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## ICANN Transcription

### EPDP Specific Curative Rights Protections IGOs

**Monday, 21 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 21<sup>st</sup> 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. Joining us a little late in the call will be Paul McGrady.

All members and alternates will be promoted to panelists. When using chat, please adjust your chat now and select Everyone. That enables all, including the attendees, to see your chat. Alternates not replacing a member are required to rename their lines that adding three Z's to the beginning of your name and at the end, in parenthesis, the word "Alternate" which means you are

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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 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 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, good evening, everybody. I hope you're all well. Welcome to call #44. We're in the homestretch, I hope. I believe. So this is obviously an important call.

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The redline document which we'll get to shortly in Google Docs is up to date with all of the wordsmithing, non-substantive suggestions, and amendments that have been made so far. And the team have gone through them and don't believe there's anything contentious, and therefore have redlined those changes.

It's not over. We have until late on Thursday UTC to take a second or third or fourth, for those who wish to pass through and come up with any wordsmithing changes that there may be. And they will then be incorporated and the final document will be before us for the call next Monday.

We are not going to spend any time on this call wordsmithing. That is not a useful use of our time and it can be done, as we've done up to now, on the list with comments on the document and, again, incorporated into that. So that's not the intention of this call. And I will prevent any wordsmithing should anyone decide to wander aimlessly into that arena.

The agenda is in front of us. It's the review of consensus designations. Then we're going to talk about the arbitral General Principles which are in reasonably good shape. I think that there are one or two issues that Org wants to raise for final agreement. And then, worst-case scenario, we can take them off the table again and have the small team meet. But I prefer not to do that if possible. And then we'll move on to the next stage.

So Berry, over to you, I guess.

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BERRY COBB: Thank you, Chris. So just for this portion, on the right-hand side of the screen you'll see the consensus designations table that the chair sent out last week. I believe we received one positive affirmation from Brian Beckham representing the IGOs about the consensus-level designations.

We're at this stage where there are preliminary designations by the chair. And this is the last opportunity, I suppose, for the representative groups, if they have any concerns with these designations, will be given through this week for any final consternation. But nothing has been raised to date. And as part of our call next week is it will be considered final designations for which they'll—

CHRIS DISSPAIN: When's the deadline ... Sorry to interrupt you, Berry. When's the deadline for minority statements if, indeed, they'd use that?

BERRY COBB: 4 April.

CHRIS DISSPAIN: Oh, okay. So even though we close off next week, effectively, minority statements can come in by the 4<sup>th</sup> of April. Is that right?

BERRY COBB: Correct. This is an indicator of where the consensus-level designations are at. If a group doesn't agree with them or doesn't agree with a particular part of the report, it usually takes a little bit

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longer for groups to compile that minority statement. So we're allowing an extra week so that staff will have time to append them to the report before submitting it to the GNSO Council.

CHRIS DISSPAIN: Okay, cool. Thank you. So, anything more to say on that?

BERRY COBB: I think we're done with this part, then. We'll switch over to the document. Give me a second, please.

CHRIS DISSPAIN: Tappity-tap. There we go. Okay, so these are the arbitral guidelines that the small group has been working on. I think we have got reasonable agreement on most of them, there being ... I think there are one or two minor ... Well, perhaps they're not minor. But one or two matters that we need to address.

So I think if those who are involved in having thoughts about these particular issues could stand ready to speak when we get to them. Mary, I think you're going to take us through the two or three pieces that there are. Is that right?

MARY WONG: I was just waiting for your direction as to how you want to handle this part, Chris.

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CHRIS DISSPAIN: Well, yes. I think there are a couple of points that we're still nutting out. And we might as well bring this to everybody's attention and then we can deal with those. Does that make sense to you?

MARY WONG: Sure.

CHRIS DISSPAIN: Okay.

MARY WONG: And actually, we've mapped it in the document, as you're seeing on screen, to make it easier especially for members of the EPDP Team who have not been involved in the small team work. The text that hasn't been marked with comments we would say is relatively stable because it's text that you probably have seen in prior, well, at least the last version of this report. It's text that the small team has discussed and seem to agree on.

So there are, as Chris said, a few places where the small team is looking either to finalize the language itself to make sure that the words we're going to be putting in these General Principles are what they're comfortable with proposing or, in one or two cases, just closing out clarity on what the principal means.

So for example, in General Principle #7, here, the discussion has been on the discovery process. And this harks back to the agreement that if arbitration is pursued because of when that would kick in, that it should, as close as possible or as feasible,

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resemble a hearing in a court on the merits of a particular case. So discovery being an essential part of that process.

And here, really, it's just a matter of wording. We previously had the word "full" but that had certain implications. So the team wants to make sure that it does ensure a reasonably full discovery process without bringing in all of the different rules that could apply; and also allowing for the parties to agree to obviously a more streamlined, shorter process. so that's Principle #7 you see here marked. [inaudible].

