understand what you're saying, but in my head, I was where Paul is. I was where Paul [inaudible] in the chat, which is that, in essence, what we're doing is substituting an arbitration proceeding for what in the past [had no ideation in it]. It is effectively replacing the court proceedings in order to accommodate the IGO's inability to have that hearing because they would have to submit to a jurisdiction.

The intention was not to change the nature of the hearing per se, but rather to change the venue in a way that enabled the IGO to

participate properly. And therefore, that was the reason for going to arbitration. To change the standard is a fairly big step because you're now saying that not only are you not going to get to go to court, but you don't get to have you're hearing using normal standards of requirements for a court hearing. And I'm talking there about standard of proof and all that sort of stuff.

Paul, is that … Yes, thank you. I think that, as an example, is an excellent example. So in other words, we're not seeking to try to create a new level of appeal. And it's why there was pushback—Brian, I'm going to come to you in a second—why there was quite a lot of pushback about the idea of having a super panel because that is more challenging than an arbitration because a) we'd able to be creating it from scratch, and b) it doesn't actually have a standard or a standing to do anything other than apply the WIPO rules again because it would effectively be a child—or rather, a father—of the WIPO panelist.

Brian, over to you.

BRIAN BECKHAM: Thanks. Sorry, maybe I'm getting a little confused. Just one small clarification that, of course, when we talk about the WIPO Overview, this is kind of a look back in the rearview mirror at consensus positions and panelists. Although they do largely follow that, they're not strictly bound to.

But I guess the question I just wanted to raise—and, again, apologies if I've confused myself here—is whether, when we are looking down this appeals fork in the road, it's better for all of the

parties and the arbitrators involved to give them some notion of the legal framework that the decision is expected to be taken under. Or whether all of the various stakeholders and parties prefer that that's done from scratch and they can apply whatever principles of law that they think are applicable.

I would personally tend to think there's much more predictability in giving some guidelines, but if the question is whether to do that or not, then maybe that's …

Let me ask this way. Is that the question before us? Are we …?

CHRIS DISSPAIN: Yeah.

BRIAN BECKHAM: Okay. I guess I would say, just from my experience, it would do a lot more good to provide some contours rather than leaving it completely wide open. It doesn't need to be overly prescriptive, but if others feel differently, then certainly I'd be curious to understand the thinking there.

CHRIS DISSPAIN: So to be clear, speaking personally, I don't have a problem providing some guidelines, and I don't know if anybody else has a problem with that. But the problem arose because—and maybe I misheard—but what I heard you talking about was, well, there's the different burden of proof in URS and a different burden of proof in the UDRP, and will those be transferred across to the …

And that struck me as trying to … I interpreted that as meaning that you're trying to create an arbitration that is, in effect, an appeal of the WIPO decision on precisely the same terms. And that isn't what the intention was. That is not the same as me saying that I don't think it's sensible to put in some guidelines and some rules, but I'm interested in what others have to say.

Now, we have 10 minutes left. We're not going to get to the other option right now. So let me sum up, and then I'll throw open for any last comments before we close the call.

What I want to have happen is that Mary and Steve and Berry can go away with this document and make the changes that we've talked about, slamming various things together. We will put out a draft of the clause with Kavouss's suggested amendment that's been finessed a little bit, and try and see if we can talk about that on the list if we can, and see whether it makes any sense to us or not.

And I would, on that score, very much appreciated it if those with experience of the IGO world—Brian and Susan and David and others—could actually comment if they feel that that makes sense or it doesn't.

And then, in respect to the point that we're currently talking about which is whether we put in place a series of guidelines for the arbitration, I'd like us to think about that and consider whether or not it's feasible to go further than "it's a de novo review" than we have here. Because there are some guidelines already here. Right? It's de novo. It's [orals allowed], etc.

So let's think about whether or not we can add to those, still allowing it to be the alternative to a day in court because I think that is a crucial key point for the registrant side of the fence.

And then we will also, on the next call, open up the discussion about Option A, which is the super panel, as we are colloquially referring to it.

Brian.

