

Subject: RE: [Ext] note to IOT

Date: Friday, October 19, 2018 at 6:08:25 AM Pacific Daylight Time

From: McAuley, David

To: Samantha Eisner, Contact Information Redacted

CC: Elizabeth Le

Thanks Sam,

OK – I can accept if we can then make one clarification – I suspect it will be ok:

To avoid any doubt that expressing some interests may exclude others, please add introductory language to the second sentence of the intro paragraph as follows:

Without limitation to the persons, groups, or entities that may have such a material interest, ...

Thus that paragraph would now read:

Any person, group, or entity that has a material interest relevant to the DISPUTE but does not satisfy the standing requirements for a CLAIMANT set forth in the Bylaws may participate as an *amicus curiae* before an IRP PANEL, subject to the limitations set forth below. Without limitation to the persons, groups, or entities that may have such a material interest, the following persons, groups, or entities shall be deemed to have a material interest relevant to the DISPUTE and, if requested, shall be permitted to participate as an *amicus* before the IRP PANEL:

David

David McAuley
Sr International Policy & Business Development Manager
Verisign Inc.
Contact Information Redacted

From: Samantha Eisner <Samantha.Eisner@icann.org>
Sent: Thursday, October 18, 2018 1:12 PM
To: McAuley, David Contact Information Redacted; Contact Information Redacted
Cc: Elizabeth Le <elizabeth.le@icann.org>
Subject: [EXTERNAL] Re: [Ext] note to IOT

Hi David -

Thanks for your language. Attached is a further redline. The first paragraph appears to have a lot of changes, but what it does is:

- 1) adopt your language of "shall participate";
- 2) makes that language applicable to all three types of situations; and
- 3) is reframed in a bulleted list so as to avoid repeating the same participation right 3 times.

You'll see my comment that I do not recommend accepting the line regarding how amicus are informed. It creates a lot of vagueness in the document, and the procedures don't have other discussion about how parties are "informed". Again, this is something that we can continue discussing for the final set.

Finally, I reorganized the footnote to return to one sentence, as there was some duplication and reference to Bylaws sections that do not appear to apply to amicus. In this reorganization, I incorporate that concept of "broad participation" that was not in my previous sentence.

Please let us know your thoughts. It would be good if we could get this out either later today or by tomorrow .

Thanks,

Sam

Samantha Eisner
Deputy General Counsel, ICANN
12025 Waterfront Drive, Suite 300
Los Angeles, California 90094
USA
Direct Dial: +1 310 578 8631

From: McAuley, David Contact Information Redacted
Sent: Wednesday, October 17, 2018 8:53 AM
To: Samantha Eisner; Contact Information Redacted
Cc: Elizabeth Le
Subject: RE: [Ext] note to IOT

Sam, Liz,

I am attaching a few changes to Sam's suggested language, shown in track change format.

David

David McAuley
Sr International Policy & Business Development Manager
Verisign Inc.
Contact Information Redacted

From: Samantha Eisner <Samantha.Eisner@icann.org>
Sent: Wednesday, October 17, 2018 10:28 AM
To: McAuley, David Contact Information Redacted; Bernard Turcotte Contact Information Redacted
Cc: Elizabeth Le <elizabeth.le@icann.org>
Subject: [EXTERNAL] Re: [Ext] note to IOT

I am about to step onto a plane, so please copy in Liz Le on your reply.

The language of the note works for me if you are OK with the language proposed yesterday.

Attached is a redline of the rules with the updates that I believe we agreed upon already, other than this new joinder language.

Thanks,

Sam

—

Samantha Eisner
Deputy General Counsel, ICANN
12025 Waterfront Drive, Suite 300
Los Angeles, California 90094
USA
Direct Dial: +1 310 578 8631

From: David McAuley Contact Information Redacted
Date: Wednesday, October 17, 2018 at 7:17 AM
To: Samantha Eisner <samantha.eisner@icann.org>, "Bernard Turcotte Contact Information Redacted"
Subject: [Ext] note to IOT

Sam, Bernie:

Below is note I would send to IOT if we arrive at language.

I am working on Sam's email and will reply shortly

David

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Dear members of the IRP IOT:

First, a word of thanks to those who participated in two productive calls during the week of October 8th.

As mentioned by Sam, we have an opportunity to have the board accept and approve 'interim rules of procedure' at ICANN 63 but we must move quickly to do so. In my opinion, establishing interim rules is timely (considering all the work we have done since October 2016) and appropriate.

Attached is the draft of the interim rules meant to capture what we discussed on the phone in the recent calls. Please take a good look.

I would like to note one particular area – that of Joinder etc. (Rule 7). You may recall that I, wearing my **participant** (not leader) hat, had suggested certain text and with Malcom's help we seemed to have achieved compromise.

As Sam attempted to draft the compromise in this respect she encountered difficulty in capturing appropriate language that she felt would be consistent with bylaws. Sam reached out to me in my participant capacity and we discussed over the ensuing days and so the language you will see there is not exactly as discussed on the calls. The language is acceptable to me in my participant capacity. I felt these discussions were appropriate inasmuch as I had raised the issue as participant and knew I would forward the resulting language to the list – a way to try to take advantage of board action at next week's meeting.

Could you please review these rules and if you have any concern please post to the list by 23:59 UTC on October 19. If we are agreed I will forward for board action.

And then, of course, we will turn to the very few remaining items for final rules – they should be able to follow in pretty quick order.

Best regards to all,
David