CHRIS DISSPAIN:

So just stop there for a second. Thanks, Mary. Let's just deal with this one. Brian, I think if I remember, your suggestion was to move from the word "full" exchange of documents to an "ordinary" exchange of documents. Perhaps I could put you to proof, if you like, of trying to explain what you think that might mean.

I think, as a lawyer, a full exchange of documents kind of makes sense to me. I'm not entirely sure I understand what you mean by "an ordinary exchange." Are you happy to talk to that? Since I think it was your suggestion.

BRIAN BECKHAM:

Yeah. Hi, Chris. Can you hear me?

CHRIS DISSPAIN:

Yes, I can.

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BRIAN BECKHAM:

Good. Hi, everyone. Look, I mean, if “full” works better, no need to quibble about details at this point. Again, we had kind of discussed there's sort of an idea to try to make this process as efficient as reasonably possible for all parties involved. And whether the notion of “full” might sort of trigger the wrong perception in one party's mind that this is more robust than would be intended.

I appreciate that there are some safeguards in the process where, for example, the arbitrator would have discretion if one of the parties raises, that the other party is seeking to cause unnecessary delay or expense.

And again, no need to spend time debating the finer points of “full” versus “ordinary,” but that was ... The intent was just to not give the misimpression that it's a years-long, drawn out process when I think that wasn't understood. Thanks.

CHRIS DISSPAIN:

Thanks, Brian. I appreciate your point. Jay can speak for himself, but I have a sneaking suspicion that ... There you go. You beat me to it, Jay.

I just think, from an understanding point of view—and if it's not too much of a challenge—if we go back to what we have, I think it's probably more sensible just because I think everybody understands what that means and it's clear. And given that these are guidelines anyway—and as you say, there were some other safeguards built in—I just feel more comfortable with that. The problem with “customary,” Brian, is in what circumstance.

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But let's move on. I'll put a star. I'll put an asterisk on my notes, and we'll come back to it in a second.

Oh, Susan. Sorry, my apologies. I've just seen your hand. Go ahead.

SUSAN ANTHONY: And I'm still waiting for the cake.

CHRIS DISSPAIN: Okay.

SUSAN ANTHONY: But on #7, I was thinking as these are general principles, I'm not sure whether this fits in here or not. And it is, unfortunately, a late-breaking idea in my mind. But I was thinking of federal court litigation here in the United States and the federal courts having become weary of all the games people play with discovery. I finally said, well, there's certain discovery that is typically required in any case.

And so there is mandatory disclosure of certain kinds of information and documents, and that really would be lovely if we could have something like that. But as I say, maybe that's a more detailed principle. It doesn't belong in general principles. But I would think that would lead to a more streamlined process. And even in a full exchange of documents, you still want certain documents as a minimum. So I just wanted to ...

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Pie? Oh, it was Pi. But it was, your ... Never mind. Just talking to myself.

CHRIS DISSPAIN: Thank you, Susan. I take your point. And I think you're right. You've said it yourself. It's a detail that I think the Implementation Review Team can pick up on. And I think it's encompassed in this current sentence in that we talk about documents and information relevant to the proceedings. So that gives them, I think, scope to talk about what is relevant and what isn't.

Let's move on to the next one for now. What's the next one that you want us to bring our attention to, Mary?

MARY WONG: The next one is pretty straightforward, under Principle #8. I think we had previous just said "mediation prior to commencing the arbitration." The clarification here is that it could also happen during the arbitration proceeding.

CHRIS DISSPAIN: Sure, okay. I think that's controversial.

MARY WONG: Yes. And this one, #9, I think is more of a question from staff, probably largely to the small team. But it's helpful that the full EPDP Team is here, too. Initially we had not had that phrase that you see at the beginning of Principle #9. So in other words, we had simply had a general rule, if you like, that hearings are going

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to be online and that there should be the opportunity to present evidence, cross examine witness, and so forth.

And one suggestion here is that the parties could agree to something different. So we just wanted a clarification from the group as to whether you thought this is either necessary or helpful.

CHRIS DISSPAIN: Well it's true, isn't it? That the parties can agree otherwise. And I think whilst it is said elsewhere, it doesn't do any harm to say it there either.

MARY WONG: Right.

CHRIS DISSPAIN: I mean, it does no harm because it's the truth that parties can agree otherwise.

MARY WONG: Exactly. So this is not major. It's just that because it's changed since the last version, for completeness we're just highlighting it.

And apologies, Chris. Happy belated birthday. Cake would have been perfect.

CHRIS DISSPAIN: What are we talking about?

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MARY WONG: I'm looking at Susan's comment in response to me in the chat. I know that this [inaudible] very strange.

CHRIS DISSPAIN: I don't know whose birthday we're talking about.

MARY WONG: Right. Moving right along. General Principle #10. You see where we've highlighted here is the phrase "in particular." I know that Jay is on the call. This is something that the small team discussed. Chris, I think you had sent back a concern in that where the original wording here, we have ...

