
IOT-IRP MEETING

Thursday, December 13, 2018—19:00-20:00 UTC

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Hello, everybody. This is David McAuley speaking. I think we should go ahead and get started. Before we go further, can I ask that the recording be started?

>>SPEAKER: This meeting is now being recorded.

>>SPEAKER: David: Thank you. Welcome everybody to the IRP Implementation Oversight Team call for 2018. This is probably the last call for the calendar year. Best holiday wishes to all on the call. I would like to begin by asking if there is anybody that is on the phone who is not showing up in the ADOBE room. Would they kindly speak up and identify themselves now?

>>SPEAKER: Mike: This is Mike R.

>>SPEAKER: David: Thank you, Mike. And is there anyone else? Okay. I would like to ask then -- there's -- in the ADOBE chat there is a phone number that begins "4015" and then ends Inaudible --.

>>SPEAKER: Mike: That should be me. But I can't -- I don't see that I am signed in. I feel like I am having difficulty getting into the room.

>>SPEAKER: David: That is you, Mike?

>>SPEAKER: Mike: Yes.

>>SPEAKER: David: thank you. Now I would like to ask if anybody in the group has a change to their Statement of Interest that they would like to note, please let that be known now.

And I don't see hands and not hearing anything. We'll move past that and get to the agenda item that is next. That is to address the challenge that Malcolm put on the list to ICANN staff participation and a full member in the IOT team. And the way I would like to approach this issue is to follow this process: I would like to begin by asking Malcolm to briefly summarize his point again to set the table on the issue. Then go to Bernie and see if he would kindly review for us -- it has been some time since this started -- the formation of the implementation oversight team. Then thirdly, I will summarize or quote from the by-law that deals with the constitution of the IO T team. Then fourth point is: I will summarize -- I won't read every e-mail -- but some of the e-mail comments that have come on list since December 6th. That's the date that Malcolm put his proposal in writing on the list. So there's no comments before that, as I recall. Then finally we can discuss this.

So to kick that off I would like to ask Malcolm if he would be willing to summarize the point he is making -- I see Sam -- before Malcolm, I see that Sam would like to contribute to the discussion as well. I think the way we are proceeding, until we decide otherwise, is the way that we have already proceeded. You will be able to make comments in the discussion portion, as I have outlined the final portion. But Malcolm, go ahead and remind us of what you said.

>>SPEAKER: -- there's a little bit of feedback. Everybody please mute who is not speaking.

>>SPEAKER: Malcolm: Thank you. Can you hear me? Clearly? Yes? Okay.

>>SPEAKER: David: Yes. I can. Go ahead.

>>SPEAKER: Well when we (Inaudible) this I think we are all in agreement that they would be useful (Inaudible) a practical element most practical experience of what actually happens and so forth. Will be able to answer important (Inaudible) questions for us. But when (Inaudible) the group, you decided that they should be full legal participants in the group rather than (Inaudible) support. Consequent to this is that they could want towards the formation of a quorum and they take a full part of the discussion, including having essentially an opinion rather than just providing factual (Inaudible) information. But actually have take a part in the formation of the group's view of the balance of (Inaudible). And by repeating in the consensus (Inaudible). Actually a full decision making part. For the group. Now I originally said that I thought this was asking a bit too much (Inaudible) while they were very important to contribute to this (Inaudible) actually the function of this group is to establish rules for the of procedure that will help hold them to accounts and (Inaudible) setting of the rules as to how those decisions shall be challenged. (Inaudible) were decided and decided that full part of the group.

