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## ICANN Transcription

### EPDP Specific Curative Rights Protections IGOs

**Monday, 08 November 2021 at 15:00 UTC**

Note: Although the transcription is largely accurate, in some cases it is incomplete or inaccurate due to inaudible passages or transcription errors. It is posted as an aid to understanding the proceedings at the meeting, but should not be treated as an authoritative record. Attendance and recordings of the call are posted on agenda wiki page: <https://community.icann.org/x/qqOHcG>

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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 8th of November 2021 at 15:00 UTC.

In the interest of time, there'll be no roll call. Attendance will be taken by the Zoom room. If you're only on the telephone, could you please identify yourself now? Hearing no one, we have no listed apologies for today's meeting.

All members and alternates will be promoted to panelists. When using chat, please change the selection from host and panelist to everyone. Attendees will be able to view chat only. Alternates not replacing a member are required to rename their line by adding three Zs to the beginning of their name and add in parentheses

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the word alternate, which means they are automatically pushed to the end of the participant list.

To rename in Zoom, hover over your name and click Rename. Alternates are not allowed to engage in the chat apart from private chats or use any of the other Zoom Room functionalities such as raising hands or agreeing and disagreeing. As a reminder, the alternate assignment must be formalized by way of a 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 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 the ICANN multistakeholder process are to comply with the Expected Standards of Behavior. Thank you. Over to our chair, Chris Disspain. Please begin.

CHRIS DISSPAIN:

Thank you, Terri. Good morning, good afternoon, good evening, everybody. Welcome to the second of our let's look at public comments calls. I get to hand over the reins to Berry to run most of the rest of the meeting, so I don't have anything to say much other than let's get into it. And obviously, as we go through, hands up if people have comments or want to speak. Berry, over to you.

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BERRY COBB:

Thank you, Chris. Before we get started, I just wanted to walk the group—kind of an overview from our last call so that you better understand kind of the process and the cadence for how we're reviewing through the comments and posting revisions of the PCRTs onto the Wiki.

So if you did have a chance to take a look, you'll recall from last week we basically made it through top to bottom of the recommendation 1 PCRT. Staff had since added in responses on the last column—and we'll go over that in a second—as well as what is being done and what was done. We'll probably go through a couple more revisions on the PCRT as we complete the work around recommendation 1. But the main reason I wanted to show you a Wiki page here is if at any time you're in doubt about what is the latest document we're going to be working with, it's always going to be this second column that is the most recent version posted out for the group to review, and as we archive off older versions, they'll continue to be populated in this last column.

So with that in mind, just kind of taking a look at the ... I need to find the right one here. So just a quick overview for recommendation 1 from last week. As we noted, we're not going to be doing on the fly typing in terms of formulating EPDP responses and actions taken, but basically, as we noted that if a commenter essentially supported the recommendation without any additional information to be considered, those kinds of things, there's really nothing for the group to do so we just basically label that we've considered the comment and no action taken.

Where we get down into a little bit of a change, you'll recall we talked through the Digimedia comment here, the generic response

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is we acknowledge the concern regarding the previous working group's recommendation that is in connection to 6ter. This in essence is kicking off side work that Chris asked us to do where we're basically extracting the latest Recommendation 1 text and will be sending that over to the small team to consider the proposed changes—and I'll get to that in a little bit. But what you'll notice here though is I'm still marking this as not completed. Once the small team for recommendation 1 kind of creates its next version, I'll be coming into the PCRT here and then completing what was actually done in response to the comment and then marking it completed.

The same goes for the other divergent conversation that we had, especially taking note of the term “identifier” so it's practically a replica of the previous comment, and that group will be working further on the Recommendation 1 text.

CHRIS DISSPAIN:

Sorry, Berry, just to be clear in case there's any misunderstanding, it's entirely fine for the small team once they start to look at this to come back and say, having considered it, they don't think that there are any changes that need to be made. It's not incumbent upon them to redraft it if they don't think it's necessary. But I do want the small team, Brian and Susan and Paul to at least consider whether the definition and clarity around identifier is sufficient or whether they want to add some more. Thank you.

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**BERRY COBB:** Yes. That is absolutely correct. And then of course, the last one which was from the IPC that really triggered the small team assignment. So just in general, when we start on Recommendation 2 today, we're reviewing the comments in column one, will deliberate the comment here on the call, staff offline will provide a draft response and any possible action taken or to be taken. We'll post that version back up to the Wiki. And depending on future agendas, we may go back and review what was posted, or if the group has any concerns with the staff summary response and action taken, you're also welcome to take note of that on the list and staff can react accordingly.

So with that in mind, are there any questions about the process here? Brian, please go ahead.

**BRIAN BECKHAM:** Thanks. Hi everyone. I just wanted to ask, because I had asked if there were any action items from last week's call and was told to just prepare for this week, which is fine. And apologies for forgetting to have reached out to Paul and Susan.

**CHRIS DISSPAIN:** Brian, sorry to interrupt you. I don't think you need to apologize because I don't think we were expecting you to have done so yet.

**BRIAN BECKHAM:** Fair enough. That was going to be my next question, if you would prefer that we kind of do that through staff or loop you guys in or leave it to you to kind of coordinate us. And I just wanted to

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mention that of course, in the interim, the IGOs have gotten together and discussed that, so I can say I can come prepared to chat with Susan and Paul and hopefully move things along. So standing ready.

CHRIS DISSPAIN: Thanks, Brian. That's very helpful. Berry, how would you like to proceed with that particular aspect of the work?

BERRY COBB: Awaiting your instruction, but it sounds like it was going to be a small team, so we can distribute the doc that I'll be sharing here in just a second and we can do a Doodle to set up a small team call.

CHRIS DISSPAIN: Yeah, given that that's how it was done last time, why don't we get Mary or whoever, Steve or you, to get a call together for the small team and do the logistics of it so that they're not bothered with that stuff. That would be very helpful. Thank you.

BERRY COBB: All right. Any questions about the procedure here for how we're reviewing comments or any input in terms of the responses that staff is providing and action taken? And hopefully, this'll become even more clear by the time we get through the second recommendation to set the foundation for when we get into the larger comments and content of the other recs.

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Next thing I wanted to show you is the assignment for the small team. This is likely going to be done for all six recommendations or five, depending on how much we combine four and five together, but what we've done here, this is also posted on the Wiki on the following pages. There's a final report document or page on the Wiki. Here's the link. And just very much so the PCRTs, we'll be creating a draft or extract of the current text that was posted into the initial report. Staff will add sidebar comments or suggested edits in redline form, either for a small team or for the full group to consider, and we'll work those out as we come across them. But the document that I'm about to share is posted on this particular page as there are revisions to the recommendation 1 text. We'll post the archive over here to the right, but the latest version will always be here in column two if you have any doubts.

