

---

## ICANN Transcription

### EPDP Specific Curative Rights Protections IGOs

**Monday, 28 March 2022 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/PIH3Cg>

The recordings and transcriptions of the calls are posted on the GNSO Master Calendar page <http://>

TERRI AGNEW:

Good morning, good afternoon, good evening and welcome to the EPDP Specific Curative Rights Protections for IGOs call taking place on Monday the 28th of March 2022 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 telephone, could you please identify yourself now?

Hearing no one, and we have listed apologies from John McElwaine and Jeff Neuman. And joining us a little later in the call will be Paul McGrady.

All members and alternates will be promoted to panelists. When using chat, please change the selection to everyone in order for all to see your chat.

---

*Note: The following is the output resulting from transcribing an audio file into a word/text document. Although the transcription is largely accurate, in some cases may be incomplete or inaccurate due to inaudible passages and grammatical corrections. It is posted as an aid to the original audio file, but should not be treated as an authoritative record.*

---

Attendees will have view only to the chat. Alternatives not requesting a number are required to rename their lines by adding three Z's the beginning of your name, and at the end in parentheses the word alternate, which means you're automatically pushed to the end of the queue. As a reminder, the alternate assignment form must be formalized by the way that Google link. The link is available in all meeting invites.

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 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 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:

Hello, welcome everybody to call number 45. I am on an iPad today, not a computer so I don't have as much functionality as I normally have. So Berry has kindly agreed to run the queue. I can see the chat. And I'll do my best to observe what's going on in there. But I can't see who is actually in the call. I've got a few boxes open in front of me but not many. So I don't know who's

---

here and who's not. No doubt people will be joining as we go along.

So our job today is to sign this off, effectively, subject to any minority reports that may be submitted, for which I believe the deadline is next Monday. But Berry will take us through all of that. So Berry, do you want to turn to—Am I freezing or something? What's the problem?

BERRY COBB: On occasion, you do come in just a little bit choppy. Maybe just reserve bandwidth for voice. Thank you.

CHRIS DISSPAIN: I can do that. Nobody wants to look at me anyway. Hopefully that's better.

BERRY COBB: I'm sharing the document only so that people can see it better.

CHRIS DISSPAIN: So Berry, over to you and to Mary to take us through whatever it is you want to take us through on the document and any changes.

BERRY COBB: Great. Thank you, Chris. So when staff sent out the latest version of the draft final report, we only received input from Jay. He made

---

a few non-substantive suggested edits. Hopefully, the group has had a chance to review through those.

Primarily, we'll focus more of our attention on the suggested text that was provided by Mary with respect to Recommendation 5. And I believe there was just one other edit suggested or questions suggested by Jay regarding the principles for arbitral rules that we'll review through.

So we're not going to go through any of the suggested edits in detail. We had talked about a few of these in prior calls that Jay had suggested. But I just thought just to highlight for the purposes of the record and as kind of part of our agenda on item 3B about the chair's final consensus designations.

Not receiving or hearing any input from the group that they intend to file a minority statement, the full consensus designations remain or continue to stand. And Chris can correct me if I'm wrong in that statement.

So there were no edits with respect to Recommendation 1, that has been stable for a while, which is our definition of the IGO complainant. There was one suggested edit here from Jay about the prior text with respect to making it clear how such complainants may fulfill that standing. He suggested to change the term to address that standing requirement. The rationale is that IGOs must show rights functionally equivalent to trademark, otherwise nothing protectable exists.

Moving on to Recommendation 2, there were no edits there, again, labeled as full consensus. Moving on to recommendation 3,

---

there was one edit provided from Mary from based on the last call we didn't see receive any input about that, but was in essence just to remove the term registrar in terms of how the parties would be notified.

CHRIS DISSPAIN: That's what we agreed on the last call, I think.

BERRY COBB: Yes, correct. Also labeled full consensus. Same for Recommendation 4 which is just for the URS with its slight variation from the UDRP. Full consensus. And then finally on Recommendation 5. So there was an exchange. This originally was identified from the Registrar Stakeholder Group about how our recommendation may affect privacy proxy usage. And it's with respect to applicable law, Mary suggested on the email list the text that you see in redline, and I believe it was the ALAC that also had suggested that there be additional detail provided in a footnote. We didn't see any feedback or response based on that suggested text from Mary. Are there any questions or concerns with how it is placed?

CHRIS DISSPAIN: I think it's useful, if Mary doesn't mind, just to take us through it so that everyone has had it said to them as well as just reading it, if that's okay. Mary, since you drafted it, perhaps you could take us through it, please.

---

MARY WONG:

Thank you, Chris. Thanks, Berry. And I can try. And I do note that the folks that weighed in on this on the list are present on the call, so hopefully, if they do have additional comments, they can weigh in too.