Well, the phrase "in particular" illustrates the previous sentence which is really about giving the arbitrator discretion as to how the proceedings should be conducted. But pointing out, particularly for the IRT, why this is important is because questions of the admissibility of the evidence that's presented and the weight to be ascribed to that evidence is something that this group thinks important for implementation consideration.

There had been a suggestion to change this particular phrase to say "subject to applicable law, the arbitrator should have discretion about admissibility and weight of evidence." And Chris, I think your concern here is that that might change the intent of this general principle.

But I see that Jay has his hand up, so I'll stop talking.

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CHRIS DISSPAIN: Jay, go ahead.

JAY CHAPMAN: Thanks, Chris. Thanks, Mary. I think the point I was trying to make here, and it might have been the wrong place to put it, was we're going to have a governing law. And as opposed to just the arbitrator being able to make all decisions subject to only themselves, I just think it makes sense to say ...

I mean, if we're going to ... I'm not quite sure what the point of our law is if we're not going to [have] the arbitrators be guided by that. Am I making sense? Maybe I'm not even clear on what I'm trying to say. But that's the point. And then maybe it doesn't necessarily fit in #10. Thanks.

CHRIS DISSPAIN: It makes sense to me. And I suppose the point I would make is that that's an overarching principle anyway—the governing law. Berry, or whoever's got the keyboard, what was the wording that Jay suggested? Let's see if we can put that in or have a look.

Mary, is that a fresh hand?

BERRY COBB: [inaudible].

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CHRIS DISSPAIN: Yeah. You go ahead, Berry. And Mary ... Go ahead.

MARY WONG: I think Berry got it.

BERRY COBB: Well, I need to find it real quick. Hold on.

MARY WONG: Oh, sorry. I think the suggestion was to replace the two words “in particular” with the phrase “subject to applicable law.”

CHRIS DISSPAIN: Does any anybody have a problem with that, given Jay’s explanation? Brian.

BRIAN BECKHAM: Hi. I think my gut reaction certainly would be ... Welcome to hear others’ views, but my gut reaction would be along the lines, Chris, that you suggested which is that there is ...

I believe it may not be on the screen, but somewhere there’s an overarching cause or a principle about governing law. And so I would tend to not introduce that concept again here just in case it might introduce confusion whether it was intentionally included here and not other places. Whereas, if it’s just hanging over everything, then it’s clear that it applies to everything.

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So I think my gut reaction, again, would be to just leave it at the highest level. But happy to hear others' views.

CHRIS DISSPAIN: Okay. Thank you, Justine, for your comment in the chat. We'll come back to it in five minutes. Let me mark it and let's move on to the next one. We'll come back to it.

MARY WONG: I thought I saw Jay's hand flash up for a second, maybe on this point. But it's gone down. Oh, here it is back.

CHRIS DISSPAIN: There you go. Go ahead, Jay.

JAY CHAPMAN: Okay. Thanks, Mary. Thanks, Chris. I think, again, if it is an overarching principle then maybe we should just put it at the beginning of the principles that ... Again, we're looking at 9 through 10 or whatever. But just making everything subject to applicable and just making that clear at the beginning. I think that would satisfy what I'm [concerned with].

CHRIS DISSPAIN: That may actually be the answer. It is, I think we've agreed, a general ... It is an overarching thing. Don't wordsmith it now, Berry. Just sit tight.

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Mary or Steve, while we're talking through the next bit, could you find the actual clause in the main document that we can reference? And then I think we can solve the problem that way. I think that's probably right, Jay. It makes sense. But we'll come back to it once we can point to the right place.

Mary, what's the next bit?

MARY WONG:

The next bit is in General Principle #12, and that is something that we believe the small team has agreed on. So again, highlighting for the full EPDP Team that this clarifies a couple of things. First that an arbitrator the arbitration panel can find, in the appropriate case, that there has been an abuse of process.

And if that is so, then as part of the outcomes, as part of the arbitrator's order, he or they or she could include that there's a declaration of an abusive process or even reverse domain name hijacking where that has been found in that instant case. So that's been added to this version.

CHRIS DISSPAIN:

And I think we did agree that. So unless anyone else has an issue with it, that's fine.

MARY WONG:

Then we're moving on to the Specific Principles, and this is where I think the small team is still having some discussion. It's not so much on the number of arbitrators. The general principle is that

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the parties should try to agree to have one, for considerations that this team has talked about several times before. But what happens if there's no agreement on the single arbitrator? And then if we're looking at a three-person panel, who chooses that and how is that done? That is what the language that you see here on screen tries to suggest. And it's still up for discussion.

CHRIS DISSPAIN: Is there any reason at all why we can't just do the normal one which would be that I choose one, you choose one, and the arbitrator chooses one. Is there any problem with that?

MARY WONG: I believe that's what this language does. Let me just take another quick.

CHRIS DISSPAIN: Yes. I was asking the group. I mean, that seems to me to be ... If you can't agree ... I'm going to use Brian as an example. If Brian and I can't agree on a single arbitrator, then really the logical and sensible way forward is for Brian to choose one, me to choose one, and for the arbitration provider to choose one. That's what you'd normally expect to have happen. And frankly, if you go to court you have no choice of judge, so you live with what you get.