And of course, down the road probably three to five weeks from now, we'll be starting to consider all of the changes into the final report, and this is where the version history of the final report will be kept as well.

CHRIS DISSPAIN:

Berry, one of the challenges with this—and it's not unique to this—is for people to know that something's been updated. Is there some way of making sure that there's a notification that goes out that says there's a new version, or are we expecting people to just check in?

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BERRY COBB: Since we're meeting weekly, it'll be pretty much noticeable on the agendas. But when in doubt, the moment staff makes an update, we're posting it there. So just always that second column will be the latest and greatest.

CHRIS DISSPAIN: Sure. But what I'm saying is that the agenda, when it comes out on the Thursday or Friday before our meeting, will contain the most up to date links, I assume.

BERRY COBB: To that page, yes. And to the documents, yes.

CHRIS DISSPAIN: Okay.

BERRY COBB: So as I noted, the non-redline text form is the original text of Recommendation 1. You see redlines here that are based off of suggestions that were provided in the comments. So for example, the IPC suggested rewording this particular section. And we have the proposed redline there. The small team is going to work on the side to consider these changes, whether they're going to be acceptable or not. And we had a comment about the use of the confusion around identifier, whether it helped to add acronym. The small team would review through that. And a couple of other suggestions provided by the IPC that gets into implementation



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guidance that is fresh text that wasn't a part of the original recommendation.

So as I noted, when the small team meets, they may have two or three revisions. As they continue through their work, we'll post the latest redlines onto the Wiki and when the small team is ready to share their work back to the full plenary group, then we'll notify you when that is done and posted on the Wiki.

Any questions about kind of the process for how we'll be handling suggestions from comments and redlines of our recommendation text? Hearing and seeing none, the next part of our agenda, start off with Recommendation 2, then we're going to go to Recommendation 6. Time permitting, try to start on Recommendation 3, but we'll see whether we get there or not.

So now we're looking at the public comment review tool for Recommendation 2 and we'll start right at the top. I believe there's only five comments that were submitted in relation to Recommendation 2. A few of these are in support and a few of these had concerns or were opposed to the particular recommendation text.

First one is from the Internet Commerce Association. Basically, they're making a reference back to the original Recommendation 5 from the prior working group. They state that it provided a reasonable proposal grounded in the facts and law which appropriately balances interest of IGOs and the rights of registrants.

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Basically, as a reminder, Recommendation 2 is a pointer and a set of instructions, should this be a consensus recommendation, to the Council that 3, 4, 5 and 6 are a pseudo-package, if you will. But ultimately, the idea here is that the Council provided what used to be a Work Track that is now the EPDP to consider the substance of the old Recommendation 5, and it seemed appropriate that based on that assignment, that somehow this group needs to provide a response back to the Council as to how they should consider Recommendation 5.

CHRIS DISSPAIN:

Berry, before we go any further, can we at least try to maybe circumvent some of this? The Business Constituency in their comment number three say the Council has already elected not to approve the original recommendation. In fact, as I recall, we had some discussion about this when we were making this recommendation about whether in fact it had already been rejected.

Because it seems to me that if it had been rejected, we can say that we know that it's been rejected, that it may be that some of these comments are perfectly reasonable in suggesting that actually, we don't need to say anything about recommending that the original recommendation be rejected, because it already has been.

So just for a couple minutes, rather than go through the comments by rote, perhaps we could try to deal with that point which might help us then deal with the comments. Mary.

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MARY WONG: Thanks, Chris. So Berry, Steve and I had a brief discussion on this as well. You're right. We did talk about this when we were preparing the initial report. So I think there might be some confusion among some of the commuters and the public, which indicates we might need to clarify.

Our sense on the staff side is that when the Council referred Recommendation 5 to what was the RPMs PDP, clearly, it did not feel it wanted to adopt Recommendation 5 but instead of outright rejecting it, it referred it to a PDP group for refinement, for reworking. Potentially—at least theoretically—if the group came back and said Recommendation 5 is just fine, the Council could be open to accepting it.

CHRIS DISSPAIN: Let me be very specific. Did the Council vote to reject the recommendation?

MARY WONG: It did not.

CHRIS DISSPAIN: Right, so it hasn't rejected it.

MARY WONG: Correct.

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CHRIS DISSPAIN: Which means that the comments about it having already been rejected is not correct and we probably do need to deal with them. Thank you. That helps me to get clear about what we're talking about. And Berry, back to you.

BERRY COBB: Thank you, Chris. Thank you, Mary. So at any rate, just to close out, the Internet Commerce Association—and I take note of Jeff's question in the chat. From our last call, we went over these in general. These are high-level, thumb-in-the-wind indicators originally or initially assigned to the particular comment as a whole. It is not a perfect indicator. If there are concerns with kind of the staff initial assignment, we can change these. But there really should be very little attention paid to these. It's all about the substance of the comment itself that we're worried about.

To close off the ICA comment here—and essentially, they are teeing up one of the new ideas that was provided by the leap of faith comments in relation to I believe notice of objection, and we'll get into that in the Recommendation 3 review of the PCRT.

CHRIS DISSPAIN: Berry, what are you looking for from us on this comment? Just noted—given that, as you say, it tees up a much more substantial comment later, is there anything that we actually need to say?

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BERRY COBB: Again, that's up to you. Other than essentially the commenters concerned with it, I don't see any direct action to be suggested other than to consider new alternatives.

CHRIS DISSPAIN: Okay. Perhaps you can explain to me. The ICA recommends that notwithstanding 2, the GNSO revisit the original Recommendation 5. Does that mean the GNSO, do they mean us? What do they actually mean?

BERRY COBB: Us.

CHRIS DISSPAIN: Okay. So I think this whole comment can be basketed and a response can be considered and bigger is better, a more detailed response is later in whatever the name was of the recommendation that puts forward the suggestion in respect of the British Columbian CRT. Okay?

BERRY COBB: That, and before we turn it over to Brian, I think there's a more substantive comment by the IPC that may at least trigger an action to consider editing the text of the recommendation.

CHRIS DISSPAIN: Yes, but I'm only talking about this one at the moment.

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**BERRY COBB:** I know. My point is that we can kind of park it for now, and perhaps the review of the other comments will strike action that may or may not fold in the consideration of the ICA's comment. Brian, please go ahead.