So essentially, the concern that was raised by the Registrar Stakeholder Group is that when a domain name is registered through either privacy or proxy service, certain details are masked. The distinction as I think we went into in some detail on the list is that when a privacy service is used, you can still see who the registrant is, but the contact details are obscured in the sense that it is not that registrant's contact details, it is usually those provided by that privacy service.

Where a proxy service registration is concerned, you do not see the contact details, but you also do not see the quote unquote actual registrant behind the domain, because the registrant is shown as the proxy service instead.

So since primarily the Registrar Stakeholder Group concern is well, if you don't know who the registrant is, particularly if you're looking at a proxy service, how are you going to know what law to choose in a case where there is no agreement on the applicable law?

So focusing in on the identity, or revealing the identity of the again, quote, unquote, actual registrant, we initially suggested that we have language similar to this on the proxy service, simply because that is the one where the actual registrant, you can't see who's behind the domain.

---

But following some discussion on the list, we thought that even with a privacy service, even though you can tell who the actual registrant is, because you might still need to make a request to get the contact details to find out where the registrant is located, that perhaps, you know, for the sake of, I guess, fullness, we should not just focus in on proxy service for this language, but we should just say privacy or proxy service, along with a footnote that clarifies that the team does understand that these two services are different in certain ways.

But I think all in all, Chris and everybody, we do think that this language does do a couple of things. One, it tracks with the process that is currently permitted under the UDRP, for instance, to request the details of the registrant so that this is not something new. Secondly, if it does sort of go, if it does overstate the case, it's better than understating it simply by limiting it to a proxy service so we don't see that it creates confusion. We think that it might perhaps provide more comprehensiveness by dealing both with a privacy or proxy service to A, identify the registrant in the case of a proxy service, and B, get the details for the registrant's location for choice of law purposes. So I hope that's helpful.

CHRIS DISSPAIN:

Thanks, Mary. I don't see any comments or questions. You've explained it, it makes sense. It makes sense to me. I don't think it's actually material anyway. So I think we're fine with that. Do we have anything else that we need to look at in this document that you want to draw our attention to?

---

BERRY COBB: Yes, Chris, and no hands in the queue with respect to Recommendation 5, full consensus. Just to highlight also, there was a suggestion from Jay to update this chart. Essentially, he wanted to add an option in here that the examiner can find in favor of the respondent during the UDRP or URS, and that the domain would be unlocked per normal procedures.

CHRIS DISSPAIN: Trying to cover everything in the flowchart. It makes sense to put that in.

BERRY COBB: Right. And then moving on, which gets into our principles. One final suggested edit from Jay. Mary had suggested text based on a previous call about the introductory paragraph with respect to applicable law governing an arbitration proceeding. The question that Jay had submitted was, when might these principles of arbitration not be subject to the applicable governing law?

The prior text used to say principles may be subject to and in talking with the leadership team, the suggested edit is that the principles are subject to the applicable law governing a particular arbitration process.

And that's it for the edits. The final thing I'll say before turning it back to Chris,. I'll note that the IPC had stated on the last call that Paul was consulting with his group. He's not on the call yet given the conflict. So I see Brian's hand. Please go ahead, Brian.

---

**BRIAN BECKHAM:** Yeah, hi, everyone. Thanks Berry. Just with respect to actually what's on the screen there with the maybe versus subject to, I don't know that it's necessary to go round and round on this. I just was recalling if only for my own benefit that we had discussed in the small team things like discovery principles and how that may vary from jurisdiction to jurisdiction. And of course, the one overarching principle that the parties could agree on, things like applicable law, discovery, remit, things like that.

So I think that may be the answer to the question, the way it was phrased, when might these principles not be subject to applicable governing law? It wouldn't be so much that they wouldn't be applicable. But they might be different rules. And I think that discovery is a good one. Chris mentioned the difference between discovery, for example, in the UK versus the United States.

So I think that maybe actually reflects our discussions better. But if the preference is just for purposes of moving on here, I suppose what's on the screen works there. Of course, this is something that's going to be turned over to an IRT. But just to recall, I think the context there, thanks.

**CHRIS DISSPAIN:** Sorry, Brian, are you making a specific suggestion to change something? I apologize if I missed it.

**BRIAN BECKHAM:** Yeah, I think the prior language actually reflected our conversations and understandings, but I don't want to hold up [inaudible].

---

CHRIS DISSPAIN: You mean maybe instead of are?

BRIAN BECKHAM: Exactly, yeah.

CHRIS DISSPAIN: Well, that change is mine, and I'm happy to go back to maybe. But how could it be a circumstance where they're not?

BRIAN BECKHAM: For example, if the parties would agree that the substantive law would be the ACPA or the UDRP.