Brian, go ahead.

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BRIAN BECKHAM: Yeah, hi. I think it's maybe a slight variation on that, Chris, where, if you and I don't agree it's more, as you say, that we don't get a choice as to who the judge is and not so much that we get to impanel a roster of three judges.

CHRIS DISSPAIN: You're saying if we can't agree an arbitrators, it should still be a single arbitrator.

BRIAN BECKHAM: Correct, unless ... Of course, one of the parties can ask for a three-member tribunal, in which case we would have three. But in the absence of a request for three, then it would still be one. It would just be that we wouldn't agree.

CHRIS DISSPAIN: Oh, I see what I see what you mean. Sorry. So it's this, then. The parties agree on a single arbitrator. If the parties can't agree on a single arbitrator, the arbitration provider nominates an arbitrator unless one of the party says, "No. I want to go to three," in which case it's you, me, and them.

BRIAN BECKHAM: Correct.

CHRIS DISSPAIN: That seems to me to be fine. It still allows for the possibility of both sides being unable to agree but being prepared to save the cost

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by having a single arbitrator. That makes sense to me. That wording is going to need to be fiddled about with Mary, but have you got enough information to make that work, subject to what Jay has to say?

Jay, go ahead.

JAY CHAPMAN: Thanks, Chris. I just want to make it clear that potentially you could have both parties who would agree to three arbitrators.

CHRIS DISSPAIN: Sure, absolutely.

JAY CHAPMAN: So they should [be given the] option to be able to agree to whoever the third is as well. Maybe they can't agree on two, but they could agree ... They choose the one that they prefer, but then they might agree on a third.

CHRIS DISSPAIN: Oh, okay. Fine. So that would simply be ... Good point. So having gone through all the hoops that we just discussed, to save me from having to say them again. When you elect to go to three, you choose one each and the third one is either by agreement or at the choice of the arbitration panel. I think that's fine.

So, can I ask Mary and Steve and the team to work on that wording and get that sorted out so that it's clear?

MARY WONG:                   Yep, because I think, then, the only thing we need to add to the existing text here is what Jay just said which is to have the parties possibly agree on the third arbitrator. Got it.

CHRIS DISSPAIN:            Whatever you say. And it might be easier to just string it out line by line rather than trying to put it all into one sentence. But I'm sure you'll work it out.

MARY WONG:                   Got it. We'll do that.

CHRIS DISSPAIN:            Brilliant. What else do we have?

MARY WONG:                   I think the next one might be the last one. And this is a rewording of something that the small team has also been discussing in the sense of whether sanctions should be something that's permissible in the arbitration as an outcome.

CHRIS DISSPAIN:            I've got to say, I hate the use of the word "sanctions" at this point, but that may be just because of where we are in the world right now.

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MARY WONG: Yeah, understood.

CHRIS DISSPAIN: Carry on.

MARY WONG: I think we wanted to avoid the word “penalty” which probably is problematic for different reasons whereas sanctions, in the world arbitration, is more generic, I would say, in concept.

CHRIS DISSPAIN: Absolutely. No, I get it. That’s fine.

MARY WONG: And so, really, this is just to allow for that possibility in three instances where there’s been noncompliance with the rules where there has been a finding that one of the party has engaged in an abusive process or where there’s a finding that one of the parties has tried to drag out or add unnecessary cost to the process.

CHRIS DISSPAIN: Anyone got a problem with that? It seems to me to be reasonably fair. Justine, go ahead.

JUSTINE CHEW: Sorry, this is wordsmithing, I think it’s “sanctions against” rather than “sanctions for.”

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CHRIS DISSPAIN: Yeah, you're probably right.

MARY WONG: Thank you, Justine. There's a comment from Susan, Chris. I think it's in relation to this principle. I just wanted to check.

CHRIS DISSPAIN: Yeah. You mean rather than using the word "sanction," Susan, using "remedies to redress"?

SUSAN ANTHONY: Yes. That was in relation to this, yes. "Remedies to redress" was my proposed language and my poor typing.

CHRIS DISSPAIN: I'm fine with that, and I hope I haven't set the hairs running by my personal concern about the use the word "sanctions" which is only, really, just because of, as I said, where we are right now. But what I'd like us to use is the wording that is the easiest understood by the Implementation Review Team to be clear about what we mean. So maybe arbitration experts might want to comment on that.

And then, what do you think, Brian? Susan, I've got to no problem with "remedies to redress." [inaudible].

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SUSAN ANTHONY: I'd be interested in knowing what the typical language is, in arbitration, because I cannot recall a situation in arbitration where we ever had somebody that was acting outside the scope of proper behavior. So I never had the issue.

CHRIS DISSPAIN: Fair enough. Mary, go ahead.

