

ICANN Transcription

EPDP Specific Curative Rights Protections IGOs

Monday, 14 March 2022 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 for IGOs call, taking place on Monday the 14th of March, 2022 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 do have listed apologies from Justine Chew.

All members and alternates will be promoted to panelist. When using chat, please change selection from host and panelist to everyone. Attendees will be able to view the chat only. Alternates not replacing a member are required to rename their lines by adding three Zs at the beginning of your name and at the end in parenthesis the word alternate, which means you're automatically pushed to the end of the queue.

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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. Statements of Interest must be kept up-to-date. If anyone has any update to share, please raise your hand or speak up now. Seeing or hearing no one, if you do need assistance, please email the GNSO secretariat.

All documentation and information can be found on the wiki space. Please remember to state your name before speaking. Recordings will be posted on the public wiki space shortly after the end of the call. 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. Welcome, everybody to our 43rd meeting. And hopefully, our almost last meeting, hopefully. It's great to see everyone here. Thank you very much. As we get towards the end of this process, it is becoming clear that we have made I think significant progress and I'm pleased about that to say the least. So this is a very important call for us. We need to start the process of wrapping this up.

The agenda is to look at the final report to see if anyone has any can't live withs. We can then have a look at the arbitral rules which I want to treat separately from the final report just because less time has been spent on that although I think we're close to—bearing in mind that it's guidance, I think we're pretty close. And then, we're going to go through some process stuff with Berry and talk about how the consensus is going to work.

So let's start with item 3A on the agenda. Perhaps we could have the report up on the screen. This is a Word document which was sent out to everybody however long ago it was. And it has in it, as we know, a bunch of numbers—line numbers so that we could be very clear about what we're referring to. I guess, we should really get stuck in straight away and talk about anything that anyone has real red line issues with. But before I do that, just Mary or Berry, do you have anything you want to say before we start that process?

MARY WONG: Chris, just a couple of I guess contextual remarks about the report if I may.

CHRIS DISSPAIN: Sure, go ahead. Please, please.

MARY WONG: So as everybody knows, this is based on a template and what you'll probably see is that it's not terribly different in terms of length or format from the initial report. We did not provide a red

line against that however, simply because things have been moved around so much that it was in a real mess and hard to read.

So thank you for everybody who's gone through it, including Chris, I know. But for those who are still making their way through it, please focus in terms of the changes from the initial report on sections 2 and 3. And the reason I say this is because section 2 has, of course, the description, the introduction, and the text of the proposed final recommendations that Chris will do the consensus call on plus rationale. I do have a couple of comments or questions in that that we can talk about.

And section 3 is the part that describes the deliberations of the group. And we've also updated that since the initial report to take into account, obviously, the consideration of the public comments and how we dealt with them and some additional rationale and comments that the group made over the last few weeks.

So in terms of substance and number of changes, they're really focused on these two sections. And obviously, there are updates elsewhere as well just to make sure that we're up-to-date, including attendance and so forth. And Chris, I know you want to deal with the arbitral principles and the annex later. So I'll just mention that we have included them in an annex as was requested by the group. So that's a real quick walk through the report for those looking at it.

CHRIS DISSPAIN: Okay, that's great. Thank you very much. So I guess, it's open floor for anybody who would like to take us to anything that they have a red line on. Oh, let me say just before that. We're not talking about wordsmithing here. No wordsmithing. We're going to have a process which Berry will explain after we finish this bit about how to deal with if you think a word should change or non-substantive issues with ifs and buts and ands and whens. And we'll deal with that separately.

This is not about that. This is about anything that you can't live with, and if there is anything you can't live with, what your proposal is in order to make it livable with. Bear in mind that there's nothing new in here and everybody's had quite a long time to consider all of this. So has anybody got anything they'd like to raise at this point? Jay, go ahead.

JAY CHAPMAN: Thanks, Chris. Can you hear me okay?

CHRIS DISSPAIN: Yeah.