CHRIS DISSPAIN: That would then become the applicable law governing the arbitration proceedings.

BRIAN BECKHAM: Well, hang on, but the parties could agree that the substantive law would be ACPA or UDRP principles, but procedural law could be governed by UK principles, for example.

CHRIS DISSPAIN: Oh, I see. You're drawing a distinction between two specific—okay. I understand.

---

BRIAN BECKHAM: Again, I don't want to hold us up here. I just was kind of [inaudible] memory.

CHRIS DISSPAIN: No, I get it. I appreciate the point. And it's guidance. You're right. It is possible for the bodies to agree to split it, I suppose. Does anybody have a problem with going back to maybe? If you want the certainty of are, I don't think anyone's going to mind. But if no one has a problem going back to maybe, then—Jay, go ahead.

JAY CHAPMAN: Being the person who suggested this, I guess they could agree to procedural as well as substantive. So there could be agreement to both. They're still going to be subject to some. Subject to what? The applicable law. That's the point. I would recommend that we keep this.

CHRIS DISSPAIN: As "are." Look, as I said, it's guidance. And Brian's very kindly said he doesn't want to make a big thing out of it. So let's leave it as it is for now and move on. Sorry, Brian. I can see you put something in the chat. I just need to try and get access to the chat.

BRIAN BECKHAM: No, I apologies. I know you're on your iPad. It was just to say that I would presume that the IRT would get some sort of a briefing on—and that may include [inaudible].

---

CHRIS DISSPAIN: Absolutely. Couldn't agree more. All right. Okay. I'm sorry. So back to finalizing it, then. Is there any anything else that you wanted to cover, Berry?

BERRY COBB: That's it for the changes proposed from last meeting for the report.

CHRIS DISSPAIN: Okay, and is there anything else you want us to talk about?

BERRY COBB: I guess we talk about next steps. So after the call today—

CHRIS DISSPAIN: Just before we do, Berry, both Brian and Jay raised a very good point. Or rather, Brian raised it and Jay is agreeing with him about benefit of an explanation. And that applies, I think, to all sorts of different things, not just that. Is there a system that ensures that if necessary, we can provide inputs to the IRT? How does that work?

BERRY COBB: As I've noted a few times throughout our deliberations, the expertise required to implement this is going to require a very small segment of the community, likely many of the people that are already participating here on the policy development.

---

That said, if most of the members here are not part of the IRT, there is a mechanism in terms of if not participating on the IRT, when they draft together what the consensus policy language will look like, it does go through public comment as a mechanism to ensure that it's—

CHRIS DISSPAIN:

Yeah, that's fine. That's the normal stuff. Sorry to interrupt you. That's the normal stuff. Agreed. Justine's comment noted—I was going to say that actually, we probably might want to put something in about our view that an implementation review team needs have a sufficient level of experience of the detail in order to be able to successfully implement this should, of course, the recommendations be accepted. Mary, go ahead.

MARY WONG:

Thanks, Chris. And thanks, Justine, for the suggestion. Obviously, it could be both, that you could have a footnote in here as well as hopefully, we will have members from this group on the IRT. I know Berry's gone through this before. But the default presumption is that there will be an IRT. And the encouragement is that the IRT should consist of people familiar with this PDP and hence this issue. So again, we hope that members of this group will consider joining the IRT or at least have representatives join it, because that's the best—

CHRIS DISSPAIN:

I'd like to go further than that. I'd like to say something in the document.

MARY WONG: So I did raise my hand for that too, Chris. And I will say that I'm happy to draft something, but not being an expert on arbitration, even though I understand that distinction between substantive and procedural—

CHRIS DISSPAIN: No, sorry, not a footnote. I'm not worried about a footnote. I think that precisely because we're not experts, we're going to tie ourselves in knots if we try and put in a footnote. So I recognize the suggestion, but I don't think it's—it would require way too much detail for it to be incapable of misinterpretation. So I don't want to do that.

What I do want to do is to say somewhere in the report, that the group feels that it's important that the people who are on the IRT have—at least some of the people who've been on the IRT are involved in this, because of the level of detail and the way that the discussions panned out. That's what I'm talking about. Can we do that?

MARY WONG: Oh, I understand much better now, Chris, yes. I feel more comfortable personally with that, unless others have more substantive—

---

CHRIS DISSPAIN: So you could draft something simple that goes into the document at an appropriate point that just says we'd like to make sure that the implementation review team has at least not insignificant representation from the people involved in putting this together, given the amount of detail and the depth of understanding that was being required to come to these compromises. Is that something you can draft?

MARY WONG: Yes. And I believe it should also just be one sentence. We can actually put it in section two where we have the recommendations as part of the general text.