MARY WONG: Yeah, and far, far, far from an arbitration expert, so this is just a comment, bearing in mind the discussions of the small team. I think Jeff is not with us today. And whether we look at "sanctions" or "remedies," there might be a small implication in the very rare case. I agree, Susan, that we might need to look at this that ...

If we're looking at remedies and redress, whether that is more in the nature of a compensatory award to the other party versus a sanction which may have some slight punitive implication. So I'm just raising that point.

CHRIS DISSPAIN: [Agreed]. I think we'll stick with "sanctions" on the basis that that's what the small team already discussions and I can't see the point in opening it up just because I said I was concerned.

Go ahead, Brian.

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**BRIAN BECKHAM:** Hi, everyone. Look, sanctions, I think that's kind of an understood term of art. But I'm just looking, for example, quickly ... I can put it in the chat, but this is in the sphere of interim measures. So it would be like injunctive relief or a bond or something.

But in the WIPO rules, there's a clause that talks about, "... the Tribunal may issue any provisional orders or take other interim measures it deems necessary ..." etc. So it's maybe a more wordy way of saying "sanctions," but no real strong feelings. I can put it in the chat for whatever it's worth.

**CHRIS DISSPAIN:** Let's leave it there for now. Did we find law thing?

**MARY WONG:** Chris, Steve and I were looking through that. And Steve, you may want to add. The reference that we had in mind for choice of law was, I think, in a very specific recommendation—I want to say is #5—which may not fully cover what this group is trying to do of the arbitral principles because that is a very specific process about who chooses the applicable law for the arbitration.

So our suggestion is to supplement that recommendation. Going by some of the comments in the chat, that we could simply add a sentence to the opening paragraph of this annex to the effect that "the EPDP Team acknowledges and understands that all of these principles are subject to the applicable law for that proceeding." And that should cover it.

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CHRIS DISSPAIN: Fine. I can't see why that would be a problem for anybody. That makes sense to me. So let's do that. Not now, please.

You'll make the changes that we've discussed today. That's including that sentence. Making the changes to the way that arbitrators are chosen and all of that stuff, and then get that into the document that gets out to everybody sooner rather than later. Right?

MARY WONG: Yes.

CHRIS DISSPAIN: Okay, fine. Well, I think that deals with that issue. And I think there are no other outstanding points on the arbitral guidelines that I'm aware of. So unless you've got anything else on that, Mary, we can mark that one is done, subject to people reading the final version once it's out.

MARY WONG: Confirming that that was it for the other two arbitral principles.

CHRIS DISSPAIN: Okie-dokie. Marvelous. Berry, what else do you want to cover?

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BERRY COBB: That's it with any specificity in the report. I guess the only other thing is if the group has any other outstanding items in the larger part of the report.

CHRIS DISSPAIN: Yeah, I'll get to that in a minute.

BERRY COBB: Nothing for this section, then. I think we're done.

CHRIS DISSPAIN: Can you go back to the agenda for me then, please?

BERRY COBB: Give me a moment.

CHRIS DISSPAIN: Okay. So the floor is open for anybody who wants to make any comments or any say anything at all before we move on to next steps and closing what will have hopefully been a relatively short meeting because we're effectively almost done.

Brian, go ahead.

BRIAN BECKHAM: Hi, everyone. I'm happy to reply in the list, but I had marked down five or six of what I believe are truly incidental things. Looking at my screen, for example, one word says "will" and I would change

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that to “would.” I think if there’s an appetite, we could probably whiz through those in a matter of minutes.

CHRIS DISSPAIN: I’d really rather not do wordsmithing on this call if possible, Brian.

BRIAN BECKHAM: It’s not wordsmithing, Chris.

CHRIS DISSPAIN: Okay.

BRIAN BECKHAM: That’s just one example that I happen to have on my screen.

CHRIS DISSPAIN: Okay. So, yeah. My apologies. I thought you started off by saying it was. So forgive me for misunderstanding you.

BRIAN BECKHAM: No, no. If I did, I apologize. What I mean is sort of, let’s say, just kind of technical points of clarification.

CHRIS DISSPAIN: Sure. Well, if you want to do that briefly, then I’m happy for that to happen. Go ahead.

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BRIAN BECKHAM: So I'm at line 35. This is just looking at the history. It says "pending a review of the EPDP charter by the GNSO Council." And I thought probably it's useful just to mention that that remains outstanding. Otherwise, it may open the question of how did the revised charter relate to the work we're doing.

CHRIS DISSPAIN: Okay, so just "which remains outstanding."

BRIAN BECKHAM: Right. There's also an extra space after the number 2 just in the line above.

CHRIS DISSPAIN: What else?

BRIAN BECKHAM: On line 47. I guess it's moved a little bit now. Right after the number 5, it says "will." But, of course, it should say "would." That one, admittedly, is wordsmithing, but I think it's just a correction.

And then one which I think is actually a useful clarification for the report is at 94. It's the words "eligibility requirements." And there's another place where this comes up later. It's now 98. I think the word "guidance" may work a little bit better.