JAY CHAPMAN: Fantastic. Well, I have said all along, as the rep of the BC, that this entire package was what was important and not necessarily just any particular item within it. The judgement was going to be based on looking at the totality of things. And so, I want to be clear on a couple of things here. And again, if this is wordsmithing, that's fine. I'm happy to come back later and talk about that.

But there in section 2, if we can look at that. The second line, and maybe this was also included in the—

CHRIS DISSPAIN: Jay, you need to be much more specific about where it is you want to take us to. Sorry to be a pain. We need to get it up on the screen.

JAY CHAPMAN: Sure. No worries. So section 2, final recommendations, is the heading.

CHRIS DISSPAIN: And what's the line number?

JAY CHAPMAN: Line 3. Actually, 122, I guess if I'm looking at it. Yeah, 122. I don't know if that's the same thing now or not.

CHRIS DISSPAIN: Well, let's go and have a look. Give us a second.

JAY CHAPMAN: Yeah, 122. Thank you. And I just want to make note of that the—where we start with however. It was clear to me from the beginning that we were very limited. And I think everybody or most everybody in the group was very clear on how our group was supposed to be limited in terms of what it was supposed to look

like. And so, I'm not sure that it is accurate to say or imply that the entire group here felt like this couldn't be fixed just by—that we couldn't do our work just by trying to look at recommendation 5 and however we need to make that understanding or whatever.

There's a separate line in 144 that also talks about how we felt like that doing all these different things that we've done has been generally consistent. I just think we need to make an exception there. I certainly haven't been on board.

CHRIS DISSPAIN: Jay, let me stop you. You don't need to argue about it. I have no problem. I have no issue with any of that. If you want us to say that you don't agree with that, I'm happy for us to say that. That's not an issue.

JAY CHAPMAN: Okay.

CHRIS DISSPAIN: I'm very happy ... That's not a recommendation, per se. This is the preamble.

JAY CHAPMAN: Yes.

CHRIS DISSPAIN: So I'm very happy to say, and Mary, if you can make a note. To be fair to you, Jay—sorry, just to explain why I've interrupted you—this, for me, sits a little bit in sort of wordsmithing. Not wordsmithing. It's halfway between the two, if you can see what I mean. I don't have a problem. If you don't agree with the wording and you want to say, "The representative of the business constituency didn't feel the same way," I'm really happy with that. That's not an issue, okay?

JAY CHAPMAN: Okay.

CHRIS DISSPAIN: Okay. But carry on. I just wanted to say that from those things, no issue at all. Please carry on.

JAY CHAPMAN: Sure. So maybe then I could just come up with something that showed the exception or whatever.

CHRIS DISSPAIN: Sure. If you want to say you felt differently, I really don't have a problem.

JAY CHAPMAN: Okay.

CHRIS DISSPAIN: You can either call yourself out, call it out specifically, or you can say, as Mary's suggesting in the chat, "Most of the EPDP team felt."

JAY CHAPMAN: Yeah, I think that would be fine. I think that would be fine.

CHRIS DISSPAIN: Okay. Then I don't have a problem with that and I can't see why anybody would have an issue on the basis of that's the truth and you can't help it. If you're more comfortable with that, that's fine. Before I go to ... So that's cool. That else did you want? Do you want to do anything else right now or circle back in a minute?

JAY CHAPMAN: Yeah, let's keep going. I'll sign off for now. Thanks.

CHRIS DISSPAIN: Okay, super.

BERRY COBB: Chris?

CHRIS DISSPAIN: Yeah, Berry. You come first and then I'll go to Brian. Go ahead, Berry.

BERRY COBB:

Apologies, Brian. And maybe I'll go ahead and forecast the later part of the agenda since this was this gray area between substantive versus non-substantive.

