
ICANN84 | AGM – GDS: IGO-INGO Curative Rights IRT Work Session
Sunday, October 26, 2025 – 13:15 to 14:30 IST

ANTOINETTA MANGIACOTTI

Hello and welcome to meeting number 15 of the IGO-INGO Curative Rights Implementation Review Team. My name is Antoinetta Mangiacotti and I'm a participation manager for this session.

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PETER EAKIN

Thanks, Antoinette. Good afternoon. I'm indeed Peter Eakin for ICANN.Org, and welcome to ICANN84, our third in-person meeting of this IRT following two sessions in Prague. And as she's already introduced herself, my colleague Antoinette is standing in for Renata as remote participation manager today, as Renata's on a well-deserved holiday.

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So welcome to everyone in the room and online, especially those who are observing for the first time. To clarify, this is a working session, so it's structured to enable the IRT to focus on its goals. But it's also an open session, so I propose to reserve 10 minutes or so at the end for comments and questions from the floor.

So we're live from Dublin, so I'm an Irish man, so it's a home fixture for me. And the weather is reverting to its glorious natural state. So like Prague, it's also a literary city, but we have a lot of our own two masterpieces to study today, the latest round of UDRP and now another round of URS updates. So it's our end game.

We hope we're approaching our Public Comment deadline. And to quote Samuel Beckett, finished, it's finished, it's nearly finished, it's nearly finished. So hopefully I really want today for us to lock down as much as possible what we think about the updates and identify any of the sort of the last outstanding critical issues that might prevent these documents going to Public Comment so we can get them fixed. So, but first things first, any updates to SOIs? And Jeff, yes.

JEFF NEUMAN

I don't have an update SOI, but I was just wondering if I can be let into the Zoom room. I don't know who's in charge of that.

PETER EAKIN

You can be in all the rooms, Jeff. So there we go. No SOI updates. Very good. I did a round of introductions in Prague, but I think given

we're a little late and also with a lot to get through, I might skip that. So just to reiterate for those not familiar, I've been sort of telling everyone who usually is on these calls the same thing since the start of every meeting since September.

The work of this IRT is a dependency for the overall IGO work stream, which has a timeline for quarter three of next year, 2026, to release reserved IGO acronyms and launch a notification process. So our project has a policy effective date of quarter two of next year. So to meet this deadline, we really need to go to Public Comment very soon, next month.

So Public Comment is a standard ICANN process, and it's not the end of the story. It's merely the end of the beginning, and it doesn't foreclose any further changes or comments or alterations to the documents. And far from it, it invites more from a broader spectrum of opinions outside the IRT. So I'm going to ask you all an important question at the end, a little spoiler with that in mind.

Before looking at the other drafts, I also want to briefly discuss something else before we get into the real meat of the sandwich. We had looked at a policy guidance document, and there it is on the screen. This emerged from the PDP, one of the two sets of policy recommendations this IRT was tasked to implement. And it was the PDP asked ICANN to produce guidance on IGO standing to file using the DRP and the URS. And this was to be shared with the GAC.

And there's also a recommendation for policy guidance relating to how a complaint should be submitted by a third party. So as we noted before, when we were developing this, and we looked at two versions of this before, some of the recommendations that this was based on were subsequently somewhat made redundant by the later EPDP, which obviously wasn't around when the original recommendations were being drafted. And other aspects have been noted by the IRT as being quite general and applying not the IGOs, but the uses more widely.

So the last version of this caused some conversation within the IRT, and we're currently revising this document in light of that feedback. Something much more, I think, slightly more reduced as to its current state. But given that the continuing conversations on this document, and no doubt more conversations will need to be had, and the fact that this is guidance, it's not policy, we would like to ask IRT whether you think this particular document requires a Public Comment.

And cards on the table, we as an ICANN don't think it does. We, of course, can keep talking and meeting on it, and obviously to produce something, but we don't really want to hold up the issue of the DRP and URS documents unduly until this is ready. However, if you do think it does require Public Comment, we could propose doing this separately. It's just given that the conversations around this may take a little longer to resolve. Does anyone in the IRT have an opinion on this? Do you think this document does require a Public Comment, or do you think it's enough that we produce it and

issue it, as was circulated to the GAC, as was originally recommended? Jeff?

JEFF NEUMAN

Yeah, I think there's two questions in there. Do I think it's necessary under the rules? Probably not, but I would rather err on the side of making it public per comment. I just don't want to see anything slow us down afterwards and the Board kind of say, well, you know, we can't. I mean, I'd rather hear from the Board say we don't need a Public Comment than us making an assumption, and then the Board getting a complaint saying this wasn't out for Public Comment.

PETER EAKIN

No, I understand. As I say, we have a version almost ready. I'll happily share this on the list. It's not ready for today, later this week, and you can have a look at it. If we feel then that we need more time to discuss the issues, we certainly can take that time.

I would then maybe look into maybe doing a staggered Public Comment, because it's not a dependency, I think, for the IGO work stream as a whole. But I think our current aim is to get the EDRP and URS out as soon as we can, so I wouldn't want to hold them up. But certainly, yes, we can proceed with Public Comment to this in some form. Thanks. I just wanted to check that. Brian?

BRIAN BECKHAM

Hi, Peter. Hi, everyone. Brian Beckham. I would be curious just to kind of probe on the first question from Jeff a little bit. If this isn't required, are there any other examples where work in this stage was either put out for Public Comment or not that might guide us? And if there's any particular corner of the community, I mean, Jeff mentioned the Board. I don't think they would normally submit Public Comments to an IRT work product.

And I think looking at some other IRTs that are going on in the community, I don't think there's any question here of any disagreements within the IRT here that need to be unlocked by Public Comment or external output. So I guess I'm wondering what's the upside of Public Comment versus the kind of efficiency of just proceeding on the basis that I think this is a fairly well-oiled machine and we're just sort of going through some motions that have been well laid down in the Working Group and we're not creating any new ground in the text in the document that's on screen, for example.