CHRIS DISSPAIN: Put it wherever you think is appropriate, and send the sentence out to everybody just so they've got it. Okay?

MARY WONG: Got it. Thanks, Chris.

CHRIS DISSPAIN: All right. Unless anyone has an issue with any of that, then I think that kind of solves that problem. And thank you, Brian. Berry, sorry, you were about to take us through some other stuff. Go ahead, please.

---

BERRY COBB:

Thank you, Chris. So the only thing left from my perspective is next steps. So after today's call, staff will go through and accept all of the changes. There is one section that hasn't been updated, which is really just stats and attendance with respect to the group, which we couldn't complete until all the calls were concluded. So this section will be updated in the next—probably no later than Wednesday. Staff will send out the final final report that will be sent to the GNSO Council.

We have until the 4th of April. As I noted, there was no indications of minority statements being attached to this. So that's no longer applicable. John McElwaine, that is our liaison from the GNSO Council, he'll actually be the one to send the final report by the 4th of April.

In parallel, staff will be putting together a draft resolution statement to accompany the final report. I'll note that given the nature of this topic, it's not anticipated that the Council will vote on these consensus recommendations at its meeting in April, and to allow sufficient time for them to be considered by the members of the Council and their respective stakeholder groups and constituencies. So likely it'd be May before the Council fully considers the consensus recommendations. And that would be pretty much it. No more calls after today. I see Jay's hand raised. Please go ahead, Jay.

JAY CHAPMAN:

Thanks, Berry. Just a general question. So will the final report be put out for public comment prior to consideration by the GNSO? Thanks.

**BERRY COBB:** No, sir. We did our public comment as part of the initial report and getting to the final report. The Council will consider the final report and assuming that they do adopt the consensus recommendations, the report is then sent to the ICANN Board as part of that process. There is a public comment to inform the Board as they deliberate and consider the GNSO's consensus recommendations. So there is a there is a public comment before Board consideration, but not before Council consideration.

**CHRIS DISSPAIN:** Okay, thank you very much, indeed, Berry. Any last comments on the document? Okay. Well, then it seems that we have reached the point—Mary, your hand is up. Go ahead.

**MARY WONG:** Yeah, Chris, I just wanted to draw your attention to a follow-up question from Jay in the chat about requesting a public comment on the final report. As I said earlier in the chat—you probably couldn't see it—this is not a requirement. A working group can consider it. We have had working groups that have done that. I think most notably and recently, it's the SubPro group. My understanding—and Steve can correct me—is that that's for a draft final report. At this stage, we are past the formal consensus calls. So it my sense is that it may be too late. But I did want to note that Jay has raised the question.

---

CHRIS DISSPAIN:

I appreciate the question. I'm not gained to having got to this stage and everyone having had an opportunity to look at this every which way, I don't think sending it out for public comment again at this point is of any benefit, bearing in mind that it is in fact going to go—assuming that the recommendations are accepted, and let's assume that for the moment, it will go out as a report for public comment again.

And I think we've reached a point where we've done our consensus call and I'm not really gained to rip it all open again at this late stage. So thank you, Mary, and thanks for the question, Jay. Appreciate the question.

Right. So to wrap up then, I want to say a few things. I really want to thank everybody who's made—not everyone's on this call, but everybody who's been involved has made an immense effort to get to this point. And I'm delighted that we have been able to do that.

I know this is contentious and difficult. And I know that this issue has been a part of my life since 2012, which is far too long. But I just want to say thank you to everybody for their willingness to compromise, the willingness to actually work within the confines of what we've been asked to do, to come up with what I consider to be a fair and reasonable way forwards.

There are going to be people who don't like it. And I imagine that we could argue that most of the people on this working group are in a state of equal unhappiness, for different reasons.

---

But we're there now and I just want to say really a big thank you to everybody for being with so willing to carry on working to knock this out to work it out and to get to this point. So thank you for me. And I know that that thank you is echoed from the staff as well.

And at a time when in certain areas, the multistakeholder model of doing this sort of stuff is under threat and under attack, not always from the, if I may put it this way, the quote usual suspects, unquote, but sometimes from areas of government that are at least supposedly supporters of this model, it is marvelous to be able to get to a point where we can say, well, what happens next is not up to us anymore, but we've done our job and the multistakeholder model has reached a conclusion. So thank you all very much.

I don't want to get into a round of—thank you all for the comments in the chat. I will throw the floor open for any last comments before we close. Do not feel obliged to say anything, [inaudible] if you don't.

All right, thank you everybody. That is a fantastic job. Berry, Mary, let me know if you need anything between now and when it goes off on the 4th. Terri, you can turn off the recording. The meeting on the 4th of April is canceled. Thank you very much everybody. Please take care of yourselves.

**[END OF TRANSCRIPTION]**