And the reason I suggest that is that later down in the report, there's a reference to an IGO meeting that requirement. Sorry, down below it says "fulfill that requirement." And I think it should

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say “address that requirement” because just because we’ve articulated criteria doesn’t mean that someone will necessarily meet them. We’re just proposing what the criteria should be.

CHRIS DISSPAIN: I’m confused, but I’m confused as to the distinction.

BRIAN BECKHAM: If I raise it this way. If you look at ... On my screen it’s 226. It may shift a little bit. It says “may fulfill.” Yeah. 230, “may fulfill.”

“ ... makes it clear how such complaints may fulfill ...” And I think, probably, it should say “may address that” only to avoid the potential misunderstanding that meeting certain criteria would ... Because we’re talking about basically showing of unregistered rights. And so just to make it less black and white, if it should say “address” versus “fulfill.”

CHRIS DISSPAIN: So I can see how that makes sense. It’s a standing requirement and you can address a standing requirement. I get that. I’m not sure how that ... I’m fine with that. I’m not sure how that [inaudible] back to what you were talking about earlier on. That change makes sense to me, fulfill/address. I get it because it is addressing [inaudible].

BRIAN BECKHAM: I take your point [inaudible].

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CHRIS DISSPAIN: It's a fluffy ... It's a requirement that says you can address it in various different ways, therefore it's hard to fulfill. Much easier to address. I get that.

BRIAN BECKHAM: Yeah, I take your point. I take that back. So then that takes me to, I think, just a missing word at line 130. It might have shifted down. It says "IGOs may not own hold registered marks." I think it should say "may not hold or own."

CHRIS DISSPAIN: Yes, that's correct. It should say that. Yeah, okay.

BRIAN BECKHAM: And then there's one. This is maybe, I think, something just to kind of do a little bit of a check with the group. Down below, at least in my document, there are some comments from Mary. The concept is that when they registrant would file a claim for arbitration, then we've removed, in the current draft, the requirement to copy the IGO Complainant. And we've left that to the registrar—and it appears in, I think, maybe two or three places—but left that to the registrar or provider to relay that to the complainant.

And it's just the question whether we want to leave that in the hands of the registrar and provider which, actually, from the provider's side the case would have been closed. So it's not clear to me they should have a continuing role. Nor is it clear that the

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registrar would want to take on that obligation. So the idea was just that we would reintroduce in a few places the idea that the registrant would copy the IGO Complainant on its notice of arbitration.

CHRIS DISSPAIN: Okay. Just to make sure I understand, the registrant does that?

BRIAN BECKHAM: Right. So if they lose the UDRP or URS case and they wish to file an arbitral appeal, then they would file that with the arbitration institution. And then the way it's frame now, the registrar or the UDRP provider or URS provider would then somehow, I guess, be expected to relay that notification to the IGO. And it seems to me that those might not be the parties that should be in charge of relaying that—

CHRIS DISSPAIN: I think that makes sense to me. Mary, go ahead.

MARY WONG: Thanks. And thanks for picking up on this point, Brian, because I had put that in the document for the group to consider. And it's more of a question of practicality rather than obligation from the staff perspective in that who would be best place to send a speedy notification to the complainant.

It may be that there are situations where the registrant does have the contact information for the complainant. But there may also be

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instances where the registrant does not. And therefore, the registrar or the provider, depending on whether it's a UDRP or the URS, might be in a better position to provide that notice. That's what we wanted to raise for the Group.

CHRIS DISSPAIN: So let's just stop for a second and work out what it is we're actually talking about. We're talking about a situation where the UDRP decision has been made. Yes?

BRIAN BECKHAM: Correct.

MARY WONG: Yes.

CHRIS DISSPAIN: Who is notified that that decision has been made?

MARY WONG: The registrar in that case, I believe.

CHRIS DISSPAIN: And then what is the registrar obliged to do?

BRIAN BECKHAM: Well, it's the provider who notifies the parties of the decision.

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CHRIS DISSPAIN: Right.

BRIAN BECKHAM: And it's the registrar who would either implement or not.

MARY WONG: Implement, yes.

CHRIS DISSPAIN: Okay. So forget implementation. The notification ... So, Brian, if it was a WIPO, WIPO sends a note to the two parties to say, "This is our decision." Right?

BRIAN BECKHAM: Right.

CHRIS DISSPAIN: Okay. So that's what's happened. I've got the decision and I decide I want to go to arbitration. There's a process I need to go through in order to do that. Right? And the question we're talking about is how and when do you, Brian—if you're the other side—get notified of my decision to do that? Is that it?

BRIAN BECKHAM: Yeah. So I guess it would be ... Sometimes we are copied when the registrant would write to the registrar to hold the

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implementation. Sometimes we're not. And so it was just, as Mary said, on a practical level, strictly speaking there's no obligation. So if a registrant loses a UDRP case and they take it to court, they're under no obligation to copy us. Maybe as a matter of just sort of a Reply All, we may end up being copied on those. But that's not—

CHRIS DISSPAIN: But they're under an obligation to tell the other side. Right?