JEFF NEUMAN

Yeah, this is Jeff. I'm not saying that the Board would comment. I was just saying someone would complain to the Board and then the Board would question why didn't we put this out for comment. You know what? There's a lot of people in this community, stakeholders that may not necessarily love the UDRP or any special rights given to governmental entities, and I don't want to provide an avenue for them to complain.

And certainly this one would be an easy thing to attack if it never went out. So I would rather err on the side of transparency than not, just to avoid.

MARY WONG

This is Mary from ICANN, the policy team. And just to maybe expand on what Peter was saying earlier, the reason we brought this to the IRT is this is somewhat of a unique document. Brian, to your question, obviously when it comes to policy recommendations at the policy development phase, as well as policies at the implementation phase as they're being finalized, right, the commonality there is these are going to be policies that are binding on our contracted parties. There are really important implications there. Those definitely go out for Public Comment.

This document is none of that. It is guidance to the governments, to IGOs, to the public, to contracted parties, members of the community. So that's why this was a decision for the IRT in the sense that there is no mandatory requirement. The original policy recommendation that led to this basically says ICANN, the organization, should prepare and publish this guidance. So that's why you could go either way. We just wanted to get your take on it because from our read of the history as well as the recommendation itself, it definitely is not necessary to do a Public Comment.

JEFF NEUMAN

Let's ask your question, but the other way around. What's the harm?

BRIAN BECKHAM

Yeah, I mean, I don't think this is something that requires a lot of debate. If people feel it would be more prudent in the grand scheme of things to put it out for comment, then so be it. To be frank, I was just looking for sort of the quickest way to tie a bow on this and get this policy implemented and out into the wild and move on.

JEFF NEUMAN

Sure. Is this something that the Board would put out for Public Comment? No. So that's why I think we should, again, kind of fall back on the err on the side of caution. If this was like a PDP where the Board also then puts it out for comment, I'd be saying, yeah, okay, let's just skip it here. But because this will never go out for Public Comment if it doesn't go out from us. There's too many people in this community that will not appreciate our efficiency. So I like to err on the side of transparency. But I mean, whatever the group, I'm not the group. So that's just my opinion.

PETER EAKIN

Thanks, Jeff. Anyone else want to weigh in on that? Of course. What I propose to do, as I say, the downside, I suppose, is it would have an impact on the deadline on the issue for Public Comment. But I think what we propose to do, we'll share a cut as soon as we

can. And we'll work it in such a way that if we need more conversation that the UDRP and the URS maybe go first and this then follows. So we can maybe avoid that eventuality. Thank you. Thanks for your opinions.

So on to, the first of the two main events, UDRP version four. So I will share the document on screen shortly with red lines against the previous version, but I've tried a bit more ambitious than usual with my graphics. So we took on Board your feedback at the last meeting and made some changes and they're noted on the slide in the screen.

So you can see in version three, we had these features where we refer to orbital provider supplemental rules and with some requirements about how a request should be submitted and somewhat around what the provider had to do in terms of forwarding notice. And then there was one or two absences noted regarding sort of how we defined the arbitration process and determined registration data.

So as you can see in UDRP four, and you'll see this more clearly as we go through the document, we've made these changes. We've replaced the former with a reference to applicable orbital rules. We've referenced submission requirements and sort of with deference to the applicable orbital rules of the provider. We've removed that requirement for the provider to forward notice to the registrar.

I had to pause implementation and we've expanded on the definition of an orbital proceeding and then we've tweaked more precisely how the location of a registrar would be determined. So we issued this last week and there's been some comments, I think from Brian mainly. So what I'll do is I'll run through the policy and sort of take them as we find them. Because we've seen this document, this is the fourth time around on this, I won't go through everything.

I'll just assume that if we have not had comments so far that everyone's okay with some things. So there we go. We can see, as you say, the main sort of structural thing in this is we had added like a sort of two sections in this. So we noted here, this is really your notice requirements. And we've noticed here, these are sort of relating to the orbital institutions, applicable rules. So I'm just going down to the first comments here.

Brian has suggested some amendments, fairly minor there. And really, in the actual EDRP itself, very few comments from anyone in the IRT. As you can see, the main difference here is how we refer to, we're not referring to supplemental rules anymore. We've got applicable orbital rules. And really, that's it for this document. But as ever in this, in EDRP, the devil was in the detail in the rules. So we'll go to this document here. So most of the changes. So we've added some text.

So we can see here, applicable orbital rules are mentioned here. And yes, Jeff, I'll post some links into the chat. As you can see here,

I think Jeff, you had made this comment last time about there was little mention of what the orbital proceeding involves. We've expanded the definition of the orbital proceeding to include references to discovery and hearings and whatnot.

The link of that into the document there, into the chat, sorry. And as we go down, as you can see, we've just minor tweaks. I'm speeding up here till we get to comments. This section here was EPDP recommendation one, two, how an IGO could show rights. This is text taken verbatim from the EPDP.

Now, this section was included and it's been in the last couple of drafts. This is essentially to address the mutual jurisdiction issue. So in this section, we're saying that except in proceedings filed by an IGO, a complainant has to submit to mutual jurisdiction. And the language we had in essentially left it somewhat optional. We had said where the complainant is an IGO, they may, but it's not required to state that they will submit the jurisdiction. And Brian, you left a comment saying, retaining this even with the may formulation goes against the entire purpose of the Working Group effort. Now you've made a little different formulation there. Would you want to speak to that comment?

BRIAN BECKHAM

Yeah, Brian Beckham. I suppose it's really what I said in the comment. I think that I understand the intent behind this being originally placed there as coming from the first Working Group. I think a lot of it was based on misunderstandings of how IGOs

operate and privileges and immunities. And I appreciate that it's formulated as an option. But the concern was really that it sort of tees up a potential issue down the road.