After today's call, our part of the process for the next several days and into some of next week, what staff will be doing immediately after this call is essentially accepting—or we're going to produce a clean version of this document in PDF form so that we get appropriate line numbers throughout the entire document. Staff will be posting a Google Doc that will be a table format that will allow any person to list the line number, list who is suggesting the edit, and then a third column that will be suggested text. And we'll be tracking those red line pseudo non-substantive suggested edits in that document and making updates to the next version of this document to make a change that was just discussed about.

And so A, this allows you to flag that there's an edit and then secondarily, it also will allow you to suggest language to correct the issue that you've identified. As part of next week's call, we will go through some of those that if ... Mary's kind of our primary penholder here but if there seems to be a possible disagreement from some of the other groups on the call, then those can be flagged and we will review those for the next call to make sure that we're getting to an agreeable type of text.

So I hope that kind of sets up in context about where we're headed and how Chris had basically said that that opportunity's going to be afforded to you for non-substantive edits. Thanks.

CHRIS DISSPAIN:

You win the award for the sentence so far of the call with “pseudo non-substantive suggested edits.” That’s an impressive set of words there. I have no idea what it meant but thank you for sharing it. Hopefully, it’s clear to everybody where we’re headed with dealing with the wordsmithing edits.

I apologize. It hadn’t occurred to me until Jay started to talk that there was a sort of middle ground, if you will, between the two. So I think we don’t have to deal with that. Brian, over to you.

BRIAN BECKHAM:

Hi, everyone. And apologies. I personally haven’t had time to go 100 percent through this. IGO colleagues who may not have been tied up with ICANN meetings like some of us last week have had more time. I’m happy to report that at our first run through, we haven’t identified any can’t live with items but we did identify a few wordsmithing items. And I appreciate there’s a little bit of a chicken and egg element to what we’re doing here.

In that respect, I supposed it would be necessary to wait to see what Jay would propose or staff would propose. But to be honest, when I hear the hesitation about when I’m looking at line 122, and we talked about looking at recommendation 5. Not in isolation but kind of looking at—really, I think what that boils down to is we’ve looked at issues like defining what is an IGO complainant that provides clarity for all potential parties to cases. Looking at this mutual jurisdiction clause and the potential complications from an IGO perspective where that could be considered as a waiver of immunities under international law.

So I guess, my question is more a practical one. And again, maybe it's something that Jay can kind of answer at a drafting level. But I'm a little confused the suggestion that we would have looked at recommendation 5 in isolation and not addressed those issues such as defining what is an IGO complainant or looking at this mutual jurisdiction clause.

To me, it seems inevitable that this all hangs together. So again, maybe we'll have to wait to see what Jay proposes. But I must confess a little confusion at where that would have taken us on a practical level if we would have. I think the suggestion is that there was some members that would have looked at recommendation 5 in isolation and not, for example, refined or created the definition of an IGO or refined the mutual jurisdiction clause which to me seemed to be fairly central to our package of work. So I suppose we'll wait and see but just wanted to raise that I suppose for maybe Jay's consideration when he's—

CHRIS DISSPAIN:

You've confused me, Brian. You've confused me totally because ... Well, not totally. You've confused me because I don't ... Maybe I've misunderstood you but I don't understand why it matters. If Jay wants to say that—because he didn't agree—why does that matter? Surely that's for him. All we're doing is telling it as it is.

BRIAN BECKHAM:

Yeah, I guess I'm not clear on how one can come to that conclusion. And the reason I raise it is because we've just come off on an ICANN meeting where—looking at the topic of WHOIS

work for example—there were significant discussions around minority positions in reports and most members said this or some members said that. And I think that we're all better off if we present this as sort of a unified voice.

In my mind, introducing language like “most members this” or “some members that” undermines the good work that we've done. We've all made compromises. I think that's clear. If we want to start adding qualifiers, “most members view it this way” or “some members view it that way,” I think we might find we have a heck of a lot of those in the report.