BRIAN BECKHAM: Well, they would ... Yes, they would need to inform the other side by virtue of filing the case before the court. And then they would need to inform the registrar so that the registrar pauses the implementation.

CHRIS DISSPAIN: Right. So in this case, then, the situation would be that WIPO may not be informed and there's not necessarily any reason why they should be. If I'm the loser and I want to go to arbitration and, let's say, Mary's the winning party. I make my application to go to arbitration and I should be ... The question is, who would be obliged to notify Mary? It could be me. It could be the registrar. It could be the arbitration provider. Those are the three alternatives. Right?

BRIAN BECKHAM: Right.

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CHRIS DISSPAIN:                    Okay. So the safest is actually the arbitration provider. Is it not?

BRIAN BECKHAM:                    Yeah, that makes sense. Yeah.

CHRIS DISSPAIN:                    And it's easy enough to write that into the contract with the arbitration provider, that immediately upon receipt of an application, they will notify the other side. That would be an easy thing to put in the provisions, I would have thought.

BRIAN BECKHAM:                    Agreed.

CHRIS DISSPAIN:                    Mary's, does makes sense to you?

MARY WONG:                        That is fine. I'm glad that we're discussing this because I don't think we've thought about the various ways that this can be handled.

If that is the case, Chris, then just to draw you and the group's attention to (vi) below. We had written in, as part of the recommendation, first of all an obligations for the registrant to inform the registrar; and then secondly, an obligation for the registrar to then notify the IGO complainant.

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As you say, the arbitral institution would do it anyway. And if we simply made that clear, then we would probably want to delete this (vi) or rewrite it to say “arbitral institution.”

CHRIS DISSPAIN: Well, I don't think it's a case of saying the arbitral institution would do it anyway. I think it needs to be clear that that is their obligation to do so and that would be a part of the agreement under which they provide their services. But I think we should write it into the document. If I could say, I do think, however, that the registrant should still notify the registrar.

MARY WONG: Right. So that's what I was going to clarify. What we'll do is rewrite that second sentence and say that it's the arbitral institution who shall notify the complainant.

Thank you. And I apologize to David for stepping over his hand.

CHRIS DISSPAIN: No, that's not a problem. It's good to deal with one point at a time. David, your hand is up. Go ahead.

DAVID SATOLA: Thank you. A procedural question. I don't know if it's for you, Chris, or maybe for Mary or Berry. It has to do with the consensus statement and the discussion we had earlier about minority positions. So I just wanted to firstly understand the timing of each

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of those and then the implications from a procedural context of that.

CHRIS DISSPAIN: Sure.

DAVID SATOLA: Did I understand correctly that you wanted to get out the consensus statements next Monday?

CHRIS DISSPAIN: Berry, do you want to ... Perhaps if Berry takes us through, David. And then you can ask questions after he explains it. Does that make sense?

DAVID SATOLA: Yeah.

CHRIS DISSPAIN: Berry, go ahead. Take us through the process.

BERRY COBB: Okay. So essentially, this all the next steps. Later on today or by early tomorrow morning, we'll send out the next draft of this report based on today's discussions. And Mary will hold the pen for these final edits that are outstanding.

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We will initiate round two of non-substantive edits. It will follow the same process. There will be a Google Doc to post the line number and suggested edit. And if you don't have access to the Google Document, send it to the full list so that everybody can see what non-substantive edits are being made.

In parallel, noting that we haven't seen any issues with the chair's initial designation, but I'll send out the table once more in a separate e-mail. But by Friday ... Let me back up.

The non-substantive edits will be due by Thursday of this week at 23:59. That will give time for staff to make updates to send the final version of the draft out by this Friday for you to review. In parallel, in a separate e-mail but alongside the final draft, the chair will send out his final consensus designations which, based on everything we see, will be the same that he did in his initial. And then any minority statements that wish to be appended to the report are then do by 4 April.

Now technically, it doesn't prevent a minority statement being provided, but the current designations are listed as Full Consensus, which means every represented group here agrees with the proposed recommendation.

So I don't recall in the past where there was a necessity for a minority statement. But it doesn't preclude any particular group from submitting one which would be due by the 4<sup>th</sup> of April. And that will allow a little bit of time for staff to append it to the report.

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CHRIS DISSPAIN: Thank you, Berry. That's correct. And just to acknowledge Paul's note in the chat because he actually sent me an e-mail about this. He's still gathering his input, and I acknowledge that. And I imagine others are, too. So it is open to people to push back, to file minority statements.

And it's equally open to people, if you want don't want to question the consensus designations and still want to put in a statement because you think there are some minor points that you want to make, then that's fine, too.

But at the end of the day, my understanding is that we sign off on the wording of the document itself on the call next Monday. And then what's left is whether or not there are minority statements to be filed, which can be filed by following Monday, if I understand correctly. Did I get that right, Berry?

BERRY COBB: Yes, sir.