Now Part 4 (Inaudible) when I asked (Inaudible) about what (Inaudible) for actually context of taking a view that is strongly (Inaudible) at a variance of (Inaudible) at least (Inaudible) view. And he would like if he were not part of it -- his staff is not considered a part of (Inaudible). That they are take part in the process (Inaudible) group as a staff support and facilitation. That was important to -- clearly unaware that they take a part in the group as full participation. He was very angry that I was suggesting that they were overstepping the grounds (Inaudible) and I was somehow impugning their professionalism by suggesting that they were actually seeking to push their own view rather than merely taking a (Inaudible) this this process. It is clear that that's not normal. (Inaudible) that wasn't -- not be normal in the context of (Inaudible). Including this one. Now I understand that (Inaudible) important (Inaudible) take part in the group in some capacity. And also arguments (Inaudible) take part as full participants in this group perhaps more than any other. There were arguments. (Inaudible) talking about this (Inaudible) in particular. So that was really where I had got to and put forward my (Inaudible) that we go back to this, (Inaudible) to the proprietary of them actually taking a full decision making part in this group. But since then, in the discussions, Beckie contributed a point that I thought was particularly important, that I would actually comment and adopt. Which is that the competition (Inaudible) set out in the by-laws, the by-laws for state that and I (Inaudible) shall be established in consultation (Inaudible) and comprised of members of the global internet community. Now that (Inaudible) states what the compilation of this (Inaudible) should be. Members of the community. And comprised of (Inaudible) ICANN. ICANN staff or (Inaudible) of ICANN (Inaudible) in that community. It will be the (Inaudible) of that community, which clearly stop participation on a decision making basis. The only way to interpret that so as not to be (Inaudible) would be to say that actually the members of staff will consider to be part of the global internet community, which is exactly stated quite clearly. That is not right (Inaudible) support (Inaudible) for those reasons I would like to move that the staff be legal team and (Inaudible) be classified as staff support so they will still have a vital (Inaudible) participating in the discussions. But (Inaudible) will be

sort of practical procedural and interpretive (Inaudible) and not for (Inaudible) of the balance of expediency of competing objectives or the balance of objectives (Inaudible) and they will not be (Inaudible) towards the quorum in the decision making. Thank you.

>>SPEAKER: David: Thank you, Malcolm. David McAuley speaking again. Before I go to Bernie, I see a hand up from Sam.

>>SPEAKER: Sam: Thanks, David. Malcolm, one of the things that I think we should clarify, before I respond to some of your statements, is there is also a suggestion in the e-mail that you sent to the IOT last week on this is those of us participating from ICANN Legal were participating with a deep conflict of interest. I did not hear that in what you just explained, and you were relying on other items to (Inaudible) the participation in this group. I wanted to clarify for the record: Do you still believe we have a conflict of interest with participation or looking more at the definition of the group in a procedural matter?

>>SPEAKER: Malcolm: I believe that the original (Inaudible) interest here. Firstly, that the group here is - the purpose of the group is that we are the community coming together to decide how challenges to ICANN as part of the process of holding ICANN accountable should be upheld. There are ICANN subject to that is (Inaudible) and representatives of ICANN have a conflict in that. I note (Inaudible) point that (Inaudible) on the list that characterize anyone other than you as (Inaudible) the (Inaudible) I disagree with that interpretation. Depending on the matter I would be likely to be on supporting ICANN side of an IRP claim, as I would be supporting the claimant's side. Balancing the community is naturally the claimant's side of the bar. I think we are balanced and (Inaudible). But I do think that ICANN is necessarily and definitively the defendant side of the bar. Moreover -- and I am sorry to say this -- moreover I made the point to (Inaudible) but it is very likely in an IRB case that the claim that is being pushed is a direct challenge to the very advice that you Sam and your colleague have given the (Inaudible) given ICANN could normally ICANN would act on a consulting issue or something. (Inaudible). IRB. And so role with this is takes a decision-making role in the challenge with the reaction that you have done or (Inaudible) on yourself could be naught. I see that as a clear conflict.

>>SPEAKER: Sam: Thank you for clarification on that, Malcolm. I think it is really important -- we are going on record right now, stating that ICANN Legal is participating in this group for three years with a conflict of interest raises a serious (Inaudible) integrity of my team. We don't agree with characterization.

>>SPEAKER: Malcolm: To understand what you are saying -- are you using a speakerphone?

>>SPEAKER: Sam: Yes.

>>SPEAKER: Malcolm: There is a real echo. Would it be possible to use a direct microphone or (Inaudible)? The same.

>>SPEAKER: Sam: I am here in a room with Liz with ICANN Legal. We are not able to able to (Inaudible). Are other people having trouble hearing me as well?

>>SPEAKER: David: This is David. I would like to interject. To be honest, I am able to hear Sam very well. But Malcolm, it is not the easiest to here. Maybe you could get closer to your microphone? I hear Sam very well.