CHRIS DISSPAIN: Let's see how we go. So far, we've got the suggestion of clarification I think of two words here in two places. So I think—

BRIAN BECKHAM: Yeah. I guess, I'm not sure what ... Then I think the question would be to Jay, did you believe that we could look at recommendation 5 in isolation and that we shouldn't have spent time creating a definition of an IGO complainant and working on the mutual jurisdiction clause? I don't see how we could have done our work having not done that. So it's a matter of logic. It doesn't add up to me that someone would say we could have looked at this in recommendation because had we done that, we wouldn't have done frankly the bulk of our work.

CHRIS DISSPAIN:

Okay, fine. As I said, I'm still not clear as to—and we can deal with this offline. Otherwise we'll get stuck here for the next hour. It seems to me, as I said, there is—what we want is our report to reflect the feeling of the group. If one of us or two of us believe that something—the same way of saying, "Well, I don't accept this particular recommendation," which is not what we're saying at the moment anyway.

I'm still not clear why it matters but nonetheless, let's see how we go when we circle back. I want to try and move on to see if there's anything else that anybody wants to raise.

So Brian, I just want to say—because I want to acknowledge what you said before when you started that you have got or you will have—that was "have—" some non-substantive wordsmithing to do. That's fine and we have a process for doing that. The only thing I would say is obviously, it would be helpful for everybody the sooner that we—well, once we finish this call. The sooner that it's done the better. And Berry will go through the timing of when we hope to be able to deal with that when the time comes at the end of the call.

With that, let's throw the floor open again to see if anybody else has anything, any comments that they want to make at all to explain why they can't live with something.

Okay. Let's go to the arbitral principles, shall we? Now, I don't think we're that far away from reaching an agreement, certainly in the small group, about these. Mary, remind me. The status of this was that this is what was written and then there was comment afterwards by Jay and others or this includes that comment?

MARY WONG:

So this is the staff's attempt to translate, I suppose, if I may use that term, the small group's discussions, and in particular, the principles that the small group discussed that Jeff so kindly and thoroughly had put forward. So essentially, what we did was we "translated" them into recommendation type, or I should say principles type, text that could be implemented if adopted by the board.

So I think what we're looking for here is in particular for Jeff and the small team but obviously for everyone to take a look at it and to see from the small team's perspective if we accurately covered what they are proposing to the rest of the group.

CHRIS DISSPAIN:

And if I recall, there were a couple of key points. And Jay, you were the one. I think you made them. So if you could be ready to perhaps bring them out but if I remember correctly, one was about—

MARY WONG:

Monetary award, I think.

CHRIS DISSPAIN:

Monetary award was one and there was another one which I forget now. Jay, can you remember what they were and are you able to just briefly give us your overview of the issue?

JAY CHAPMAN:

Sure, Chris. Thanks. So as we were talking about these things ... And again, we've only had I guess really one, maybe two meetings after getting some general guidance principles from Jeff. Very much appreciated just to kind of get us started on things. I mean, again, one of the situations here is that we are attempting to replace ... In the event that a court doesn't make a substantive decision, we're in the position of having a situation where the arbitration, the arbiters are trying to decide what's going on here. We're trying to make that as much as like a court proceeding as possible. And so, some of the things that these principles that were brought didn't bring up, in particular, one of them was sanctions and monetary damages.

So for example, if someone were to appeal a UDRP here in the United States based on the ACPA, there are claims that the parties can make for damages and those damages can be pretty substantial. And so, I just felt like there needs to be a provision for something that goes beyond just sanctioning the parties for bad behavior during the proceeding or whatever.

If we're going to make this real ... And I think the reason behind considering this is just the point that we don't want to incentivize gaming. This has been clear from the beginning and there are no ... As a respondent, right, you can't really gain because you're either going to get your domain taken away from you or you're not. As a complainant, there's not anything for you to consider in terms of whether or not you really should go forward with this.

And again, this isn't a concern for the good faith IGOs out there that are having all the problems that have been discussed. Again, I am all in favor of getting rid of cybersquat—getting domains

removed from the hands of cybersquatters and people who are trying to impersonate IGOs or whatever. That absolutely needs to stop.