And I think in a way kind of strays into almost legal advice. So I think it doesn't need to be there for an IGO to elect to this. I think it would be remarkably unusual given the history of this file that that would happen. That's frankly the reason why we're here having this discussion. So it just seemed, I'm sorry to say, but a little bit illogical to include that as something that would sort of suggest to an IGO that this could be something they could opt for.

PETER EAKIN

Thanks, Brian. Does anyone want to comment? Jeff? Sorry. Brian's comment was in X2 there, so 12. Essentially we had written where the complainant is an IGO complainant. The IGO complainant may, but is not required to state that they will submit the mutual jurisdiction. And I think, Brian, that's the language you're objecting to, yeah? Yeah. So I'll highlight it here on the screen. Yeah, there. Yes, it's crossed out, yes. Zak Muscovitch.

ZAK MUSCOVITCH

Brian, so it's your suggestion that rather than direct a prospective IGO complainant or rather than even suggest to them the possibility of commencing via a licensee or assignee of a right, that it just be left implicit that perhaps a prospective IGO complainant will attempt to use that procedure, even if it's not expressly set out?

BRIAN BECKHAM

Well, I think that's a slightly different, this is talking about the mutual jurisdiction, but I think the same would hold true in terms of the suggestion from the original Working Group about filing through a licensee or an agent. And by the way, nothing in here, this doesn't need to be there because elsewhere in the policy and rules, there's language which clearly covers the kind of process flow whereby a losing registrant could seek to take the case to court. So not having this here doesn't foreclose that option for the registrant.

PETER EAKIN

Thanks, Brian. I suppose when I looked at this, I can see your point, certainly about the spirit of it. I suppose my thing was what the original language definitively says, that the IGO complainant is not required to state that they will submit that jurisdiction. I know at the start it says accepting proceedings filed by an IGO complainant.

I just wondered if maybe the replacement language was maybe a little more ambiguous in that. It says that you are required to agree to arbitration. I just wondered if I think we included that language just more directly to kind of make it clear you're not required to submit to jurisdiction. I think that was our intent.

BRIAN BECKHAM

Yeah, look, I think the thing here is we all know this very well, but a lot of IGOs don't track ICANN Working Groups and policy outputs.

And I think it would be unfortunate if someone were to pick this up and misunderstand that portion and unknowingly jeopardize their privileges and immunities. Even if the package of the existing language talks about arbitration, someone could unwittingly read this and take a fork in the road that they maybe didn't intend to.

So I don't really see the necessity or even upside of including this. If you read the kind of policy and rules documents as a whole, it's clear that registrants have the option to try their hand at court. And then the IGO can invoke its privileges and immunities and see how the court treats that. But I don't see why this is really required. And it's frankly founded on a misunderstanding. And I think it just sets a potential issue up down the road that could be avoided.

PETER EAKIN

Thanks, Brian. Does anyone want to say anything to that, Jeff?

JEFF NEUMAN

I mean, the important part of that paragraph is still there, right, where it says where the complainant is an IGO, the complainant shall state that the complainant is an IGO complainant and that in the event the respondent elects to submit to arbitration, the IGO agrees to it. So I don't think we need the sentence crossed out. It's just not worth arguing over.

PETER EAKIN

Just wanted to just check we all agreed on that. I do see your point, Brian. Yeah. So I think if the IRT agrees that the original intent is

still served, then I think then it's okay. So if we go on down, let's see again. I'm just going to look for comments here. You're suggesting here, Brian, and we sort of either combine or further separate these clauses here, some more typographical suggestions.

And again, the most of the content relating to the IGO process came towards the end of the rules. Again, here we've made an edit referring here to applicable arbitral rules rather than supplemental rules. So section 20 was always the sort of start of the show.

Indeed, we've talked here about arbitral communications. We've just left to note the IRT. We're noting the possibility of leaving this more specific, like more of the finer points to the arbitral institution rules. But we're saying it's these provisions of life or variations specified in arbitral rules. We think that some sort of reference to this should stay as it reflects the principles and Final Report, even as a starting point, not getting too detailed about what exactly needs to be done. And so we're asking for making an electronic record available.

And again, as we're saying here, how they initiate a proceeding and then sort of the intake. So we've removed the requirements here that the provider has to notify the registrar. Sorry there, Jeff. Yes, we're in section 20, section E, arbitral proceeding intake.

JEFF NEUMAN

Of course. Sorry, it's Jeff. We go back to B. I still have the same view that we shouldn't be dictating how communications go with the arbitrable, I can't say it, arbitral institution. It's all governed by their rules. So why are we saying that it needs to be electronically via the internet, a record of the transmission being available?

Just say communications are governed under that arbitral institution. All this other stuff is; that stuff is addressed by arbitrators' rules. So we don't need it. I don't want someone to say, well, I don't know. I just think that it's not necessary to say any communication will be governed under the arbitral institution's rules.

PETER EAKIN

Well, I think we just, as I said, we included it for some sort of consistency. And we do say that, obviously arbitral rules may permit otherwise. I think it's just a record could be available. But we know to point and we can look at that.

And then we were just at E. So this is where I just want to highlight where things have changed. Previously, we had said that the institute, the provider effectively had to forward notice of arbitral proceeding. The ideal complainant is something that it's in the have to. But we also had the registrar and we removed that following our RT feedback.

So then as we go down, we see comments here from Brian, but whether this, sorry, the comments are slightly out of sync. Brian,

you're saying we need the last part of this. And you're saying here, it's not clear, and we have said here that the orbital institution, when it receives a request, should review the submission for administrative compliance with the policy, these rules and the applicable orbital rules. And if they're in compliance, then it would force notification.

And you're making the comment here that the orbital institution would be assessing whether this is a valid claim under the orbital rules, under the policy, if it's heard de novo. And you're saying you're not sure if all of that applies.

BRIAN BECKHAM

Yeah, I think this is kind of drawing from the same spirit of what Jeff was questioning earlier about the kind of long-winded way of saying that communication should be by email. I think this language comes from elsewhere in the policy. So in that respect, I think it's understood that it was just, you know, it made sense to kind of cut and paste that and use it here. But I think kind of picking up on what Jeff said about the arbitration institution might have its own protocols about communications.