>>SPEAKER: Leon: I am having trouble hearing (Inaudible).

>>SPEAKER: David: Leon, David here. Are you having a hard time hearing Sam or Malcolm or both?

>>SPEAKER: Leon: Both.

>>SPEAKER: David: Thank you. So I would ask Malcolm to please get closer. I don't know what to say about Sam. I am hearing it clearly. If others are challenged hearing Sam, like Leon is, we'll have to ask you Sam to pick up the receiver and proceed that way.

>>SPEAKER: Sam: All right. So I'll return to what I was saying. We had some general information that we'll be presenting on. But in terms of the presentation of our participation as a conflict of interest, we think take that as a serious allegation in the legal department and our professional integrity and it also raises a question of what to do next with the rules, if this is a participation about the conflict of interest. That also raises the question of what happens with anyone else that is intended to use the IRP against ICANN or participate as a party in the IRP, how does their participation within an IOT get impacted and what does that do with the three years of rules that we have had in place? It is a normal thing to participate in what procedures will apply to them in the (Inaudible) proceeding.

Let's move on from the conflict of interest portion. I want to make sure that -- I understand that there are senior members of ICANN Org, not from the legal team, that are working on a response to provide to the IOT that will clarify the impact of what Yoren said during the Barcelona meeting. Yoren was not aware of how the ICANN Legal and (Inaudible) came to participate in the team when Malcolm asked the question in the Barcelona meeting. When presented with the same history on the list, Yoren looked at that and said: It sounds like ICANN Org is supporting the community in exactly the way that the community asked them to be supported, through ICANN Legal participation. So from that perspective the view of using Yoren's words to say: Therefore ICANN Legal should be excluded today from a certain level of participation within the IOT is not really what he intended. Given the history of what the community asked us to do and how we have been doing it, we see as ICANN Org taking on the role that was requested. That is a separate issue, whether or not as we look at the IOT as a whole how we are going to work and how community would like to see the group constituted. And if ICANN Legal were not on the call today, we would not have quorum to have this conversation based on the current levels of participation in the group. If Bernie went back over the attendance records for many of the meetings over the past year, would be the similar case.

So clearly there has to be a broader conversation about what to do to bring participants from a qualification and what experience you want to have within the IOT. And if we want to cut off the IOT's ability to do any work now and to conclude the work, then, you know, we can step back. But it still makes -- there's still the end goal, right? We need rules in place and we need the other procedures around that -- (lost sound) -- the IRP that are dictated in the by-laws to be implemented.

And so the focus should be on: How can we make sure that we can conclude the work and whether or not I am considered as a full participant or not? Whether you see me as a full participant or not, I don't really have a position on that. But do know that it is important for this work, which is implementing the IRP and making sure that this goes into place, that there's a consideration of what normal (Inaudible) rules are, what normal procedures are, how we as an entire community -- this in this place I am consider ICANN as part of the global community. We are making sure that the IRP is efficient, both in time and cost-effectiveness. We are all participants. It is the funds that the public trusted ICANN with that are

paying all of the administrative fees, except in extraordinary cases. It is what you pay for in registration fees and contractual fees that take up the time and resources for ICANN to defend against IRP that we want to make sure are developed in a way that make sense for everyone. So the suggestion that ICANN is only participating in the IRP process in a way that can shield ICANN from or protect ICANN more is to ask the question: What are we protecting ICANN against? We are protecting them against any sort of misuse of funds, from inefficient use of funds, while still making sure that we are holding up the IRP that is in the by-laws, to make sure that the community has the ability to come and seek the accountability from ICANN that they have. If that is the baseline we can maybe move forward to work with the community conversation: What should the IRP look like in the future? Do the next round of work, which include appellate rules and CEP. Who do you want as part of that conversation? If it makes sense to exclude ICANN on the basis that they are likely to be participating in all of the (Inaudible) how can you -- parties in the process wouldn't be there as well.

So we need to have all of that as part of a conversation as we look at the composition. I am not suggesting any particular outcome here, but I think that every participant to this group has participated and brought a voice to the table, including ICANN. We need to consider what voices we want to continue having at the table also to make sure that the process runs smoothly. So something that is present today the board that there's not then opportunity for ICANN Legal to come in, for example, and advise the board on something without having the transparency around what it might be that we might be suggesting to the board that this group understands the contribution along the way.