But in the situations where you might have a party, a complainant who is just more interested in getting a better domain name perhaps or an acronym domain or something like that. but where you've got a good faith registrant, then there needs to be some teeth to make sure that the IGO has teeth or the complainant has teeth in the matter. No different than any other complainant would within a UDRP situation.

So I just felt like it made sense to put that out there as part of the consideration that the IRT needs to include again, beyond just simple sanctions for council's behavior or a representative's behavior within the process itself.

And then the other thing was around enforcement. And that is, we need to figure out how we're going to be able to enforce these things because that's the way it works in court is that there's—if there are sanctions or damages or whatever that there needs to be some way to be able to enforce that. So that was the other part that I've raised so I hope. Thanks.

CHRIS DISSPAIN:

Thanks, Jay. That was really useful. Before I go to Jeff, I actually ... I do want to say again, I don't think we've got that much work left to do on this. However, I'm also conscious that it is not something that I suspect the vast majority of the people on this call want to involve themselves in discussion about.

So what I propose to do is to give the floor to Jeff and Susan and briefly anybody else. And then I think we will reconvene the small team later today or tomorrow and nut it out to a point where we can come back and say, "Look, these are the recommended guidelines to provide—" bearing in mind, that all we are really talking—I say "all." What we are really talking about here is simply providing some guidance to a IRT rather than actually drafting the arbitral rules themselves. With that said, Jeff and then Susan.

JEFFREY NEUMAN: Yeah, thanks. So in the initial research I did, I had included the concept of a loser pays which is different than sanctions. So I do think they should be considered separately. And a loser pays model is enforceable pretty easily because you can just require deposits upfront of the cost and then the winner gets their money back plus whatever it is. So I do want that to be treated separately. I don't see it in here but I do think it's important for a loser pays type model to incorporate here.

And again, it's very different than a loser pays for a UDRP because in this case, in an appeal, it's responding to a registrant that's bringing the action. So if they want to bring it, they'll have to pay the fees or deposit the fees, so you don't have to worry about collecting from them. And if the IGO wants to defend it, well then they're going to have to then put up the fees. So it's not an enforceability question. Sanctions though are different and I'm not going to opine on that one. Thanks.

CHRIS DISSPAIN: Thanks, Jeff. Susan, go ahead.

SUSAN ANTHONY: I think what's bothering me is the idea that the arbitral review process, whatever you want to call it, is akin to a court proceeding. I thought in our discussions a couple of weeks back, that we were looking ideally at a streamlined process, at a process that might be less expensive.

I didn't think or I was hoping that we weren't moving in the direction of let's reflect the court because of two reasons. One, we'd like to make a process that people might be inclined to take from the get-go. In other words, you could choose to go to court then failing there, if you're rebuffed on privileges and immunities, you go to arbitration or you might choose to skip that process and just go to arbitration.

And so, the arbitration ought to be appealing to you unless you just really like lawyers and spending money because arbitration can get very expensive and very complicated very quickly, unfortunately in my experience, as an arbitrary representative.

The other is because the registrant is already facing a great challenge if he/she decides to go to a court to challenge the IGO. He may or may not succeed but probably won't based upon what David and others have told us about their success at raising privileges and immunities. So a registrant is then looking at an expensive court proceeding. I have no idea how much money it would take to go to court and then be rebuffed on privileges and immunities assuming that there are no other procedural issues

that get you kicked out such as wrong court, etc. And then you go to arbitration.

That's a pretty hefty sum of money for somebody that we hope is that very isolated case of a very, very bad actor who is just hell-bent on wreaking havoc. It should be that kind of singular case that is going forward in these situations. And Chris, I'm concerned because you keep rubbing your forehead and holding your head.

CHRIS DISSPAIN: No, no, not at all, Susan, not at all.