Then here, we're not asking them to conduct a compliance review like a UDRP provider would when a case is filed, just asking them to basically make sure that it can be taken in under their rules. So I guess the upshot is, to the extent it mirrors language that appears elsewhere in the policy, that makes sense. It's just a suggestion for

a small adjustment when we're looking at the arbitral institution rules versus the kind of protocols under the UDRP.

PETER EAKIN

Okay. Thanks, Brian. Sure, I note that. Then as you see, I mean, if for anyone following this, you'll remember that previously we had a very, very long section 20, as you can see, we've already taken out lots of the detail and left a lot of this as the IRT's general wish was a lot of this is then left to the sort of disposition of the arbitral rules to kind of govern a lot of these sort of elements.

And we note here, this part of the arbitral proceeding, it was sort of laid down in the recommendations themselves, recommendation five, but the law, the governing law, and we note here that we used to say that we would take the location of the registrant from the registration data. And now we're suggesting that indeed, as per Jeff's suggestion, I believe it should be verified by under the proceedings of paragraph 4B.

So effectively the email at the time of the UDRP registrar. So we updated that language. So that is the end of this document. So we're noting the comments from Brian and that discussion around certainly, especially the mutual jurisdiction and the need to maybe, well, the IRT's opinion that we need to maybe sort of move sort of discussion of communication to sort of a higher level in the document.

Again, leaving even more detail just to the provision of the arbitral rules. So considering that and on the understanding that obviously we can make some of the minor changes, some of the changes suggested. Is the IRT content we're in a good place with this UDRP documentation, assuming these changes are made and that it would be in a good enough state to go to Public Comment? I'm taking here, seeing some nods.

JEFF NEUMAN

And when you, this is Jeff. When you put that out for comment, you'll have the clean version and then the red line to the version that exists today.

PETER EAKIN

That would be the intent, yeah. Just so people could see obviously the changes where they are from the current version.

BRIAN BECKHAM

Yeah, I just wanted for the record to say, yes, I agree. And thanks Peter and your team for the clean and good work here.

PETER EAKIN

Thanks Brian. What I would do then when we make those changes, I would circulate them again, just for information. But I'm taking the IRT's then consent that we can start preparing on this side of the equation for the Public Comment. But it is only for everyone, one half of the conversation, because we also have another set, the

companion policy, the younger sibling, the EDRP, the URS. We've only looked at one version so far.

And largely this is not just, this is not us being negligent. It's largely because the provisions are much the same. There are some differences, but what would be an EDRP would be in some form in the URS. So agreeing one would certainly help make agreeing the other easier. And I'll post a link in the chat, Jeff, when we get to that. I just wanted to give a quick up sort of overview of that.

So we've redrafted version two to reflect the language and approach taken in EDRP 4. So to that extent, if there are some of the issues that we've identified today, if they reappear in the same language, obviously if we fix them in EDRP 4, we'll do the same in URS two. But you might see that because obviously it's a different document, the structure is different that we address the same issues in different wording. So this version's redlining against the current published version. That's because EDR, the first version was, I think it's been so long ago, it had a different approach entirely. So I think it's more sensible just to sort of approach this from a clean slate.

We have a new section, section 13.2, which is orbital proceedings involving NGO complainants. And that's where the bulk of the detail lies. The one difference between the two policies is there is a built in appeal element to the URS. And as per recommendation four, we're sort of stating that arbitration can only be requested within 10 days of either the court declining here the case due to IGO

immunity, so far so EDRP, or the affirmation of URS determination in favour of the IGO complainant by the appeals panel.

So this was a provision in the original REC. You have to go down the appeal before you can request the arbitration. Can't do it in advance. So I appreciate, I issued these very little last night. I know one or two of you, Zak, you certainly looked at them. Maybe one or two others have too. So I would suggest I'll walk through them now. As I say, largely, this language does reflect the content of the EDRP.

So what I'll do, I'll bring up the screen. It's still EDRP, so I'll post this into the chat. This is the URS rules, and because life's funny that way, although this was the more detailed document in EDRP side of things, it is the lesser detailed document in URS land. So we're noting here, we have made some, where you see in yellow, we have included references to the arbitral proceedings and that they'll be governed by rules in the arbitral rules of the institution. And so we have the same definitions that we included in the EDRP and the IGO complainant definition as per EPDP recommendation one.

So if you need me to slow down, just say, I'm just getting to the good stuff, which we've highlighted in yellow. So again, this is the second part of EPDP recommendation one, this is two, this is how an IGO complainant can show rights in the mark. So this was text taken directly from the final report. So we're not presuming to change that or even suggesting it. So here we are saying that if the

complainant identifies itself as an IGO complainant, it'll effectively, yes, hi Jeff.

JEFF NEUMAN

Yeah, on this provision, I think we need to make it clear whether the complainant has to go to the appeal or sorry, I guess it would be the respondent has to use an appeal first before requesting arbitration or whether it can skip the appeal and go straight to the arbitration.

PETER EAKIN

Yeah, that's a good question. We've written it as such that it has to go to the appeal. And what I'll do is, if you mind, I'll just do a slight detour and bring up the actual original recommendation. So this is four. So this is the recommendation that refers to the URS proceedings. So there's two, three and four. So I thought this might come up. Detail the sort of triggers for arbitration under the URS. So three is the court case, effectively, which is declined to be heard.

And then four states. So where the registrant files an appeal on the URS section 12 and does not prevail in the appeal, it may submit the dispute to binding arbitration. So from the reading of the REC, we're seeing that we're seeing that the Working Group's intent was that you would need to go through the appeal process first. It's effectively exhaust the existing avenues before launching a new one. But Brian, do you want to?