**BRIAN BECKHAM:** I know that we said we would get to this at number three, but maybe I can just give a preview, which is of course, we looked at this as we looked at most of the comments by now, and gave it some consideration. From what we can tell, this proposal that references some Canadian court process basically would have the IGO issue some sort of a notice that it wishes to take the case to court.

So to the extent that that's the suggestion, I can only say that it fundamentally fails to recognize the core issue that's been put in front of us regarding court jurisdiction. So it doesn't seem like it's fit for this particular purpose. We can discuss in more detail later, but it didn't seem like it would work as far as a practical suggestion. Thanks.

**BERRY COBB:** Thank you, Brian. Moving on, Digimedia's comment here—and again, as a recollection, some commenters made specific comments about each recommendation. Others were kind of just mashed together as an overall comment that didn't point to any one particular recommendation. Here, Digimedia flat out doesn't agree with the particular recommendation text as it is, but of

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course, the larger rationale that would probably support or indirectly connect it to Recommendation 2 is provided in the other comments that are pointed towards recs 3 and 4. But I think in terms of a response here, unless Jay would like to add some additional commentary, it's noted and move on. There's no direct action as of yet that we can take other than noting that there's disagreement with the recommendation.

Moving on to the Business Constituency, basically, they supported this recommendation, the Council elected not to approve Recommendation 5, and they note that if recs 3 through 6 are approved, then Recommendation 5 should be superseded or replaced by these [inaudible] recommendations. Any kind of response here is noted, and we'll see what happens when we come back through the other recommendations.

Jay, please go ahead.

JAY CHAPMAN:

Thanks, Berry. I would just note that the BC's response here in relation to number two was very specific in that it only was supportive in the event that ... If three, four and five—I don't want to restate it, but I just want to say it's very specific and that was very intentional. And I think that also relates to the inconsistency or the lack of relation of making sure that all the recommendations were interdependent. Thanks. Bye.

BERRY COBB:

Thank you, Jay, for the clarification. Okay, moving on to the ALAC comment. Basically, they thought it was premature for them to

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really comment on Recommendation 2 until they had better clarity around recommendations 3 through 6. Maybe as a suggestion, I think we have one or two colleagues from the ALAC here that as the substance or clarity is gained on the additional recommendations, that the representative can reach back out to the ALAC and provide additional input around Rec 2 when there is more of that clarity.

Justine, please go ahead.

JUSTINE CHEW:

Thanks. I think in this instance, the tag of concerns and support are not necessary. I think it's rather inaccurate in fact. It should, if anything, be a no comment. And I would suggest that the EPDP response could be just that the team has considered this comment. Thank you.

BERRY COBB:

Very helpful. Thank you, Justine. And finally, here, the IPC comment, and I believe they have issue with the wording of the particular text. And this is where I was suggesting a possibility here—unless the group thinks that we can agree on some redline changes to the original text of Recommendation 2, that what staff do is extract the Recommendation 2 text, create a separate document and ask for volunteers of the small team to try to work on that text. Or if the chair decides, maybe we can do that as—



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CHRIS DISSPAIN:

I'm confused, Berry. I don't know how what you've just said relates to what they've said. What they say is effectively, 5 has already been rejected. Which it hasn't, so they're wrong. It says the IPC believes this recommendation is worded poorly as it implies that the original Recommendation 5 was not already rejected. Well, it hasn't been rejected. So the recommendation was not adopted by the GNSO Council. That is true. When a recommendation from a PDP is not adopted by the Council, it is dead. Well, that's not so, according to Mary, which is why I asked her in the beginning of all this. She said they could reconsider it.

Creating confusion that somehow the failure to adopt the recommendation [of the PDP] would somehow resurrect old 5 doesn't reflect how the policy development works. This recommendation needs to be reworded in order to tease out whatever concept the EPDP team was meaning to put forward.

The concept we're meaning to put forward is that technically speaking, very simply put, there has not been a vote to reject Recommendation 5 and if our recommendations are accepted, Recommendation 5 needs to be rejected. Mary.

MARY WONG:

Thanks, Chris. I see Paul has his hand up. And I think rewording makes sense because there's probably, as I said earlier, some confusion. So I'll cede to Paul, but essentially, [it was] saying that if we just reword our Recommendation 2 to make it clear that it supersedes anything to do with old Rec 5, that should solve the problem we have.

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CHRIS DISSPAIN: But it doesn't automatically supersede Rec 5. Rec 5 needs to be formally rejected. That's a fact. Just by accepting our recommendations, it does not automatically reject Recommendation 5. There needs to be a vote.

MARY WONG: Yeah, that's what the staff were thinking. Because the original wording in the Council resolution—and I think Paul will speak to the IPC view on this—is the Council does not approve Recommendation 5 and refers it to RPM.

CHRIS DISSPAIN: Which is not the same thing as rejecting it.

MARY WONG: Exactly.

CHRIS DISSPAIN: Paul.

PAUL MCGRADY: Yeah, [inaudible] different view and memory when we voted on this back in the day. The text is pretty straightforward. GNSO Council does not approve Recommendation 5. And yes, there's some direction back with regards to [inaudible] next steps. Those are all about looking at 1, 2, 3 and 4 which the Council did

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approve and sets out four things for us to think about in terms of enhancing 1, 2, 3 and 4.

But I don't know how much more explicit than "does not approve Recommendation 5" it gets. So I think we have to be careful that we don't breathe new life into Recommendation 5 [inaudible].

CHRIS DISSPAIN:

Paul, I got the gist of what you said, though you were a little difficult to hear because you're breaking up. But I don't disagree with you if it is correct to say that there is no requirement to formally reject a recommendation or it is correct to say that not approving counts as the same thing. Then I'm fine with that. And it makes effectively this part of the recommendation redundant, which may in fact lead to the clarity that people are seeking.

But my concern would be, A, is that correct, and B, if we were to not come to any conclusions, let's say, and this PDP was to close without making any recommendations, what would the status of Recommendation 5 be? And my understanding is, what I've been told, is that unless it is formally rejected, then it is still technically—well, it is not rejected, and therefore we don't approve it, does not mean we reject it. But I'm happy one way or the other. Paul, did you want to come back on that?

PAUL MCGRADY:

Yeah, [inaudible] why I can't get the actual text [inaudible]. Paragraph 1, the Council approves recommendations 1, 2, 3 and 4 and the second paragraph is the Council does not approve Recommendation 5. So if approval by the Council adopts the

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policy, then presumably the same words, does not approve, rejects the policy. I don't know why we have one standard for approving [inaudible] that moves something to the Board but we have to use some other word to make sure something died.