SUSAN ANTHONY: So I'm wondering if I'm—

CHRIS DISSPAIN: This is me in listening mode. I'm thinking, I'm actually thinking. My brain is weary. So I take your point and I actually agree with you but the distinction I think I would make—and I think Jay would likely accept this—is that we are trying to build a process that can be streamlined but we are also trying to build a process that allows a registrant, should they wish to do so, to take advantage of the ability to bring witnesses and discovery and all of that stuff if they wish to do so.

So I think what we're trying to do is to build a flexible process under which, a registrant ... Let's be clear. I think we all agree. We're talking about the edge of the edge cases. Who does want to go through that process because we are effectively saying, you

can't go to court? To have the option to at least use it. Have the same opportunities that they would have in court. Now whether that extends to things like sanction and stuff, it's a different issue. I don't want to give in to that description on this call. That's what I think the small group needs to talk about.

But I agree with ... I don't think they're two things. I suppose what I'm saying is I don't think the two things are incompatible. I think the opportunity to build a streamlined system with the right for the registrant to actually go, "Hold on a minute. Actually, no. I want this in the circumstances," is probably okay or it's rather it's where we can end up as a sort of compromise situation. That's my thinking at the moment. But I do think that we're not—as I said, I don't think we're very far apart and I think if the small group can gather relatively quickly either later on or tomorrow, then I think we can knock this out.

Jeff for example wants to talk about how to deal with costs and so on. Jay wants to talk about the issue of sanctions and so on. So I think we can get it sorted out and if we can, then we can come back. But please, everybody remember, this is guidance to an implementation review team. It's not intended to be—we all agreed that it wasn't intended to be detailed and it wasn't intended to be prescriptive but rather just say, "The implementation review team should consider the following things and etc." So let's not lose sight of that. So what I'm going to try and do is to convene the small team shortly if we can to start nutting this out. Jay. Sorry, Brian. Go ahead.

BRIAN BECKHAM:

Hi, everyone. I'm trying to—apologies, I haven't been able to find it. I believe there may have been advice in one of the recent three or four communiques on this topic. I do know in big picture terms that one of the points the GAC had raised ... Jeff, I don't know if you have handy a kind of a summary of GAC advices on the topic as our liaison. I do myself but it's not on top of my screen. And it was that this process should be at minimal or no cost to IGOs. And maybe there was a small imprecision as to whether that meant the filing of URS or the UDRP or the arbitral review.

But I would say—and maybe, Chris, I've noted that you've signaled that we as the small arbitral review group can get together and try to have some of this out. But I do tend to agree with Susa. When I look over these general principles. Some of the language—you look, for example, it says it's supposed to be in a substantive equivalent of a judicial review. I think probably it would be safer to say "borrow sufficient due process components of." I don't mean to wordsmith here but it talks about allowing a more streamlined process if the parties agree. It talks about allowing full discovery as the norm. It talks about the arbitration should be conducted through hearings, etc.

And so, when I look at some of that particular language it seems to be kind of at cross purposes with the general idea of a more efficient, both in terms of time and cost, process. So maybe that's something that we as the small group could sort of come together a little bit and maybe there are ways that we can kind of bridge the gap a little bit between some of these more robust court-like notions that are present in the document than the idea of a more streamlined process.

But I do share Susan's concerns that this seems to be taking on a flavor that may be straying from the intended efficiency that, at least from IGO's perspective and I think from the GAC's perspective, had been hoped for. Thanks.

CHRIS DISSPAIN: Thank you, thank you, Brian. And leaving the GAC advice aside for a moment, because that was given. I'm not suggesting it's not still there but it was given in a different environment to where we are now. If GAC chooses to give advice at some later stage about the recommendations in our final report, then so be it.

I want to say I completely acknowledge what you said about the common sense of having a streamlined process. I'm not sure it's fair to characterize the goal of doing this as being efficiency.

What this group agreed—at least in my understanding on what this group agreed—was that we were prepared to go down the road of creating this process to enable IGOs to have curative rights in the system. And we were prepared to recommend that the registrant—that in the final analysis, the matter could be settled in arbitration but that it would be built in a way that it ensured that if a registrant did go through arbitration, it was closely aligned to what rights—to the rights that they would have in court.