BRIAN BECKHAM

Well, more of a question. Zak and I were talking earlier, and apologies, I don't have the URS committed to memory. But if I recall, there were a couple of different kind of procedural forks in the road in terms of appeals. So I think in the document you had earlier, I mentioned paragraph 12 of the URS for appeals, but I think there were different appeals of possibilities under the URS. So just wondered how we need to kind of think about that in this context, if all of the different appeals possibilities need to be covered off, or there was just a specific reference to one of those appeals possibilities.

PETER EAKIN

Sorry, there may be in the other document, actually, because we're not coming up here with any references, but that's a good point. Well, we can look at see what in the other document. I think that's where the information is.

BRIAN BECKHAM

I think from memory, there was appeal after default and then appeal de novo. And I'm sorry, I'm a little fuzzy on all the language, but I just that may be one thing that we want to look at.

PETER EAKIN

Sure, Jeff. Mary?

MARY WONG

Yes, there's at least two points, right? Which is possible that basically everything just goes on and you get the determination under the URS, which kind of like the UDRP, or there is that intervening period that Brian and Jeff mentioned, where there is an initial default by the respondent. Then what happens is the case does have to be determined on the merits, even in the default by the panelist. But then the respondent has six months after that to file an appeal, right, using the word most broadly.

I'll say that I don't believe the, Brian can correct me if I'm wrong, I don't think the Working Group actually went into this level of detail. I believe, however, that the intent was that when you had a determination on the merits. So to that extent, if that is also true in those two possibilities of URS, you could probably treat them the same, if that is what you also believe the intent of the Working Group was, not to make a distinction, but once you did have a determination on the merits.

PETER EAKIN

Brian?

BRIAN BECKHAM

I think that sounds right. So maybe it's just a matter of us doing a little bit of homework and looking at the exact language. And I think Mary is right in terms of the intent. But I just wanted to flag that because I did recall that there were the different kind of appeals options under the URS.

PETER EAKIN

Mary.

MARY WONG

Having said that, then I had a follow-up question. This is Mary from ICANN staff for the record. And again, maybe we do, I can take a look back at the discussions of the Working Group, because like I said, my recollection is that we did not get into the level of detail. Because one question that arises specific to the URS, because of this intermediate appeal, as I'll call it, it's probably unlikely that a respondent would go to court and go to arbitration and come back six months later and try to appeal.

But that's a little bit of a loose end that I wanted to point out, because it's not within the authority of this group or the ICANN, or even of the original Working Group to say that, therefore, your avenues of appeal under the URS are now curtailed. So that may well be the practical effect, but I thought for the record, I should at least point it out.

PETER EAKIN

Thanks, Mary. Hey, Jeff.

JEFF NEUMAN

And I can't remember, can complainants appeal too? Is it both? I don't remember. But you could have a situation where the registrar, if the complainant can, the registrar prevails, the

complainant appeals, the complainant prevails on the appeal, and then you'd go to arbitration. Yeah, we have to kind of go through each of the scenarios.

PETER EAKIN

Yeah. Okay. Either party, yes.

JEFF NEUMAN

So it has to be, the arbitration has to be after everything, yeah.

PETER EAKIN

Yeah, I think that makes sense now, because it's the final step.

MARY WONG

But, sorry if I'm missing it. Is that after everything means that if it's a URS case, that you need to wait the six months to see if the respondent first files an appeal? And the reason for the six months, this is, what is it, 15 years now, Jeff, since we did this, is just to give the respondent the opportunity, because they may not have received the original notice, et cetera, et cetera.

So the six months, in the event of a default determination, is really give them the opportunity to come back and say, hey, I should have defended this. Which obviously wouldn't be the case for the complainant, because the complainant filed the complaint, so.

BRIAN BECKHAM

Yeah, hi. Brian Beckham. I think, I guess we need to maybe slow down and take this offline and look at it a little bit. But just wanted to throw one thing out there, which is, I think we all kind of see the potential kind of complications and timeline here.

Another way to look at it might be, and I guess we would maybe need to trace over legislative history a little bit from the EPDP Working Group. But to consider whether if one of the parties invokes the right to arbitration, if they then effectively waive their right to come back and invoke the appeal under the URS. Because the arbitration is meant to be binding. So I think you can make a pretty reasonable argument that by taking that fork in the road, then they've chosen not to invoke the appeals options.

JEFF NEUMAN

And then I can't remember, can the respondent immediately pull it once it finds out there's a URS against it and go straight to arbitration? So there doesn't even need to be a decision or an appeal. The respondent can just say, I don't want to deal with this in a URS. I want to go to court or I want to go to arbitration.

MARY WONG

But then I think that gets us back to Peter's original point, which was the question I think that you asked, as in, is it a conditioned precedent that the respondents actually have gone to court and gotten an order that the IGO is jurisdictionally immune? So technically, in this case, if the respondent said, I don't want to deal

with the URS, I don't want to deal with an appeal under the URS, they can't go to arbitration under this form of proceeding, the one that we're talking about, without having gone to court first. So they can't go directly to arbitration. And that was your question, wasn't it?

JEFF NEUMAN

I thought in the UDRP, go back to the UDRP, you don't have to go to court to get a finding there's no jurisdiction. You can go straight to arbitration. You don't have to go to court.

PETER EAKIN

That's true in the UDRP. But then there's no appeals process in the UDRP.

JEFF NEUMAN

Right, but why? But you still have the right in the regular URS, you have the right to go straight to arbitration or straight to court in the normal sense, right? You can just say, oh, is the URS filed against me? I'd rather fight this out in court.

Obviously here, we're saying, you know, because of the new policy, that courts aren't necessarily available for it and IGOs won't agree to that jurisdiction. You should be able to go straight to arbitration then. Why do you have to spend money, go to court, get a finding to spend all that money to get a finding that there's no jurisdiction before you can go to arbitration? That makes no sense.