CHRIS DISSPAIN:

That's fine by me. Before I go to Mary, Paul—or Mary might be able to answer this—are there any steps that need to be taken when a recommendation is rejected that have not been taken with respect to Recommendation 5? If the Board rejects something, there's a whole heap of things that need to happen. My question is, are there any steps that need to be taken with respect to old Recommendation 5 on rejection that have not been taken?

MARY WONG:

The short answer is there's no requirements as such, Chris, and this was a bit of an exceptional situation because the procedures normally suggest that the Council could go back to the original PDP working group. The Council chose not to do that in the case of Rec 5. It chose to refer it to RPMs which is now our EPDP team.

So I raised my hand to suggest that we can simply try to reword Rec 2 potentially just to make clear the point that Recommendation 5 does not come back, to Paul's point.

CHRIS DISSPAIN:

Okay. Paul, go ahead.

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PAUL MCGRADY: So again, this is probably the first time in 15 years where I'm disagreeing with Mary. There's no language in what the Council did that says Recommendation 5 is referred back to anybody. The Council does say, here are four concepts to consider in relationship that are consistent with recommendations 1 through 4. Now, some of those concepts may be Rec 5 concepts. But there is no referral back of Rec 5. So Rec 5 was not approved.

Anyways, I just don't want us to create zombie recommendations.

CHRIS DISSPAIN: Completely agree.

PAUL MCGRADY: And I could be wrong, but [inaudible]. I think Recommendation 5 is good and truly dead.

CHRIS DISSPAIN: Okay. Jeff, I'll come to you in a second. And Paul, would you be comfortable if we said in the recommendation you don't want to see any reference to old Rec 5, or you'd be comfortable to see a—we don't need to make this recommendation, do we? At all, if we say there's nothing to be said about Recommendation 5. Or have I misunderstood the import of this recommendation?

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PAUL MCGRADY: Yeah, I think that's right. I think we can say nothing because the Council vote from my point of view unambiguous. Recommendation 5 was not approved. But if we're going to make a reference to Recommendation 5, then we have to make it clear that old Recommendation 5 was not approved and nothing we're doing here revives old Recommendation 5. But if we don't make any reference to old Recommendation 5, then I don't know how that would serve to undo a Council vote. You can't undo a Council vote [unless through a new motion.]

CHRIS DISSPAIN: Okay. Jeff.

JEFFREY NEUMAN: Can someone bring up our charter and see what question it asks us on this? Because if the question, as I remember it, asks us what our comments are on Recommendation 5, if it was dead, then why would they ask us what our comments are to a dead recommendation?

So if we look at the charter, that may give us an indication of what we're supposed to do.

CHRIS DISSPAIN: Thanks, Jeff. Can we get the charter wording up?

BERRY COBB: I'll read from this particular ... During the GNSO Council's deliberations over the final PDP recommendations, concerns were

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expressed as to whether this particular recommendation referencing 5 would require substant modification to UDRP or result in potential reduction in existing level of curative protection, so on and so forth. Consequently, the GNSO Council did not approve this particular recommendation and tasked the RPMs working group to consider it as part of the phase two work, whether as appropriate policy solution can be developed to the extent possible that it's generally consistent with recs 1 through 4. Here's a link to the charter for anyone.

CHRIS DISSPAIN:

Okay. So I'm not 100% sure that we are necessarily shining a light on stuff that really matters, but at the end of the day, if we can simply ... the intention of Recommendation 2 as I recall was to ensure that there was clarity around the fact that accepting our recommendations 3, 4, 5 and 6 led to the demise of Recommendation 5. What we are now being told is that Recommendation 5 has already been rejected.

So I suppose we could, if we wanted to, leave this recommendation in but word it for example as Recommendation 5 having not been approved by the Council, we suggest that recommendations 3, 4, 5 and 6 ... But then even if you say supersede it, that implies that it hadn't yet died.

I'm not sure how you can do that. I'm not sure why it matters, to be honest, but I understand that people do seem to care, and I'm not an expert on this, so I [inaudible] guided by those who care. But I'm unclear as to why we'd need any recommendation at all if we accept the situation. So, do those who think that we do need to

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have a recommendation—Mary, that includes you as staff—if you think we do need to have a recommendation, perhaps you could speak to why you think we need a recommendation.

MARY WONG:

Thanks, Chris. So that we can get back to substance, I've made a few comments in the chat. I think originally, we thought that we needed a recommendation to make the point as clear as can be, and also to make it clear that the rest of the recommendations that we're going to look at effectively address the same problem the original Recommendation 5 tried to solve and failed.

So right now, given the comments that we're seeing, including from the IPC, what we're thinking is that we still need that clarification but potentially not as its own recommendation.

CHRIS DISSPAIN:

Which clarification?

MARY WONG:

That the recommendations from this EPDP team try to address the same problem as the original Recommendation 5 and original Recommendation 5 was rejected by the Council.

CHRIS DISSPAIN:

That's a given, isn't it? Would it not be an extraordinary circumstance to suggest that we were not trying to—given that that's what we were asked to do and given that the opening sections of the report when we finally finalize it are going to refer



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to the charter and what it is that we were supposed to be doing and here's what we've done, it just seems a bit odd that we would say, "Just in case anybody thinks we haven't, by the way, specifically with respect to 3, 4, 5 and 6, we have." Just seems odd to say. I can't see that there's any reason to do so.

MARY WONG:

And that is one of the benefits of a public comment period, and we're looking at how others interpret what [we already have] in the initial report. Just to explain the staff perspective on this, because this particular situation is unusual, the way that the Council went about it—and that's why we wanted to be extra cautious, but it did sound like our original approach caused more confusion than we thought it would.

CHRIS DISSPAIN:

Well, I think everybody assumed that Recommendation 5 had expired and gone [inaudible]. But if that's correct—and Paul says—and I accept his point—we don't want there to even be a hint that anybody would imagine that Recommendation 5 can be revived. If Recommendation 5 were to come back onto the table again, it would have to be as a result of the development process.

So for example, one way it could come back to the table again would be if we said, "Well, after a year's worth of work, we've decided that Recommendation 5 is the best you can get." Then that would be our recommendation. Effectively, it would become our Recommendation 5. Brian.