Now, we can argue about sanctions and stuff like that as a separate point. But at this stage to be arguing that it's looking too court-like because we've put things in about discovery, which we've mentioned right at the very beginning as something that

would be important—the opportunity to have evidence given, which we mentioned right at the very beginning as something that would be very important—to now start to bring in a different set of principles, like the principle of efficiency, which is there if both parties choose to take advantage of it.

But I think the overarching principle—and if I've got this wrong, I have no doubt others will chime in—was that we should be giving the registrant an opportunity to use an arbitration process because that's suitable for IGOs. But to be able to do so as far as possible with the same rights and opportunities that they would have in a court case. But anyway, that's just how I see it. But go ahead, Brian.

BRIAN BECKHAM:

Thanks, yeah. I suppose just to slightly repeat myself, I think maybe we had different starting points. And maybe when the small arbitral review team comes together, I don't know that the intention about sort of mirroring court processes. I think it comes down to the default position that it shall have full discovery or it shall have hearings, etc. Frankly, it kind of flies in the face of arbitration which is ... One of the benefits of arbitration is that it is possible for the parties to tailor this to their needs.

And so, I think maybe if hopefully we can agree amongst the small team that rather than default or starting positions, that this can be something. And by the way, these are general principles, so we could say the parties have the option to agree to this or that rather than the process should always take this fork in the road or have this—

CHRIS DISSPAIN: Sorry, I completely agree with you on that scope. I'm sorry if I've—so there was no misunderstanding, absolutely, it should always ... The parties should have the flexibility to say, "No, stop that. We're not doing that. We'll do it this way. Completely agree." But I just think the registrant should have the opportunity to say, "No, no, I want to do it."

BRIAN BECKHAM: Fair enough. So I think that then let's ... Hopefully, we can sort of iron out a few of these details in the small team.

CHRIS DISSPAIN: Super, that's excellent. And can I just ask those that are on the small team to consider that, when this call closes or whatever time that will be—at worst case scenario, it will be on the half an hour, so in 45 minutes' time—we could maybe convene, if only briefly, just to start the ball rolling. So have a think about that. If we manage to finish early, then we can convene earlier.

I think we're at the point now where we can probably pass it over to Berry to talk about logistics. But before we do that, let me just check in with anybody to say thank you if anybody wants to say, bearing in mind that the arbitral principles will come back out from the group. Hopefully, agreed. We know what we're going to do about word smithing and we've considered all the recs.

If there's nothing else right now, then I'm going to—and there isn't—I'm going straight to Berry. And Berry, take us through the next steps, please.

BERRY COBB:

Right. Thank you, Chris. Berry Cobb for the record. So as Chris already noted, but just to repeat for consistency's sake, later on today, as part of wordsmithing, pseudo non-substantive edits—no, just non-substantive edits—there will be a table provided. Susan, I don't believe you have access to Google. So if you do, follow the same process but send those to the list and staff will add those into the Google Doc. But again, three columns. Who's making the suggested edit. What line number or line numbers. And then, what the suggested edit shall be.

And in the background, staff will compile those for the next red line version to get this out to the group. For this round, we're hopeful that you can have those non-substantive edits done by UTC 23:59 of Thursday of this week. And that will give staff a few hours on Friday to get those red lines posted into the next version. We're going to send that version out Friday afternoon in preparation for next Monday's call.

As in past experiences, four days is not going to be enough but because they're non substantive, we also will have next week kind of for a second round of edits. I do ask that the groups on this call will look for other submissions for edits or suggested edits. And if you think that you have an issue with a suggested edit, flag it as a sidebar comment or send an email to the list. The earlier you can signal to us you may not have an agreement with the suggested

edit, that will help us develop a short list of items that we can review for the next call.