PETER EAKIN

It's interesting. I'm just looking again at the recommendations because again, there is this 10-day trigger. Basically, it's not an unlimited period. So going just purely by the text of the recommendation, it's 10 days after the court declines to hear. And obviously, you'll know the timeline of this very well, the case, or it's 10 days after the appeal decision.

JEFF NEUMAN

I was part of that Working Group. I think, Brian, you were too. The one, the EPDP.

PETER EAKIN

Yeah, the EPDP.

JEFF NEUMAN

Yeah, I'm pretty confident the group never said that it was a requirement to go to court and have a finding of no jurisdiction. I think that was in there as an option. We didn't, but it was supposed to be similar to what's in the UDRP.

PETER EAKIN

I suppose this is where we maybe run into the question of what's on the screen in terms of what we're-- This is the policy that we're being asked to implement. And to what extent then, regardless

what the intent was, this is what's done in black and white. Yeah, Jeff?

JEFF NEUMAN

I say we continue down the path of the intent. And then once we finalize it, we go to the council and we explain why we did it that way. And the council, I'm sure, would affirm it.

PETER EAKIN

So you're saying we don't draft as per the recommendation. We draft as--

JEFF NEUMAN

We draft it as it was intended, which was not that the registrant has to go to court because it was where the registrant initiates court proceedings. That's not mandatory. It's where the registrant decides to go to court, this will happen.

PETER EAKIN

I suppose then...

JEFF NEUMAN

But where it decides not to go to court, the arbitration will happen.

PETER EAKIN

Mary?

MARY WONG

So again, I think just for the record, obviously this is from recollection. I'm really happy to go back and check and correct myself again on the record. But one assumption, as in all disputes, is that the parties can always agree to go to arbitration at any time. That's true of the UDRP. That's true of the U.S. That's true of anything else.

What this arbitral proceeding was designed to do was to address the balance of rights between the registrant and an IGO. Because if we still go up a level, essentially what the recommendations say is that an IGO is exempt from mutual jurisdiction. And that's what starts us down this path. And if I recall correctly-- sorry, Zak, I'm kind of looking at you for this. There were very strong arguments that if that is the case, the registrant on their side needed some protections to balance against that, which also meant that they needed to have clear neutral evidence that the IGO was indeed immune to a jurisdiction of a particular court.

BRIAN BECKHAM

Partly. The whole reason we decided on arbitration this way was because we wanted to make it as court-like as possible. It was the notion of, well, if they're not going to be able to go to court because there's no waiver of the jurisdiction, then they need to be able to go to arbitration. And we need to do everything to make this arbitration as court-like as possible.

And so if you're saying that a URS respondent can go to court whenever it wants, then they should be able to go to arbitration whenever it wants. It shouldn't have to skip. It shouldn't have to go to court, spend God knows how much money losing a motion it knows it's going to lose. It should be able to go directly to arbitration. And the court was there.

The court option when we were talking about this in the EPDP was, well, if a registrant wants to try it out in court, nothing should prevent them from doing that. So it was never to make going to court mandatory in order to get rejected before you went to arbitration. So for me, I mean, we may have different overriding principles, but for me, the overriding principle in this IRT was to make everything as court-like as you can.

And think of it as every right the registrant had to go to court, should be the same rights it has to go to arbitration. I think that for me is the overriding number one principle, more than equalizing rights between registrant, because I don't even know what that necessarily means. But certainly it was you're taking away court because of the mutual jurisdiction, we got to substitute arbitration in its place. And every place that was going to court now seems set needs to say, go to arbitration.

PETER EAKIN

Zak?

ZAK MUSCOVITCH

I find this terribly confusing me because I wasn't completely convinced by Mary, and I'm completely convinced by Jeff. And every time I try to formulate some kind of cogent thought about it, I end up going in circles. So maybe forgive me for just trying to think out loud a bit here.

So if the principle at play is to enable a respondent to go to court preemptively or during or at any time, just like the UDRP is, right? A respondent, when notified of the URS, can decide to go to court at that time. And that would give them the exact right of going to court. The difference is, as Mary pointed out, the complainant will not have submitted to the jurisdiction of court, right? But that submission to jurisdiction is it a really necessary piece of the puzzle for respondent to avail itself of court, right?

So the respondent could say, okay, well, the complainant hasn't submitted, but I'm entitled to go to court. So I'm going to go to court, regardless of whether the complainant has submitted the mutual jurisdiction. That would make it exactly like court. But so the question then becomes, and I'm really thinking out loud, is that in the absence of that submission to jurisdictions, does that somehow disadvantage the respondent from availing itself of its natural right to go to court?

JEFF NEUMAN

It is because of the lack of committing to or not committing to mutual jurisdiction. The registrant essentially knowing going in is not going to have court as an available because it knows pretty

much that it's not going to have jurisdiction. Like if you were advising like a registrant and someone, an IGO filed a URS against you, your client, and you knew, okay, I don't want to fight this out in the URS. I want to have the case heard on its merits.

You know going in, the court is not going to accept jurisdiction over this. So do I have to continue then in the URS and do an appeal before I can go to this arbitration and spend all that time and money? Because yes, in theory, you can go to court, but you know going in, you're going to lose. And not even lose on the merits, you're going to lose on jurisdiction. So to me, the not agreeing to jurisdiction takes away effectively your right to go to court.

PETER EAKIN

Mary?

MARY WONG

So again, drawing on recollections of all the other caveats from before, on this point, that is exactly the concern that I believe was expressed on behalf of registrants during the policy development phase. And I think that the solution that they came to represented a kind of functional equivalent, right? Because essentially, in principle, yes, when an IGO doesn't submit to jurisdiction and it has jurisdictional immunity, you cannot get the case heard in court.

Some of the arguments that we heard in the Working Group on the other side was we don't know that the IGO will always be immune. It might depend on the court we go to. It might depend on the IGO

itself. And drawing on the previous PDP, there was an expert opinion that gave examples of when IGOs would be jurisdictionally immune. So because of that doubt during the Working Group phase, there was motivation to provide something, like I said, it's functionally equivalent so that if the respondent indeed believes that in his or her particular case, the IGO is not necessarily immune to the jurisdiction of the court they want to go to, they go to the court to try to get it heard on the merits. You're right, Jeff.