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**BRIAN BECKHAM:** Thanks. I think I agree with you, Chris, and with Paul. I was only going to suggest, I wonder if the question sort of seems to be here if we come up with a recommendation, then I think we all understand that would supersede number five from the prior working group and then the Council would vote on whatever we put forward. And then if we're unable to come to a recommendation which squares this old Recommendation 5, it's not clear to me if that's more a question for the Council versus this present work. So I'm just wondering if we might kind of skip this step for now, look at the substance, and that might help us kind of answer the fork in the road that's in front of us presently.

**CHRIS DISSPAIN:** Thank you, Brian. I think that's probably exactly the right step to take now. And I think where we're at is that we don't need an agreement about this, that there's a desire to make sure that something is said, and we can say something in the opening text, and let's look at the opening text when we get to that point. But Mary, if you could make a note that it would be a good idea to make a reference in the opening text to say that these recommendations supersede Recommendation 5. That would be good.

So what that means is that this recommendation comes out. I don't know what that means for your chart, Berry, but no doubt you do and you'll be able to work out the words that you put in.

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BERRY COBB: Thank you, Chris. Makes things a lot easier. Just to emphasize, this group is intimately involved with the details of our work here, and I even think this recommendation was probably my idea originally, and the whole point was to make it as clear as possible to the Council that isn't intimately involved in this. So whether it's recommendation text or introductory text, the whole point is to make it crystal clear to the Council so there's no ambiguity when they go to consider this.

CHRIS DISSPAIN: Except of course it is the Council's decision at the end of the day and not ours. But that said, let's stick with what we've agreed to do, and let's not get into a discussion now about whether it was going to confuse people if we remove Recommendation 2 and all the other recommendations move up a number. We could have at least half an hour's discussion on whether we should have Recommendation 2, this recommendation deliberately left blank.

BERRY COBB: Recommendation 2-old, archive.

CHRIS DISSPAIN: Okay. Recommendation 2 is dead, it is an ex-recommendation. Let us move on.

BERRY COBB: All right. Now we're on to I believe Recommendation 6 per the chair's guidance last week. And as a reminder, Recommendation

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6 is about picking applicable law for an arbitration proceeding. There were several comments on this. I believe a fair amount of them have concerns or divergent, but a few also supported the original recommendation text. I think in the end—

CHRIS DISSPAIN:

Berry, sorry to interrupt. Just before you carry on, for those that weren't on the call last week, recommendation 3 and 4/5 are clearly the real meat of this. I think we can consider the comments on Recommendation 6—which clearly are only relevant if recommendations 3 and 4 end up being recommendations, but I think we can consider those and put this to bed, and then go and spend the rest of our time, the next few weeks, discussing 3 and 4, which is why we're going to 6 now. I just realized there are some people who weren't on the call last week. Sorry, Berry. Go ahead.

BERRY COBB:

No problem. That was helpful. Thank you. So at any rate, you'll recall that two options were presented for the recommendation. A fair amount of the comments were pointing to option one. One comment, I believe, even suggested combining both, but we can look into the particular details here.

So again, I really don't want to read in the particular text of these, and just to note, sometimes if all four options—these thumb-in-the-wind indicators, it was difficult for staff to determine whether it was support, new idea, divergence or concerns. So maybe this is just a particular comment in general, and I see Brian's going to

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save me because he's part of WIPO and submitted this. Please go ahead, Brian.

BRIAN BECKHAM:

I'll try. Thanks, Berry. I apologize, I don't recall exactly which one it was, but it might be useful to look at the comment where you suggested there was a proposal or an idea floated to combine these, because one of the things that we had discussed, the IGOs, was of course we had felt clarity was preferable on this. And of course, we had in the working group here identified the potential of these cases falling through the cracks, if you will, if we kind of knowingly tee up a possibility where one of the parties would find themselves in a jurisdiction—I think Australia was mentioned, maybe a few others where there wouldn't be a cause of action.

So frankly, we thought this was kind of a registrant protection as much as anything. So we wondered if maybe that idea—I don't know if there's as particular text or we could kind of brainstorm the idea, but that although we thought clarity was better and we know there's potential situations where there might not be a cause of action for one of the parties to invoke, that just in the interest of kind of compromise and keeping things moving, would be willing to entertain the option one but thought that this concept of combining them so that if the option one tees up a situation where the parties and the potential arbitrator would be kind of in no man's land, at least we give them an out. So that was—

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CHRIS DISSPAIN: That's II, isn't it, Brian? Possible additional step under consideration.

BRIAN BECKHAM: Yeah, exactly. So maybe it's just a matter of making clear—of course, if the group here agrees—that if we accept option one again, that was something that IGOs maybe thought wasn't perfect but were willing to compromise on. At least we ought to have that possible additional step under consideration brought into the recommendation so that the potential future parties and decision maker would have something to guide them in the situation where they would find themselves in a jurisdictional question where there's no cause of action.

CHRIS DISSPAIN: So let me ask you a couple of questions about that and make sure we're clear. What we're saying is—I accept we haven't decided this, just where the discussion is—you just take option one, which would be that the arbitration would be conducted in accordance with the law of the relevant registrar's office or where the respondent is resident, and you would elect that. So you're the IGO, you would say "We choose in this particular case the registrar's principal office," or you would say, "We choose where the respondent is resident."

What you're saying is that there may be circumstances—now we're moving to the II wording—where there is a concern about applying the law of either of those two things, because that law

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does not have a satisfactory cause of action related to the parties' dispute.

Now, effectively, what I think you're saying is that would make it impossible for you to make a choice because whichever one you chose, there would be no cause of action. Is that, in effect, correct?

BRIAN BECKHAM:

That's right. And normally, arbitration rules would in effect cover this where there would be some kind of a clause where the arbitrator would be able to request briefings from the parties or they would be able to invoke principles of law they consider appropriate. But yes is the answer to your question.

CHRIS DISSPAIN:

And let me go a little bit further then. So my first slight concern—leaving aside whether the principle is acceptable [inaudible] the moment—would be the use of the word “satisfactory,” because I don't think anyone has the faintest idea what a satisfactory cause of action is. Either there is a cause of action or there isn't.

And I wonder whether or not it would be ... Is this the sort of thing—let's assume for a moment, Brian, that this option wasn't available and that you were forced to make a choice to go to a place where you said—let's say the registrar's principal office and the respondent's residence is the same place. So you've only got one choice, effectively.

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So you believe there's no cause of action but you're forced to make that choice. You make that choice. Presumably, what's going to happen is an arbitrator is going to say there is no cause of action. Is that right?