But again, it's going to be a clean version PDF with the line numbers for you to specifically call out. Any questions with regards to non-substantive edit before I go to the next step? Okay, let me share a new document on screen after also today's call and ... Let's make sure I've got the right one.

CHRIS DISSPAIN: Yeah, you've got the right one.

BERRY COBB: It is also time to kick off the consensus call process. So today was really, again, identifying can't live with items. It seems by today's call at least with respect to the five recommendations that we have, there doesn't seem to be any can't live with items.

Later on today, the chair will be sending out—it's going to be a two-page document of Chris's assessment of the current levels of consensus for each of the five recommendations. And he may or may not include the two sections that are also substantive. It's not necessarily required but about the policy impact analysis as well as the arbitral rules which are still kind of work in progress.

But at the very minimum, each of the five recommendations will have an initial level of consensus designation. And in parallel to the non-substantive edits we're going to be asking that you go back to your respective groups with these initial designations. And if you believe that you disagree with this initial designation, the

sooner you can signal back to the full group—but predominately Chris and staff—that you may disagree with this initial designation. We will also be discussing this next Monday to try to work through trying to identify, are there any changes that could make this into full consensus or not? But we're going to work through that process.

If for any reason you don't support any one particular of the recommendations or the final aspect of it, if we can't resolve them by next week, then that tees up your process about submitting any particular minority statement that we can attach to the final report.

I'll resend out the timeline for this. But essentially, we're conforming down to next Monday to try to wrap up the first phase of the consensus call. After next Monday—essentially later on next week—the final designations will be sent out. And we have the 28th, I believe, as kind of a buffer if we need to work through any of the final consensus designations as well as wrapping up any non-substantive edits for this final report, with the goal or the aim of submitting the report to the GNSO council by the 4th of April.

The last thing that I'll stay here before I turn it back to Chris is, as he approaches the final consensus designations if there's any group that still doesn't support that designation, it will be eventually identified here in this third column. And one of the final steps as staff prepares the final report is for each recommendation, there will be a single sentence appended to each recommendation signaling this final level of consensus.

Just as an information, on the second page of this document is an extract from the working group guidelines that talks about the definitions for each level of consensus and some procedure type aspects about getting to final consensus for you to absorb as well. So I think that pretty much covers the next steps with regards to initiating the consensus call process. Back to you, Chris. Thank you.

CHRIS DISSPAIN:

Thanks, Berry. Any questions? Marvelous. Okay. I think if it's okay with everybody that we should wrap the call, have the small team stay in this Zoom chat and talk about the arbitration stuff and have everyone else go and read the document again and get ready for the consensus call to come out later on. Does anyone have an issue if we do that now? Anyone have a problem if we move on and get the small team together? Anybody got anything they want to say apart from the small team meeting afterwards? Okay. So to be clear, my notes will come out later on today. The small team is going to be working on the arbitration stuff.

On the consensus call document, the arbitration column is with the last one that Berry had. We'll probably say it's being decided because it's too early to call it yet. Everything else will be my initial call. That's that line item document—the PDF with all the line numbers for non-substantive changes to come back. Please, by close on Thursday, midnight on Thursday, so that we can get it back out to you on Friday.

That's the reason for saying Thursday so that everyone can get it on Friday with these non-substantive suggestions—the change so

that we've got a proper discussion about it next Monday. Next Monday is in essence the date for us, all being well, to wrap up if we can. Obviously, if we can't we've got a bit more time but that's the reason for trying to do it so that we—if there's an emergency, we've still got time.

So if no one has any problems with it, I'm going to ask Brian and Susan and Jay and Jeff—I think that was it—to stay along with Mary we'll nut out the arbitral principles. And I want to say thank you to everybody else for the time and effort for being on the call and we'll see you next week. Thank you, everybody.

TERRI AGNEW: Thank you, everyone. The meeting has been adjourned. I will stop the recording but leave the Zoom Room open for those that are staying on for a small team chat.

CHRIS DISSPAIN: Thanks, Terry.

[END OF TRANSCRIPTION]