In many cases, that will bounce right back. But I don't believe that some of the president's Working Group thought that that would always be the case, and that's why it was engineered in this way. Therefore, going back to the URS question, to your other point, it probably is an argument to say that in an event of a default determination, that should also allow the person to go to court and arbitration to kick in. In other words, you don't have to wait for the six months.

PETER EAKIN

Jeff?

JEFF NEUMAN

Yeah, I remember those discussions in the Working Group, and it was always an option that they wanted to preserve, not mandatory. And so I think interpreting it as, well, the registrants were arguing that there's a chance they could get jurisdiction over the IGO. So they didn't want to foreclose the opportunity. But that doesn't

mean they wanted to make it mandatory that you have to go to court, even if you know you're not going to have jurisdiction.

So I agree that the registrants wanted it as an option, because they may want to argue that. But to make it mandatory, I think goes against the principles of what the registrants were asking for, at least in the EPDB.

PETER EAKIN

Zak?

ZAK MUSCOVITCH

Okay. So just trying to think about this from a very, very practical perspective, aside from the principal perspective, which you're explaining well. If a respondent was notified of a URS commencement, and it went to the IGO and said, we're thinking about going to court, we're thinking about going to arbitration. And wouldn't the IGO's perspective be, well, we'd much prefer if you go to arbitration, right?

So we'd much prefer you go to arbitration, because we don't want to have to argue our privileges and immunities in court. So maybe we don't need to even argue this, because the IGOs would want that respondent to go to arbitration in those circumstances. So there's nothing really in contention. Under the recommendation and under the URS rules here, the respondent can go to court and take its chances there. But from the IGO's perspective, it would

want to enable the respondent to go to arbitration instead. And so there's really no conflict between the two parties.

JEFF NEUMAN

So on a practical, how long does a respondent have to respond to a URS complaint? It's shorter than a regular, right? Fourteen days. So you're assuming, A, that the respondent is going to be able to find and reach out to the IGO, that they're going to be able to get some kind of agreement.

ZAK MUSCOVITCH

No, no, I'm sorry, Jeff. I'm not saying that they actually would consult. I'm not saying they would actually consult. I'm just saying that for our purposes, there is agreement in principle between both respondents and complaining IGOs that arbitration is the preferable method. So why wouldn't we enable that?

JEFF NEUMAN

That's not in the policy.

ZAK MUSCOVITCH

Well, this is what you're suggesting though. You're suggesting that arbitration be an option for a respondent without having to go to court. Right. And I'm saying that's in the IGO's interest too.

JEFF NEUMAN

But that doesn't mean they would agree to it.

ZAK MUSCOVITCH No, I'm saying we could agree. You're saying that it should be the policy that a respondent can go directly to arbitration without having to go to court.

JEFF NEUMAN Correct.

ZAK MUSCOVITCH Right. And that's from a respondent's rights perspective, right? And I'm saying that from an IGO's perspective, they'd want to see the same thing. And so for our purposes, there seems to be agreement that there should be the right to go to arbitration directly because it would be in the best interest of IGOs too. Whether this is permissible given the constraints of the recommendations is another question though.

PETER EAKIN Yes, that's something we need to remember. We're looking at the policy as written. Mary?

MARY WONG Is it possible to agree with everybody and say something completely different? This is Mary again from ICANN. So on that point, rightly or wrongly, I think we're going down this path to try to take into account and balance all the different rights and concerns that were expressed during the policy development

phase. But there was always that sort of fundamental underlying assumption that at any point in this process, both parties could just say, forget about this.

We'll enter an arbitration agreement and then go to arbitration in whatever institution we choose. In other words, this form of arbitral proceeding with this funnel as written is not the only path to arbitration. That's what I mean I'm agreeing with you. So you know, like I said, at any point early, middle, towards the end, both parties could just say, this is too much. Let's just come to an agreement because you need to essentially, again, right, both parties need to agree voluntary arbitration. And that's why this policy also has some very specific recommendations about how do we get that agreement first from the complainant and then secondarily from the respondent. I don't know if I made it better or worse.

ZAK MUSCOVITCH

No, I think that makes sense is what you're saying is that implicitly parties can go to arbitration by agreement at any time. And so even if we don't explicitly enable them to, the respondent to go directly to arbitration, they can still reach an agreement with Jeff. They can still reach an agreement with the IGO complaint. But I think practically speaking, a respondent would probably just resort to commencing the court procedure and then sorting it out after and saying, listen, we'll draw this, let's agree to go to arbitration. And so practically that's possible.

There is some friction there because when you kind of compel a respondent to commence a court action, rather than just directly enable them to go to the arbitration, there may be a tendency to continue on with that court action. And that's kind of an aggravating factor for IGOs and raises the costs and problems for a respondent.

JEFF NEUMAN

Yeah. And the problem is you're assuming that the parties will have an agreement amongst themselves. I think if I were the IGO and I filed a URS, I'd be like, let's just, no, I don't want to go to arbitration now. Let's just let this go to its decision, right? Why would they at that point? They already filed, they already spent the money to do it. If you're the IGO, you're going to go, it's only 14 days. I'm going to get a decision. Why would they just leave it? So I think requiring mutual agreement is just not even a real practical option.

And the second thing as an attorney, if I were to file a case, knowing I have no jurisdiction, I would be breaching my ethical obligations. If I know, that's always a chance. So if I know, then that's a violation. Yeah, sure, you can get an attorney. But again, I think we go with what the intent was, which is now that we're not allowing or we're not having the mutual jurisdiction clause, we have to follow that through in accordance with all the ripple effects.