With that, turn it back to the group and let me if there are any questions I can answer from the ICANN side.

>>SPEAKER: David: Thank you, Sam. I see a hand from Robin. If this is further on the discussion, I would prefer to do it at the end and go through the process that I spoke about earlier. Let me ask what your hand is up for.

>>SPEAKER: Robin: I did want to discuss this issue and the relevance of ICANN Legal participation and the role that it should play in our work. Are you asking me to defer that until later?

>>SPEAKER: David: Yes, I am going to ask that you hold that for a minute. I'm sorry. I hear a lot of background noise. I am going to ask you to hold that. We'll have a brief discussion very shortly. We are going to kill one of the things that I said. Malcolm has already mentioned what by-law 4.4N says. We can skip that.

I am going to ask Bernie if you could briefly inform us as to how the IOT was formed, and just so we have an accurate background for this discussion.

>>SPEAKER: Bernie: Can you hear me?

>>SPEAKER: David: Yes. Just as I went on mute you asked. But I can hear you.

>>SPEAKER: Sorry. The IOT was a creation of Workstream 1 and was confirmed in a memo by Thomas Rickert, then e-mailed on November 5, 2015. I think that if I heard correctly, Malcolm doesn't have an issue that the community did at the onset when it created the IOT ask ICANN to be a member, just one member, regardless of the number of people who have participated. And so in the interest of letting

everyone have a good discussion, I think that probably summarizes the position. But I will be glad to answer any questions on this, if there are any.

>>SPEAKER: David: Thanks, Bernie. That is my recollection as well. Malcolm, you mentioned in your mail and mentioned to (Inaudible) that I would taken this -- actually I have taken the decision to keep the group going as it was originally constituted and as it ran when Beckie was the head. I will read Malcolm's chat in just a minute.

But Brenda, if you could put up on the screen the e-mail that I sent you that summarized the positions that the people put on the e-mail subsequent to Malcolm's December 6th e-mail making this proposal? I can briefly summarize that we have received comments from Beckie, Avri, Mike -- Beckie, Mike -- Leon, further comment from Leon, Kavouss and myself. They are on the list. I believe it is un --- there's a lot of background noise. If everybody could please mute that is not speaking. I believe the document on the screen is un-synced, so you can scroll and see the comments. This is my best attempt to create reasonable excerpts from what people have posted. You have the e-mail list in your inbox. There's more in the e-mail than I may have pulled out. I was going to read through these, but it is now 30 minutes almost past the hour. I am going the skip that, unless anybody thinks that I should get into it. And so we can move to discuss this issue.

I would like to ask people to get in the queue. Robin had her hand up first in this. I will go to Robin first. In the meantime and while she is speaking, I will try to read Malcolm's chat. Robin, why don't you go ahead.

>>SPEAKER: Robin: Can you hear me okay?

>>SPEAKER: David: Yes.

>>SPEAKER: Robin: Great. I just wanted to support what Malcolm has suggested, and also point out that in my recollection of how we have constituted things over the last few years it's always been the case that we welcome the participation and input and the guidance from ICANN Legal. The question is whether or not they have a decisional role when it comes to consensus calls and making critical judgment calls like this. So I think we are really all in agreement that it's important that they participate and provide the valuable experience that they have. It is just a question of: What's the appropriate role? And I went back and I looked at the CCWG charter -- the original charter from which this group originally came, as you guys were just talking about -- and the charter explicitly says that ICANN doesn't participate as a decisional participant. Let me pull that up here briefly.

In the CCWG charter it says that the (Reading) -- include a staff representative to provide input from the deliberations and able to participate in this effort in the same way as other members from the the (Inaudible) a need for any consensus calls neither the board liaison would participate in such a consensus call.