BRIAN BECKHAM:

No, I think it's kind of a matter of, let's say, putting at a textual level here what I think would be kind of the default practice, which is that the arbitrator wouldn't say there's no cause of action before me, they would normally request the parties to brief the arbitrator on that or in some cases, they may proceed based on the briefings that are already in front of them. For example, if one invoked a national law or UDRP principles, an arbitrator might feel that they had enough to go on under their general powers.

So if you will, it's sort of codifying what would be, I think, the normal expectation, and by so doing, removing the doubt—and I think giving comfort to the parties that they would positively have the opportunity to weigh in here as opposed to leaving it more open ended.

CHRIS DISSPAIN:

I understand that. What I don't understand is what the result would be. So let's just say it was the UK, just because I'm here. If you believe that there was no—using the current wording, satisfactory cause of action. Let's assume we've honed that down a bit. But you believe there was no satisfactory cause of action, and you're forced to make that choice to use the law of the UK. What would



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the result be of it not being a satisfactory cause of action? Are you suggesting that the arbitrator could still hear it?

**BRIAN BECKHAM:** Yeah, exactly. And I don't know if—if it's okay, maybe we could even ask Matt Coleman from OECD to help out here. He's probably a little more familiar with this than I am. But normally, you would have a choice of law clause in arbitration rules or in the contract. So this wouldn't prohibit the proceeding from going forward. It would just create a sort of dead space that the parties and the arbitrator would need to work out. But it wouldn't procedurally prevent it from going forward.

**CHRIS DISSPAIN:** So I'm happy for Matt, if you want, to comment. You're very welcome to do so.

**MATT COLEMAN:** Yeah, I think what Brian said is spot on. I would just say that at least in my experience, it's very rare to come across a commercial contract without [inaudible].

**CHRIS DISSPAIN:** Understood, but I'm still not clear what the result is. So you're not happy, you don't think that there is a satisfactory cause of action, but you're forced to use that jurisdiction. And so what? That's what I don't understand. You'd still argue your case in arbitration, the registrant would still argue their case in the arbitration. So what is

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the so what of there not being a satisfactory cause of action?  
That's what I don't understand.

MATT COLEMAN: I don't think it's a procedural [inaudible], I think that's more of a kind of substantive legal point.

CHRIS DISSPAIN: Yes, agreed, but the point is that we're making the point here that this possible additional step has been put forward as a suggestion to try to solve a problem, and now that we're sitting here talking about it, I'm not sure I understand what the actual problem is.

BRIAN BECKHAM: So I think, just to use, Chris, your example of the UK which I think actually is a good example, because there are cases in the UK courts—[inaudible] was the case where there was an attempt at an appeal following a [Nominet] process and the court didn't take that case on.

So potentially, you're teeing up a situation where there would be no cause of action. But I think the practical effect would not be that the arbitrator would decline to take the case forward. They wouldn't say that there's no jurisdiction or no substantive law on which they can base the decision. They would look to the briefings or to additional information that they would request of the parties to help answer that question.

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So I guess what this says to me, as we sort of talk through it, is that option one really doesn't work without the possible additional step under consideration.

CHRIS DISSPAIN: Whereas I still don't understand what it would achieve. I'm still not clear, because what I think I just heard you say was that it's not that the arbitrator would refuse to hear it, they would simply be relying on the submissions of the parties. So, doesn't that mean that the arbitrator is doing their job and the arbitration would be heard fairly? Or again, have I misunderstood?

BRIAN BECKHAM: Yeah, I'm sorry, I'm not really following.

CHRIS DISSPAIN: Okay. We may be talking ourselves into a cul-de-sac here for no good reason. Mary, go ahead.

MARY WONG: Thanks, Chris. And I think from the staff side, we had the same question. I think we all understand what the situation or possibility here is, because the way that we see the sequence is firstly, the parties should try to agree on applicable law. Secondly, if they don't, then the choice is for the IGO complainant to make, and it's either the registrar's or the respondent's location. But thirdly, the IGO complainant may raise to the arbitration that we can't use either law because there's no cause of action in both. And I think

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Chris, we have the same action as you. In that case, what happens? Does the arbitral tribunal then typically say we can't go on, end of proceeding, or does it say in that case, we apply law of country X, Y or Z? I think that's where we need the clarity.

CHRIS DISSPAIN:

Thank you, Mary. So that suggestion seems to be that it's open to either party to go to the arbitrator as a preliminary matter and say, the choices of jurisdictions that we have, A and B, or just A or just B, don't work for this arbitration because there is no cause of action, and it is then for the two parties to make their submissions to the arbitrator and it is for the arbitrator to decide, not necessarily at this stage what law it should be, but whether in fact they can hear it under A or B.

And if they say they can hear it under A or B, then it would be a matter for the hearing to go ahead using that law, and only if they said that they couldn't hear it under A or B would it be a circumstance where there would be a choice whether it would be a mechanism for choosing a third jurisdiction.

I think that that's what would be correct as a process. [inaudible] is a different issue, I think. Jeff.

JEFFREY NEUMAN:

Thanks. I do think that that's the process. What I think we need to try to avoid is a situation where the law doesn't deal with—at the end of the day, doesn't have a cause of action and therefore the party that benefits by not having a cause of action would file some kind of motion to dismiss. Because arbitrations can have motions

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practiced just like courts can, and so I think we want to try to avoid that situation.

So I think for clarity, it is option—try to agree, can't agree, then it's option one, and if there is no cause of action—or I think Mary wrote it in the chat, then you go to have the tribunal choose the applicable law. But I don't think we should make it such that one party would have the right to, quote, oppose the arbitration because of a lack of cause of action. Thanks.

CHRIS DISSPAIN:

I agree with that, and I don't think that's what's being said. Jay, I don't know if you're up to speed with this, but perhaps you could comment if you're able to on the concept that it would be possible to ask the arbitrator to rule on whether or not it is possible to run an arbitration using the law of A or B, which he would suggest to you is a benefit to both parties, but I understand that you may not think the same. Jay, go ahead.

JAY CHAPMAN:

Thanks, Chris. I'm just trying to parse out—so the arbitrator gets to decide whether or not there's a sufficient cause of action?

CHRIS DISSPAIN:

Well, they get to decide in the sense that—okay, so it's you and me. So I say—the registrar and the registrant is in the same jurisdiction. It's just easier to do it that way. The jurisdiction is the UK. I say it would be inappropriate for you, the arbitrator, to run

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the arbitration using UK law because there is actually no cause of action on which you can run the arbitration using UK law.