And forcing a registrant to file in a court knowing it has, it will likely not have jurisdiction is just not the right thing to do. And I think, I know what it says. I could also tell you that EPDP spent very little

time on the URS, very little. And probably never even thought about this in the way that we're thinking about it now. I'd be very comfortable proceeding down the path of letting them go to arbitration and bringing this up to the council as the issue and why we did what we did. And I'm pretty sure the council's going to go, okay, because it is in line with the policy. Maybe not the words exactly, but it definitely is in line with the policy.

PETER EAKIN

Thanks, Jeff. We're almost at time. So apologies for anyone. I know I promised 10 minutes of lively chat. I think we've had it. We got it. Yes. So the issue here is, as you point out, it's intent versus policy, right? So obviously, I hear what you're saying, Jeff. Again, I'm interested in terms of addressing the rest of the IRT. Do we feel that this is something that there's agreement on? Yet to go into the numbers game, but in the sense of what the feeling is with Jeff's position?

ZAK MUSCOVITCH

I mean, I'm sympathetic to Jeff's argument, but I want to hear from IGOs or people on their behalf, whether this is something that's in their interest too. Because if there's universal interest in this approach, it's in best interest of each side to this kind of dispute, then that makes any argument to GNSO that's necessary a lot easier.

BRIAN BECKHAM

Yeah, Brian Beckham. I think I'm trying to kind of recall, I remember at one point, the IGOs, we got together and we created kind of like a process flow of what it would look like if someone tried to go to court in the spirit of encouraging arbitration straight away. And so my gut reaction is that it makes sense, but I think it would be helpful if we could see something on paper. And then of course, I'm happy to coordinate with IGOs and come back to the IRT.

PETER EAKIN

Thanks, Brian. We're almost at time. Obviously, we're going to have to think more on this. I also want to just; this would have an impact on our timeline. It really would do this. I mean, I understand your opinion. I'm just stating that. I'm not trying to sway anyone. And that said, I'm just stating as a fact, this would not be able to go to Public Comment on our timeline. And Mary, yes.

MARY WONG

The genius of late ideas. This is Mary from staff. You had mentioned a staggered Public Comment earlier, Peter. Obviously, in the context that we had thought we can go to Public Comment with the revised UDRP and URS at the same time, followed by subsequent time by the policy guidance document. Because the URS is modeled on the UDRP and because we had approached this implementation, we're looking at both policies.

Would it be helpful to seek Public Comment on the UDRP implementation first while we continue this? Because that might actually be illuminating to this discussion, or at least it would mean that we're not on hold with what is probably the major policy concern for most parties.

PETER EAKIN

Jeff?

JEFF NEUMAN

I would say absolutely. I think that makes sense. And I was just thinking through going to the We don't have a council liaison, do we?

PETER EAKIN

We do. Damon.

JEFF NEUMAN

What's that?

PETER EAKIN

Damon. He's not here.

JEFF NEUMAN

He's not here. Okay.

PETER EAKIN

He sent apologies.

JEFF NEUMAN

What's that?

PETER EAKIN

He sent apologies. He's on route. He will be.

JEFF NEUMAN

All right. Right, okay. So I'll find Damon and try to bring him up to speed because he's the one that would present it to council.

PETER EAKIN

I suppose the only thing, I know we're over time, folks, but if you can stay with us for five minutes. The only thing, I am not averse, I want to get this going. And if the UDRP can go for Public Comment, certainly. My only issue is in the UDRP, there's also the requirement to go to court.

So my issue is that if we make changes to DRS, they will impact on UDRP. So in the UDRP, I know there's the option, you can just skip court, go to arbitration, but it also says if you want to go to court, you have to go to court, go through the motions and be told you can't proceed because the IGO used its immunity. So if we change it here, we will not have to change it there.

JEFF NEUMAN

In the UDRP, you can go straight to arbitration, no?

PETER EAKIN

You can, yes. You don't have to go to court, but if you want to go through, yeah. But here as well, you can go after the appeal. You don't have to. As this is the issue, we're going by what's written versus what was intended.

JEFF NEUMAN

Now you've totally confused me. What?

PETER EAKIN

I think we're all confused. I think. No, we're just talking about the-
. So yes, so this is written sequentially, yes. So I think that's where the issue is.

JEFF NEUMAN

Right. The UDRP is not.

PETER EAKIN

No, it's not.

JEFF NEUMAN

Okay, good. So I don't think what we're talking about here has any impact on the UDRP.

PETER EAKIN

Well, folks, we are over time. So what I suggest then, obviously, we're going to have to talk internally about what the issue is today. But in terms of next steps, I have a slide for that. It's somewhat not entirely relevant anymore. What I would suggest though, what I would like to take from this, we need to look into this issue more.

And obviously, we were hearing the IRT's views on this, but the IRT is, just to reconfirm, you're happy with the proposed updates to the UDRP. Okay. So we'll discuss, and if possible, we'd like, we'll see, we'll explore going ahead with that. And then we'll obviously have to meet again to discuss this issue further. I just then, obviously, timelines will be impacted, certainly from the URS side, but this is something I think we just maybe all need to take some more time to think about and then regroup. Does anyone have any closing comments to make?

BRIAN BECKHAM

Just one question then. I just want to understand in terms of next steps on this, is that something, I don't know, Jeff, did you think you wanted to try to kind of put pen to paper on this, or is that something that you were thinking about, Peter? I just want to kind of see what to look out for and how to try to move this forward.

PETER EAKIN

So just to clarify again, Brian, what were you suggesting? I think this is something, yes, we'll need to discuss internally how to proceed on this and then get back to the group. I don't want to sort

of shoot from the hip just in this forum without, I think, maybe some time to look at this.

Obviously, we need to see how this impacts on everything, but obviously, the IRTs expressed a concern, so we want to make sure that that concern is addressed. I want to give everyone their voice on this, but on that note, does anyone else want to say anything in the end? No? Okay, well, thank you. Dublin, as ever, has been interesting. It's a lively city and we'll be in touch. We'll go leave it at that. Okay, thank you. Stop the recording.

[END OF TRANSCRIPTION]