CHRIS DISSPAIN: David, does that answer your question?

DAVID SATOLA: In part. Thank you, Chris. And thank you, Berry. So maybe there's a place that Berry or Mary or someone can point me to, to understand what a minority statement would be or what sort of criteria are necessary to frame it. We noted in our initial IGO response that Brian sent last week that we supported Chris's—the

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chair's—consensus designations. We'd noted in that communication that our position was based on a series of compromises that were made. I suspect that that is not a minority statement.

CHRIS DISSPAIN: No, that's not a minority statement.

DAVID SATOLA: Okay, all right. And I don't want to take up the time of the group, but is a minority statement just an objection to the language that's in the report?

CHRIS DISSPAIN: "We don't agree with Recommendation 5" or ... I'm making this up. I don't remember what recommendation, but 5 is off the top of my head. But we don't agree. It's a "we don't agree" statement. It can be that we don't agree with a particular part of it. It doesn't have to necessarily be the whole thing. "We don't agree with line 77 where it says everything should be pink. We think it should be green."

DAVID SATOLA: So there can still be a consensus on the issue amongst the rest of the people in the consensus. But if there's someone who's not in the consensus [inaudible] minority [inaudible].

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CHRIS DISSPAIN: Correct. And that's why my designation would go from full consensus to consensus.

DAVID SATOLA: I see.

CHRIS DISSPAIN: Or to agreement but substantial disagreement, or whatever other alternatives there may be.

DAVID SATOLA: Final question, sorry. If minority statements are submitted, is there are review period for that or do they get to be rebutted?

CHRIS DISSPAIN: I think they stand alone, but Berry can answer that question better than I can.

BERRY COBB: They do stand alone. And Mary has her hand raised to maybe point some extra color on this.

CHRIS DISSPAIN: Mary.

MARY WONG: Yeah. So to that question, they are what they are, basically, because a group or a participant is disagreeing with something

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that the rest of the group has agreed on. And so to the earlier point—Chris and David and everyone—as Chris has said, if there is a minority statement, it basically means that we don't have full consensus. But we can, and in many cases in the past, there would still have been consensus because most of the group agrees.

The third thing I wanted to raise here is that we have also seen instances where it was a consensus designation, not full, because there was a minority statement. But the minority statement essentially agreed with, say, the intent of the recommendation or even what it does. But it may have concerns about the way it's being done or concerns about how certain parts of the recommendation were addressed.

So there is that little bit of room there. But the essential thing, as Chris is saying, is that as a minority statement it would result in consensus, at best. Not full consensus.

CHRIS DISSPAIN: David, got it?

DAVID SATOLA: Yep. Thank you very much, all. Thank you.

CHRIS DISSPAIN: Thank you very much, David. Berry, go ahead.

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BERRY COBB: If I may just add on to that, though. So our meeting next Monday the 28th is the final deadline. As I noted, this Friday the chair will send out his final consensus-level designations. While the minority statement is not due until the 4<sup>th</sup> of April, we do ask that if you do intend to file any kind of a minority statement, please let us know by Thursday 23:59 UTC so that the consensus designation can be adjusted if necessary.

CHRIS DISSPAIN: And you'll put all that in an e-mail to go out to the list later on today or first thing in the morning.

BERRY COBB: Yes.

CHRIS DISSPAIN: Good. Just to add a little bit of icing onto the cake, it is actually possible to be part of the consensus but still put in a minority statement which makes things even more complicated sometimes. But anyway, I think, hopefully everybody is now clear.

Yrjö, go ahead.

YRJÖ LÄNSIPURO: Thank you, Chris. As far as the At-Large/ALAC is concerned, Justine and myself are going to present this whole package once again to the—what is it called—the Consolidated Policy Working Group. And we certainly expect that there will be full consensus. But anyway, we'll keep you posted. Thank you.

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CHRIS DISSPAIN: Thank you, Yrjö. That's fantastic.

All right. So, I think all of us have got a bit of work to do on the various different aspects of this. But we have nonetheless coalesced around a way forward.

Berry, is there anything we have not covered that you want us to cover?

BERRY COBB: There is not. So you'll see e-mails this afternoon and no later than tomorrow morning. All input by Thursday 23:59 UTC. And we have a meeting next Monday 28th March. Same bat channel, same bat time.

CHRIS DISSPAIN: Thank you. I just want everyone to know two things. One, I'm incredibly appreciative for everyone's cooperation and the way that we've worked together.

And the second thing which is much more important than that is that next week, when we have our call—which is actually at 15:00 UTC, but we've gone summertime so it will be 4:00 for me—I will be on the first day of my holiday. So I want you all to be really nice and jolly and happy on the call so that we start my holiday off with a smile. And I shall certainly be doing that.

Thank you all very much, indeed. And we can close the call now. And see you all next week.

BERRY COBB: Thank you, all.

TERRI AGNEW: Thank you, everyone. I will stop the recordings and disconnect all remaining lines. Stay well.

**[END OF TRANSCRIPTION]**