I think what we are doing now in this working group is sort of changing that around and allowing for the voice to count in a consensus. Not only it to count for a call, but each and every person -- whether a person or staff or legal representatives -- to individually count. That surprises me, because I am a co-leader of other working groups and we have never been allowed to count ICANN staff as participants for the purposes of calling a quorum or even in the decisional aspects of it. This is quite a departure of what

we are doing in other ICANN working groups. I think that it is a little bit unfair to characterize Malcolm's statements really targeting against ICANN Legal and integrity and that sort of thing. It is just what is the appropriate role here. Again, what original charter said, what the CEO of ICANN Stat said: Yes, we want to hear from them, but they don't have an appropriate role in the decision making and consensus making. This's all I wanted to say. Thanks.

>>SPEAKER: David: Thanks, Robin. I put my hand in the queue since I want to speak as a participant. But I will go to the back of the queue. I have been speaking. I will take my hand down for a moment. Robin, your hand might take down. The next in queue is Avri. Please go ahead.

>>SPEAKER: Avri: Thank you. Avri speaking. I was very involved at the time of this group being formed as a community member. I remember that we had separate groups also talking about staff participation and the whole discussion, what was open. And this group was specifically basically brought out as indeed an exception as something that was being done because this wasn't creating the policy so much for IRP but the procedures, the supplemental. And that they were considered not only important in terms of overview, but important in terms of bringing along on a consensus. It was almost an experiment, something that we were talking about at the time that we've since put aside about indeed having a closer working relationship with the staff organization at times when it was appropriate. Because they are indeed members of the internet community, though they are a different type than those of us in the community. So I was one that fought very hard for the current arrangement we have being accepted and explicitly adopted. To say that it was in the rules and -- is a mischaracterization. It is quite intentional that it is structured as it is structured now.

>>SPEAKER: David: Thank you, Avri. Beckie is next in the queue. Please go ahead.

>>SPEAKER: Beckie: I want to say that this group is not traditional GNSO working group. It is not a CCWG, it's a specific function identified in the by-laws for implementation of the IRPT rules and other things. And so while I understand that the role of ICANN Legal maybe different in this event than it is in other places, as others have said, that's quite intentional. And indeed I do think it is entirely appropriate to have the party that will be defending the actions of board and staff as part of the conversation about how the rules should operate role. That is absolutely -- I mean "standard" isn't exactly the right word for it. I think it would be peculiar if they weren't here. So I am going to go back to what I said on the list, which is I think that part of the problem is one frankly we are stuck on one issue. And we try to solve an issue with reconstituting the group. If the group is going to be reconstituted -- which I actually think would be beneficial that we should go to the -- with the by-laws say. Consult with the SOs and ACs and get a robust group together going forward. I would certainly advocate for an ICANN member of the real member of the group -- whatever that is -- to be somebody from ICANN Legal on it. But I am troubled that we are trying to solve a just agreement with a, you know, in a procedural way, as opposed to just getting the disagreement resolved.

>>SPEAKER: David: Thank you, Beckie. David McAuley speaking again. I put my hand up in the queue because I want the following comments to be understood as comments from a participant, not as the IOT lead. In the meantime, recall too that there are other comments on screen that you can scroll as to what

other people on the list and invite others to join the queue if you want to join the issue. This is an important issue and we need to come to grips with it.

Let me chat about a few other things. Robin mentioned the charter. I think she accurately quoted it. I don't see this as a charter issue. It was formed on an ancillary issue and (Inaudible) from the beginning, as I recall. And I don't think the charter provisions override what happened with that support group. And then the other thing I mentioned -- Malcolm, what you said in chat. I don't think it was Beckie's decision either to have ICANN Legal participate. It was how it was formed. It is a small point I guess, but I just think it should be clear that that's the way the group was formed and that is the way it's operated so far. I think it should continue to operate that way until we change.