You say, rubbish, it's fine, you just need to go ahead, here's my reason why. And the arbitrator makes that decision. Now, equally, just to be clear, Jay—and again, I'm extrapolating here, so if I get this wrong, don't hesitate to interrupt. Equally, if you have got a right to go to court, I would be able to say, in the UK, there is no cause of action here, you cannot bring your court hearing, and the court would then decide whether you can or you can't. So did that answer your question?

JAY CHAPMAN:

Yeah. I think it does, somewhat. I think I still would like to ... Maybe just looking at some language to assess how that might play out might be helpful as well. I get the concept. Actually, it makes a lot of sense. And honestly, I can't believe we didn't come to this earlier. I think we actually had kicked this around—this concept before.

I just want to make sure that we don't have a situation where ... I don't know. I would make sure that somewhere where there is a cause of action, that we're not having arbitrators decide that, "It's insufficient for me," or maybe, "because I'm not familiar with it," or that sort of thing.

CHRIS DISSPAIN:

I agree with you. I understand what you're saying. But I think to a great extent, we do need to remember that these commercial arbitrations are run along clear precedential lines, much the same

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as courts. And whilst they're supposed to be capable of cross-border work, and supposedly saving money, although some would argue that doesn't happen, they are and can be relied upon to operate in a similar way.

But let's put that to one side for a minute. I'm going to suggest what we do now, in the time we have left, is actually go back to Berry and briefly go through the actual comments—see how that feeds back into the discussion that we're having—and then go from there. Berry?

BERRY COBB:

Thank you, Chris. We started off with the WIPO comment. The next one is the Internet Commerce Association. All of this really starts to get above my paygrade so I really defer to the group about substance here. But I believe that, in general, the Internet Commerce Association was more supportive of recommendation six in conjunction with option one.

CHRIS DISSPAIN:

Yeah. That's correct. In the sense of grudgingly, that would be the correct answer.

BERRY COBB:

And I think, also of substance, is that if this recommendation were approved by this group, that probably more of the detail should be discussed here and not necessarily left for an IRT, assuming that the Council and the Board adopted any recommendations from this group.

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CHRIS DISSPAIN: Fine. Again, I think we've discussed this at considerable length and I don't think we've actually reached a strong conclusion yet. But at the end of the day, it's a judgement call on how far and how deep an EPDP needs to go as opposed to Implementation Review Team. But the point's taken.

BERRY COBB: Okay. We basically went through Jay's intervention. I believe we, more or less, touched on his comment and we talked about satisfactory cause of action. Unless Jay has anything else he wants to add here, I don't think there's more that I can offer up, summary wise. Hearing and seeing no ... Thank you, Jay.

The BC ... I forgot to put the BC here. They do support recommendation six in conjunction with option one.

CHRIS DISSPAIN: Cool. At-large is the same, I think.

BERRY COBB: Yes. Now, At-Large was the one that suggested combining them, which is what set us down our original path of discussion here today. They look to combine one and two but I think the third step, they still might have some concerns with.



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CHRIS DISSPAIN: You can't combine one and two because one and two is actually two.

BERRY COBB: Right.

CHRIS DISSPAIN: So you cannot combine one and two. You can combine one and ii. But you can't combine one and two because if you do, then you've effectively got two. Justine, go ahead.

JUSTINE CHEW: I don't quite understand what you've just said, Chris. Sorry. But I just wanted to point it out that we went with option two instead of option one.

CHRIS DISSPAIN: Oh, really?

JUSTINE CHEW: Yes.

CHRIS DISSPAIN: "We agree with option one, which is to allow the arbitral review to be conducted in accordance with the law. We also support the addon of option two."

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JUSTINE CHEW:                    So 6(i) is not—

CHRIS DISSPAIN:                So they are effectively ... Sorry. Actually, At-Large is suggesting option two.

JUSTINE CHEW:                    Yes. Correct.

CHRIS DISSPAIN:                It's not an addon it is a separate option. All right. Thank you. Now I understand. So, Berry, we need to read the At-Large comment as being, "We choose option two."

BERRY COBB:                     Got it.

CHRIS DISSPAIN:                Which is fine. But the weight of all of the comments, apart from that, are in favor of option one.

BERRY COBB:                     Correct.

CHRIS DISSPAIN:                And the last one is the IPC.

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BERRY COBB: Yes. And IPC does not support either option. "Make it more UDRP-like." See comments in i, above.

CHRIS DISSPAIN: Paul, do you want to talk to that at all.

PAUL MCGRADY: Sure. [Inaudible] [that you've got]. Neither of these are really great. It looks like either we're trying to pre-solve this problem that the parties will have in front of them to work out with an arbitrator. And in doing so, we're taking a concept that has to do with jurisdiction, rather than choice of law, out of the UDRP.

The UDRP never mentions a choice of law. A substantive law can be applied by the court. This says the two options of where. So it seems to us that we would be better off if we just leave it where most arbitrations are, where the parties agree to an arbitration. If they can agree, at that point, on the choice of law, great. Then if they can't, then they simply move forward and the arbitrator sorts it out.

CHRIS DISSPAIN: Isn't the difference here that in the UDRP scenario, that there is no choice of law because the court you go to will only use its own law? Sorry. I've lost you.

PAUL MCGRADY: Courts apply laws other than their own all the time.

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CHRIS DISSPAIN: But their jurisdiction ... Okay. So take me through that, then. So you're saying that I can turn up at a court in America and say, "This should be dealt with in accordance with UK law?"

PAUL MCGRADY: It happens. It's not common but it happens. Jurisdiction is just over the people. The choice of law has to do with what causes of action can be brought, what elements need to be proven, and what the defenses are. So if somebody wanted to end up in the US but they wanted to have the courts apply a different law—if there was some indication, somewhere, that that would be appropriate—the court would hear that and either accept it or reject it.

In other words, by having this recommendation at all, we're pre-tying the arbitral panel's hands, which is unusual, because if the parties can't agree, then one of the parties gets to pick. So that creates all kinds of questions about whether or not the party that gets to pick has any motivation to agree in the first instance. And secondly, if what's picked is a meaningful appeal for the other party, what we want here is a meaningful de novo right to appeal.

So by us interjecting a UDRP-like concept into this, we're just pre-tying hands. And there's a very really risk ... And I don't want to speak for Jay but if I were Jay, I would be saying, "There's a very real risk that the way that this is gamed out, there'll be a choice of law chosen that has no defenses and the losing respondent really won't get a good day in court."

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CHRIS DISSPAIN: I'm going to go to Jay because I wanted to get his comments on this. But just for my benefit, briefly, how do you end up deciding what law that arbitrator uses in your model?