BRIAN BECKHAM: Thanks. I just wanted to offer one observation as we look towards this arbitration. And, of course, you've reminded us that we also have Option A which may make this moot.

But in my experience, we do the UDRP which is the bulk of our cases, but we also manage disputes for quite a number of ccTLDs around the world. And most of them use the UDRP or a tailored variation of UDRP. So that could be, for example, in .es for Spain they would, in addition to trademark rights under the UDRP, they would capture rights that are relevant under Spanish law. A lot of a lot of ccTLDs make that variation.

A few ccTLDs have used the arbitration model in the past. And one of the drawbacks, if I can put it that way, has been that the awards are confidential and they don't start from the UDRP framework that is an option for us to take here. And frankly, I can say anecdotally—from seeing the pleadings of the parties and the decisions of the panels—that there seems to be a very clear preference for some sort of guidelines rather than leaving this wide open.

Because if you think of it from the panel's perspective, of course, they can invoke rules of law that they think are applicable. They can look at the ACPA and United States, for example. They can look at the UDRP. The WIPO Overview, what have you.

But if you're a filing party in one of these arbitrations and there are no substantive guidelines, then you're kind of in the dark as to what you should be arguing and what the other party would argue. And so, actually, in some cases those ccTLDs actually, over time, said, "In fact, we think that it would be better to use the more public UDRP model where there's a body of jurisprudence and some known standards."

So, again, I think if at least we can put some guidelines in place for the parties and the experts, that would be very well received by those parties down the road.

CHRIS DISSPAIN: Thank you very much, Brian. Paul, go ahead.

PAUL MCGRADY: Thanks, Chris. Respectfully to Brian, arbitration is different, and what the arbitration about is based upon the complaint filed by the party who feels like they're aggrieved. Right? And so us prescribing the four corners of an arbitration by referring back to the UDRP isn't arbitration anymore. That's just farmed out super panel. And so I do think we need to be a little bit careful.

Jeff has put some ideas of what kind … If you're a U.S.-based loser of a UDRP, what your complaint may be based on. Other

jurisdictions may have similar legislation. That's kind of the losing respondent's problem, to find something that would stick. Right?

And so I just want to be real careful that we're talking about an independent arbitration, not some sort of super UDRP that people just have to pay for. Thanks.

CHRIS DISSPAIN: Thank you, Paul. I'm going to make Jeff's comment the last comment before we wrap up the call. Jeff.

JEFF NEUMAN: Yeah. One thing you can do which may make sense for—well, it makes sense to a registrant as kind of like a quid pro quo for the mutual jurisdiction—is basically saying that the IGO consents to use the law of the jurisdiction in either where the registrant is or the registrar. So you're not saying that they consent to the jurisdiction because that's what we're trying to avoid. But if they can consent to the law of one of those two, it sort of goes a little, partial way towards Brian's predictability so that you know what kind of standard would be applied; and essentially also address the registrant's concern of not being able to bring the action in their jurisdiction.

CHRIS DISSPAIN: Okay. That's food for thought, Jeff. That has merits. And as Brian says, it merits further discussion, so that is what we will do.

We will come to the next call ready to discuss this further. It's an important point and we obviously need sort it out. So marshal your forces, everybody. Gather your gather your research together, etc.

Meanwhile, the document will be redrafted in accordance with what we've discussed today, and we'll get that out as quickly as we can. We are meeting next Monday, so we just have this week for preparation. So Monday the 28th at 15:00 UTC.

And with that, I would like to … Yes, Paul, thank you. Offline discussion will be really good. We do have a list which doesn't get used, and it will be good if we could maybe try and do some intersessional work so that instead of just coming to the calls, we actually had a discussion online. My commitment is that if somebody posts something, and I will at least acknowledge it. And I may even respond.

Thank you all very much, indeed, for coming. And as Berry says, five weeks to deadline. I think we're actually making significant progress, and I'm buoyed by the cooperation and collegiality of the group. So thank you all. Let us reconvene in a week's time. Thanks, everybody.

TERRI AGNEW: Thanks once again. The meeting has been adjourned. I'll stop recording and disconnect all remaining lines. Stay well.

**[END OF TRANSCRIPT]**