Now I actually participated -- contributed some comments on the list where I said I thought it would be -- it would be strange to pass muster and fundamentally fair and due process and the respondent's side was excluded. I heard Malcolm's comment earlier. I am not sure I have been convinced. I understand in some cases Malcolm would be supporting ICANN's legal side of it, but won't be a part of the litigation or mitigation. ICANN is guaranteed to be on the respondent's side in every IRP. I think it is something worth recalling that many IRPs are brought by individual entities. A good example is applicant for a new GLD. And I think Mike said he represented a case like that or two cases. And so it is not unusual, not strange or unfair or anything surprising that an individual entity would make a claim as an IRP claimant for their individual benefit and not as a member of the community -- in which case ICANN may be just indirectly would be representing community interest in some case. In other words, what I am saying: ICANN has, I think, a very legitimate stake to participate as a full member in this. I will also mean that on the idea of touching base with the by-law, what Beckie is suggesting -- one of the things that happened is touched base where I normally work in the registry stakeholder group just to see what the reaction would be. I think there is developing a strong interest in yes, the IOT team should come back and check with the SO leaders. We were formed under CCWG Workstream 1 and the by-laws became the by-laws. I think this is a good time right now -- a question that goes to the identity of the IOT -- it is a good time to go formally to the SOs and ACs and say: "Here are we are. We are the IOT. We have been operating in the manner under Workstream 1. We now have a challenge to ICANN's participation. What do you think? Tell us how the constitute this team."

It is also an opportune moment because we are discussing a later to the same people saying give us more members, help us reinvigorate this group. So in my opinion this is an excellent time to go to the SO/AC leaders with those two procedural questions and say: "Here we are. We want more information. Let's take the disagreement off of the table and reconstitute the IOT formally and add more members and discuss ICANN's role." When we discuss it, we can discuss: Do they have a role? Is it formal? Is it more than one or one? What is the role of (Inaudible). Are observers allowed? Etc. etc. etc.

Pressing the questions that Malcolm brings up. I think we can put together a team that will draft something along these lines, bring it to the whole IOT team look at it and polish it and do it. I would suggest we do it as a matter of urgency, including in the holiday period, to get this done. We have work to get down. We have two rules time for filing and intervention. We are on the cusp. That is my suggestion as a participant.

I will stop now and see if anybody has any comments. And I will take my hand down. I haven't had a chance to read the chat in the meantime. Bernie, if you have seen anything in chat that you think should be called out I will ask you to call it out. And I will ask if anybody has any further comment on this topic. I don't see any hands. And Bernie I take it -- I'm sorry. Sam has her hand up. Then Bernie I will ask if you could sort of review the chat while this is going on. And thank you. So Sam, over to you.

>>SPEAKER: Sam: Thank you. I just want to make sure that I understood your suggestion. Is this for the IOT itself to do a review of who is participating? Or is this something to support SO/AC consideration of what the IOT looks like?

>>SPEAKER: David: I'm sorry, Sam. Part of that dropped. Would you restate the question?

>>SPEAKER: Sam: Sure. Your suggestion of the us doing from review, that was to support the SOs and ACs as a who will looking at the IOT and not the IOT doing a study of itself; is that correct?

>>SPEAKER: David: Yes. It is along those lines. What I am suggesting is we as the IOT get together and reduce to writing where we are on two important issues. One is Malcolm's challenge and two is adding new member to the IOT. And put those in writing to the SOs and ACs and say: "As a matter of urgency we would like to constitute" -- I can't think of a term right now. "The IOT, we have important work. We need to get on with it. We need to do this urgently."

I would ask others to weigh in on that suggestion and what do we do in the meantime. I suggest that we press on and discuss the issues that we have in front of us, especially the two rules that we have, and get them ready to tee up. That is what I am saying.

I believe it is the latter of what you described Sam. Does that answer your question? Before I go to Malcolm, I will ask you, Sam, if that answers your question.

>>SPEAKER: Sam: Yes.

>>SPEAKER: David: Malcolm's hand is up. Go ahead, Malcolm.

>>SPEAKER: Malcolm: Thank you, David. Like Sam, I want to be sure that I understand exactly what it is that you are proposing here. Use the word (Inaudible) SO/ACs to reconstitute the group and especially in this context, that doesn't (Inaudible) for more than one interpretation. I will put two possible interpretations to you and say which is what you are proposing.

One is that we write to the SOACs and ask them to essentially re-convene this group so this -- as we put some issues before them like the participation and about the status of ICANN's participation and the various questions around that and also how many people should be and who they should be and so forth and as the SOs and ACs to reform this group. That is one understanding of "reconstitute this group."

The other interpretation -- and I think this may have been what you intended, but please I would like to be clear on this -- is more modest move of writing out to the SO and AC leaders, inviting them to submit additional participants for this group and also consulting them on the issues for the (Inaudible) in relation to ICANN Legal's participation. For the enlarged group to then take action upon informed by that submission of views that we hope to get from the SO and AC leaders.