PAUL MCGRADY: In the model, either the parties agree to it on the way in or they submit papers and the panel—

CHRIS DISSPAIN: Explain to me what you mean by “they submit papers.”

PAUL MCGRADY: They say, “I'm [appealing] this bad decision but under the laws of where I live—”

CHRIS DISSPAIN: What you're talking about is they lobby for a particular law and then the arbitrator decides the law. Is that right?

PAUL MCGRADY: They brief it and the arbitrator decides what law will apply.

CHRIS DISSPAIN: Right so to be clear, the suggestion is, in very simple terms, parties agree a jurisdiction. If the parties can't agree a jurisdiction, they make whatever submissions in favor of whatever jurisdiction

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they would like to be used to the arbitrator and the arbitrator makes a decision?

PAUL MCGRADY: It's even more simple than that, which is, "Let's not butt into this. Let's let the international arbitration panels resolve this however they resolve it." Let's say nothing.

CHRIS DISSPAIN: But if we were going to say something, would you be comfortable with what I've just said?

PAUL MCGRADY: What you've just said is the very best of the things we don't like. Yeah.

CHRIS DISSPAIN: I'd like to thank you for your support. Right. Mary, your hand is up. And then, Jay, if you'd like to comment, that would be excellent. Mary, go ahead.

MARY WONG: Thank you, Chris, and thank you, Paul. We wanted to pick up, on the staff side, on something Paul said—that what this group was trying to do with the various option was to, in some ways, pre-solve for a situation with the underlying sense of two things. One is to provide some certainty with the introduction of this element of arbitration, to registrants in particular, as to what they could expect

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of an arbitration. And secondly, to try to weave in the concepts that, in some ways, provided a limitation on jurisdiction under the mutual jurisdiction clause.

That said, given the comments, including the IPC comments, it might be that we are over-solving for a problem, as we know and as has been explained by various folks. How a court—and I assume also how an arbitral tribunal—decides on what is the applicable law that governs the dispute in question can be very complex. And it varies from court to court, country to country.

So if our starting point here is that when we introduce an arbitral element, the fundamental principle is that the parties get to choose the choice of law, then it seems like the dispute is really, “Do we want to go beyond that?” And maybe it’s possible to then refer to the arbitral tribunal rules—or sorry, the applicable arbitral rules—because some of them do provide for this type of situation. Some of them don’t. But I will note that the jurisprudence on choice of law where none has been chosen is actually quite complicated.

So at least we have a starting point. We can agree that the parties should be able to choose. What seems to be somewhat more complicated, or where there’s some divergence, is whether we go beyond that, and if so, what to do we say.

CHRIS DISSPAIN:

Thanks, Mary. Jeff?

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JEFF NEUMAN:

Yeah. Thanks. Again, I know we go through the IPC comments and the other but I do think it's important to go through all of the comments because I think that if I read the ICA comment correctly and some other ones, that they are essentially—and not just on this question but in all of them—they're essentially saying that there's got to be some balance. And if you expect registrants to accept this notion of an arbitration as opposed to going to the court that they choose, there's going to have to be some give and take.

So while not ideal, perhaps, to the IPC, we did hear the IGOs say that they could live with it. This is one of those where I think there has to be some give if we're going to get to a compromise solution. So while I appreciate Paul's legalistic interpretation, while he is technically correct in the sense that you can always argue for a different law to apply in a court, generally you need a pretty good reason why the court's not going to apply its own law. And in 99% of cases, the court does apply its own law. Anyway, we need to think of the overall big picture as well. Thanks.

CHRIS DISSPAIN:

Thanks, Jeff. Just before I come to you, Jay—thank you for putting your hand up—I think just to add slightly to what you just said, Jeff, I think the key for me is you know where you are because the default is the law of the court that you've chosen. Yes, the other side could argue that it's appropriate that it should be heard by a different lawyer and they might win that argument. But at the end of the day, you've got a reasonable degree of certainty that you know what law your matter is going to be heard under, which I think, to me, would be the point. Jay, go ahead.



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JAY CHAPMAN: Thanks, Chris. I think, to be concise, I agree with what you're saying there. To me, again, like we said in our comment, it seems to be more the pragmatic flow of how things tend to work. And while I agree with Paul that courts do make decisions as to choice of law, I think the typical way that it plays out tends to be more in line with what we're talking about here and the way option one falls. Thanks.

CHRIS DISSPAIN: Yeah. So I think, having said what I said ... And thank you, Jay. We are running out of time. Having said what I said, I'd like us to go away at the end of this call and come back next week, having considered this particular matter. It seems to me that if we were to choose option one with the get-out clause of ii, if you will, I think there is merit in the argument that it is probably in both parties' interests to have some flexibility.

If the presumption is that it's going to be the law of the registrar's principal office or the respondent's residence, that makes sense. But if there is an option for the other party to say to the arbitrator, "We don't think that this is appropriate because there is no cause of action," and the arbitrator can make a finding as to whether there is a cause of action or not, and then, based on that finding, the parties could then go away and agree an alternative jurisdiction, and in the event that that wasn't possible, I suppose the arbitrator could choose ...

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But there may be—and I stress may be—a sensible set of recommendations to take it forwards in the best interest of everybody. But I'm not pushing that. I'm just saying I'd like us all to go away and consider that. Think it through so that when we come back next week, we can perhaps continue to wrap up this discussion and then move on to recommendation three. Berry, anything else that you want to cover?

BERRY COBB:

Yes, Chris. Thank you. Basically, action items. Staff is going to send out a Doodle poll for the small team to convene on rec one. We'll resend the draft text that we have so you can maybe start working offline until we get a meeting scheduled. Staff will update the rec two and rec six PCRTs based on our discussions today. When we send those out, then the full team should review through those edits of two and six.

And as Chris suggested, your homework is to really put some thought into recommendation six. We'll spend a little bit of our time on the next call on rec six to try to wrap it up. But most importantly, I encourage everybody to thoroughly study recommendation three. That's where we roll our sleeves up and have real fun. Lots of long input there.

CHRIS DISSPAIN:

I think you may be wrong. We may just reach a conclusion almost immediately, Berry. I can't believe you're so pessimistic about it. Thank you very much, indeed. Any last burners before we close the call? No? Good. Excellent. Thanks very much, everybody.

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Very good, collegial and interesting discussion. See you all again in a week's time. Thanks, all.

MARY WONG: Thanks, Chris.

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

**[END OF TRANSCRIPTION]**