

From: McAuley, David

Sent: Tuesday, June 19, 2018 6:36 AM

To: Gregory, Holly (Redacted)

CC: Samantha.Eisner@ICANN.org; elizabeth.le@icann.org; Bernard Turcotte (Redacted)

Subject: [Ext] IRP IOT matters for discussion on seeking assistance

Dear Holly,

As mentioned in my email of 14 June 2018, the IRP IOT have agreed on some changes to the updated IRP Supplementary Procedures that was originally published for public comment last year. That said, as explained further below, there are still some areas that need further development and are not yet ready to be finalized for Board approval.

There are two specific areas that the IOT has agreed to seek Sidley's help in resolving (in coordination with ICANN's legal team) and working to identify language that might be appropriate for the final set of Procedures. Those areas are: (1) Rule 7 – Consolidation, Intervention, and Joinder, and (2) Rule 5 – Conduct of the Independent Review.

With respect to Rule 7, there are still areas that need development with respect to the procedures for a right to joinder and intervention, as well as other practical considerations related to time limits for intervention, and filing fees for which we are hoping you can help us develop proposed procedures. The attached document at pages 8-9 (described below) has some annotations in it as it relates to joinder, specifically regarding the note on the need for intervention as of right to require some sort of tethering to the dispute. The Supplementary Procedures need to uphold the purposes of the IRP, so it cannot be that anyone can join in as a claimant, but only that those with related issues may join. We also need to consider things like filing fees and other practical issues. After public comment, the IOT had recommended text using the word "party", but it is not clear that "party" is the appropriate term here, which is the reason for the proposed usage of "CLAIMANT" instead. Attached are some emails and transcripts where some of these issues were raised. (See email from S. Eisner, dated 6 April 2017; email from E. Le, dated 9 July 2017; transcript of IOT call, dated 12 June 2017.)

With respect to Rule 5 – Conduct of the Independent Review, the IOT recognized that procedures need to be provided regarding translations for the proceeding. However, there appear to be many considerations regarding translations that need to be addressed in rafting language. The IOT discussed some of the items raised in Sam's email of 31 May 2018 (attached as PDF), and agreed to have Sidley try to take the first pass at language.

While this work is happening, the IOT is also sending out for public comment some proposed language on the time for filing. Given the length of the public comment process and the need to have some procedures in place quickly that align with the new Bylaws, the IOT is considering the release of an interim set of supplemental rules, to be finalized after the comments on the time to file issue are taken into account and integrated. If the Rule 5 and Rule 7 language discussed above can be finalized quickly, the IOT will recommend that this new language also be included in the interim set of Supplementary Procedures. For our information, attached is a draft of the proposed set of Interim Supplementary Procedures, in redline from the version that was posted for public comment in 2016. Please use this version as the starting point for proposing language for Rules 5 and 7. You will note that there are annotations in there that might also assist in your consideration of issues and language.

We look forward to speaking with you further about these issues. o:p>

Best regards,

David

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