They seem to be two very different approaches there. One is almost sort of almost dissolving this group and asking for it to be reformed anew. The other is a consultation exercise on particular issues, plus a call for new participants that would then be decided by this group. Which way were you proposing?

>>SPEAKER: David: Thanks, Malcolm. It is helping me to sort of sharpen it. I hadn't been that specific. What I was suggesting is the work that we have done and are doing is legitimate. But it is a good time to go to the SOs and ACs and say under the by-laws: One, we want new members. We think that will help us as a team. And two, there has been a challenge to our work to ICANN's legal participation or -- whatever we phrase that -- participation, continued participation in the group. We don't think we are able to decide that. We have to come to you and have that issue resolved. I don't think we as an IOT team can decide on ICANN Legal's validity as a member of the group.

>>SPEAKER: Malcolm: If we are not going to decide it and the SOs and ACs are, how are they going to do that? What is the process? If they have different views, how will they be balanced and how will that be resolved?

>>SPEAKER: David: I can't answer your question, Malcolm. The by-law says what it says.

>>SPEAKER: Malcolm: I am not trying to be difficult, but we are going to let them (Inaudible) raise a question of how this is implemented.

>>SPEAKER: David: Part of --

>>SPEAKER: Malcolm: Should we take this under advisement. Maybe to come up with an answer on the spot is unreasonable. Is this something that we should take away for consideration?

>>SPEAKER: David: Let me react to that. That's your hand. Let me react to that. While I do, I am inviting people to come and in the queue and take part in this discussion.

Part of what I am struggling with is by-law itself. Basically says -- let me read it again. It's worth reading. Of course I have a problem with the link.

IRP implementation oversight team should be established (Reading). Comprised of members of the global internet community.

This doesn't give us much direction. So I take the phrase "under advisement." I don't want to decide right now. But I am worried that "under advisement" creates drag. We have had some nice momentum recently this group. I want to continue that. We have run out the string on this call. But we are going to have a (Inaudible) in January. Rule 4 and I forget the number. We are going to move forward on that. We are not going to sit and wait.

What I would suggest is maybe a small team. My suggestion is me you and Sam, if possible -- I don't know. I am thinking out loud -- to come up with a draft to the SOs and ACs and say that, "by-laws give a certain direction. We are moving along and would like to do two things. Add new members." No problem. "And two, we have a challenge to ICANN Legal's continued participation. We don't feel we are authorized to make a decision on the latter question. So we are asking to consult with you as the by-law requires and see what happens from there."

My guess is as we draft that and discuss that draft early in the next call, it will help us crystallize what we are doing. That is the best I can say right now. I see Avri's hand is up. Go ahead.

>>SPEAKER: Avri: Yes. I think the way you just put it is actually quite workable. We are going back to our so-called chartering organization, as it were, and basically asking for a clarification, asking them very specific questions. And I think as long as that does not end up negating us continuing to work I think that is a great idea. We have to continue working towards consensus on the issues in the meantime, because

that will take many months. And it will take many months when we have answers and we start to understand and start to incorporate new people. So hopefully we can do these as parallel tracks where we continue to work on consensus, but ask for advice from the so-called chartering organization. I don't know that we are using that title for them here, but that is how they essentially get referred to elsewhere. Thanks.

>>SPEAKER: David: Thanks, Avri. That is a good term: "Parallel operations." Robin's hand is up. Go ahead. Take the floor.

>>SPEAKER: Robin: Thank you. I don't think that we want to ask the SOs and ACs to make these decisions for us. I think this is a working group that has authority under the ICANN's by-laws and we need to understand what our authority is and how we operate. What we need to do, instead of going to ask others what do they want to do, we have to take a good hard look at what documents actually govern our activities here. And I think this that's the obvious starting place. And if the answer is clearly there, then there's absolutely no reason for us to ask the SOs and ACs: "What do you think?" Because we will have seen that. I quoted the charter before under which this group was originally formed. So I think -- is there a document that has changed that? Do we have a new charter now? I don't remember seeing one. But I could have missed something. I am wondering: What do we actually have on paper that has some kind of authority with respect to how we make our decisions and how we operate? The one that I am seeing is the charter under which it was created. It seems to me until someone can present a document with authority that says otherwise, I am concerned that we are in violation if we do otherwise. Thanks.

>>SPEAKER: David: Thank you, Robin.

>>SPEAKER: Sam: I'm sorry.

>>SPEAKER: David: Who is that speaking? Beckie. Turning up the charter for the CCWG? Or are you saying that there is a charter for this group?

>>SPEAKER: No. The charter that I referred to earlier that said that ICANN's staff do not could want as decisional participants, that was the original charter for the CCGW under which the working group was originally formed. What I am wondering now is what document are we operating under if it isn't the charter is -- if it is something different than what we were originally created from, there should be some documentation that would answer this question for us. This shouldn't seem like such a mystery. It should be in the chartering documentation. Thanks.

>>SPEAKER: David: Beckie, did you want to say something further before I call on Sam?

>>SPEAKER: Beckie: I don't think the charter for the (Inaudible) working group is relevant. I think it could be accepted that there is a document or charter it is the by-laws provision and I think that I will take responsibility for this, we went out and we consulted. And I think Leon is on the call. And I think that the co-chairs of the accountability went out and sought input in the form of members from the various stakeholder groups. But I don't think we documented anything. I think that's an exercise that is worthwhile doing. But in the meanwhile, the by-laws provision is the document that I think governs.

>>SPEAKER: David: Thanks, Beckie. Sam, you have the floor.

>>SPEAKER: Sam: Thanks. So I heard Robin talk about this charter and talk about consensus participation, etc. and how it is limited through the CCWG charter. And not for this call. I know we have

only 3 minutes left. It would be helpful to see what the consensus call issues are being flagged and ICANN Legal's participation in the -- this might be an easier way to fix this issue. If someone can help explain the consensus call issue and where it has been a problem within the IOT it would be useful and would give ideas of a passthrough. We have heard some other positions. We have heard some other descriptions of how ICANN might be or be appropriate to participation etc. But look at the examples of where that has been an issue and see if we can fix that for the participation going on now.

>>SPEAKER: David: Thank you, Sam. And with respect to that last task that you were suggesting, I would ask Sam that you sort of confirm it on list so we have it crystallized on it what your suggestion is.

We have 2 minutes left. So I want to thank everybody for the discussion. This is an important moment for us. We have to sort this out. My hope is that we can sort it out and continue to work in the background and that we can sort it out consistent with the by-laws. I have made a suggestion on the phone of doing a draft and maybe creating drafting team. We have run out of time on the call. What I will do like I asked Sam to do, come list and make that -- put it in writing and ask if people think it is a good idea. I am going to ask that people respond on list.

I don't want to wait until January to move that idea forward. If it is not a good idea we can kill it. If it is, we can pick it up. This is a really important moment for this team. I personally you can tell, I like the idea of formalizing consultation with the SOs and ACs, as the by-law requires. I really like that idea. I think it is time do it and it will help us crack two nuts: One that Malcolm has raised on ICANN's participation and get new members. And ICANN 64 will probably have a reorganizational meeting.

Thank you for this discussion. I will close the call in about 30 seconds. But I will ask one last time if you have any closing comments to add to this.

>>SPEAKER: Malcolm: If I may, this is Malcolm. I know this is difficult and I know this is contentious, but I would like on a personal level that there is nothing personal about this. I have the highest respect for ICANN Legal team and for those helpful contributions on the things that Sam was just talking about there. We couldn't have acted as effectively. But nothing intended here to be a slight or personal slur on anybody's professional or personal integrity here. But I do think at least these points in the arguments I have raised have at least as much merit to be worthy of consideration without (Inaudible). So I would like to leave you in (Inaudible) Merry Christmas to you all.

>>SPEAKER: David: Thank you, Malcolm. Welcome comment. So we have reached the top of the hour. Thanks again, everybody. Look for something from me on list about the idea that we have spoken about. This is important. Move this forward. We are gaining some nice momentum. This concludes this call. I wish everybody Happy Holidays and goodbye.

>>SPEAKER: Bye, all. Happy Holidays and safe travels for anyone that is traveling on the holidays.

>>SPEAKER: Bye-bye.