

Zoom Chat Transcript
IRP-IOT Meeting – 25 February 2020

- 12:58:34 From Flip Petillion : Flip
- 12:59:49 From David McAuley (Verisign) : Hi, I also show my phone ending in 154
- 12:59:50 From Malcolm Hutty : Hello all
- 13:01:11 From Susan Payne : welcome all. let's give it another minute
- 13:06:18 From Kristina Rosette : IRP IOT-specific SOI is a good idea.
- 13:06:54 From David McAuley (Verisign) : Agree with Mike - the GNSO SOI process is not the easiest
- 13:07:29 From mikesilber : it seems you need to be invited
- 13:07:32 From Chris Disspain : Apologies from Becky who is running late
- 13:08:28 From Robin Gross : Agree on an IOT specific Stmt of Interest.
- 13:10:22 From Kristina Rosette : Support meeting on the 17th (and not trying to "meet" during the meeting schedule)
- 13:10:52 From Robin Gross : I think the community sense is to focus on PDPs at #67
- 13:11:05 From David McAuley (Verisign) : I agree as well
- 13:11:13 From Scott Austin : Agree
- 13:11:25 From Malcolm Hutty : 17th is OK for me, but not later that week
- 13:11:59 From David McAuley (Verisign) : Greg, aka agent 917
- 13:13:44 From Brenda Brewer : YOu're welcome!
- 13:14:47 From Bernard Turcotte : next meeting is then set for Tuesday 17 March 2020 - 17:00 UTC
- 13:15:49 From Kristina Rosette : I have a question once we're ready to start discussing. (Raising my hand momentarily.)
- 13:16:53 From David McAuley (Verisign) : OK here
- 13:17:13 From Greg Shatan : Can this be translated? :-)
- 13:21:52 From Kristina Rosette : If the intent was to have the IRP Standing Panel handle, I think the language needs to be revised somewhat.
- 13:22:54 From Mike Rodenbaugh : The Standing Panel is intended to handle everything.
- 13:23:13 From Mike Rodenbaugh : At ICANN's expense.
- 13:23:36 From Kristina Rosette : Exactly, Sam. That was the issue I kept getting stuck on.
- 13:26:40 From Kristina Rosette : Translation was not an issue in the .AMAZON IRP.
- 13:26:46 From Mike Rodenbaugh : There have been so few cases... and all counsel has spoken English afaik.
- 13:26:56 From David McAuley (Verisign) : Interesting, thanks Flip

13:28:19 From samantha.eisner : The Bylaws as currently written confirm that the IRP is to be administered in English, so unless the IOT is recommending a Bylaws change, we need to confirm that the supplementary procedures are aligned with the Bylaws

13:29:00 From mikesilber : job reservation for english speaking counsel???

13:29:55 From Mike Rodenbaugh : I agree there should be more of a bright line rule here, rather than so much discretion, which will mean litigation. I would rather we develop that rule if we can, and we should change the Bylaws to not be English-only.

13:30:17 From Bernard Turcotte : 30 minutes into the call, 60 minutes left.

13:33:40 From Kristina Rosette : I think UDRPs are done in the language of the relevant registration agreement.

13:35:36 From Scott Austin : Are arbitration scenarios distinguishable because they anticipate a specific arbitration agreement or (in UDRP arbitration) based on the language or the applicable registration agreement. There is a reference to ICDR rules in the translation materials. Do claims in IRP center around an arbitration agreement in each case or documents that would direct the language of the proceeding.

13:35:56 From Kristina Rosette : I think we need to make a key decision, from which we can map out further possible decisions. Key decision: Must the Claim be submitted in English?

13:36:24 From Mike Rodenbaugh : My view is No.

13:36:25 From David McAuley (Verisign) : I believe all IRPs take place pursuant to Bylaw 4.3 and its provisions and must meet those parameters

13:36:48 From Flip Petillion : @Kristina; in my view yes

13:37:20 From Flip Petillion : @Scott : that is indeed possible - as long as parties agree

13:37:49 From David McAuley (Verisign) : I agree with Flip with English as the primary working language

13:38:37 From Mike Rodenbaugh : @David that is different than Kristina's question

13:39:01 From Mike Rodenbaugh : Do we force everyone in all cases to file a Complaint in English?

13:39:24 From Mike Rodenbaugh : Like the Bylaws say now....

13:39:45 From Malcolm Hutt : I agree with Susan: we should stick to the existing bylaws. If we allow ourselves the right to assume a change we broaden the scope of our mandate unduly

13:39:58 From mikesilber : Malcom +1

13:40:14 From mikesilber : /Malcolm/

13:40:53 From Mike Rodenbaugh : Did Susan say that?

13:41:18 From Flip Petillion : no

- 13:41:35 From Mike Rodenbaugh : I don't believe that our mandate precludes recommendation of changes to Bylaws, so long as they pertain to the IOT.
- 13:41:42 From samantha.eisner : ON a practical note, some possible choices - we can require an initial filing in English to be accompanied by a request for translation. WE could then specify the ability to consider that request, to allow for amendment for filing in preferred language, and to re-set a briefing schedule
- 13:41:45 From Malcolm Hutty : The second sentence was my own, not Susan's
- 13:42:28 From Susan Payne : I think we have to assume one party is ICANN since it's an IRP and so we don't have e.g. 2 Russian parties
- 13:42:30 From Scott Austin : @Flip Thank you.
- 13:42:47 From Mike Rodenbaugh : The idea is to have a better, specially trained Standing Panel. Not ICDR.
- 13:42:53 From Kristina Rosette : In terms of documents, Scott, there are some core "pleadings".
- 13:43:42 From samantha.eisner : I concur with Flip that providing the proper levels of discretion to the panel is the key
- 13:43:42 From Kristina Rosette : @Sam - agreed. I'm less concerned about where we land than I am that it's crystal clear how this will work.
- 13:45:26 From Flip Petillion : @David: i agree - if bylaws cover, that should work for now
- 13:45:52 From Kristina Rosette : Oh, definitely, David. I didn't mean to suggest that the other issues don't matter.
- 13:46:21 From David McAuley (Verisign) : Ok, thanks Katrina
- 13:48:01 From David McAuley (Verisign) : Interesting point, Malcolm
- 13:49:22 From Mike Rodenbaugh : Isn't that backwards?! We should allow a complaint in any language, with a request for translation to English.
- 13:49:34 From Mike Rodenbaugh : Any UN language.
- 13:50:15 From Mike Rodenbaugh : To require a complaint in English, requires hiring a lawyer that speaks English?
- 13:51:09 From Scott Austin : Have any prior IRP proceedings been held to date requiring translation? Do we have any other ICANN based analogues where complaints/ dispositive proceeding documents agreement have required translation?
- 13:51:30 From Becky Burr : @Scott, not to my knowledge
- 13:51:31 From Malcolm Hutty : I take no position on whether the Statement of Claim must be submitted in English, but if we allow it to be submitted in another language, it must be translated into

English, if not at the Claimant's expense then at ICANN's, as an administrative cost for the benefit of the community as a whole

- 13:53:29 From Scott Austin : @Becky thank you. Then is the UDRP our best analogue to work from.
- 13:53:58 From samantha.eisner : I'm not aware of any requiring translation
- 13:54:00 From Flip Petillion : no, indeed
- 13:54:45 From samantha.eisner : @Scott, I don't see a clear analog to the UDRP procedures here
- 13:54:54 From samantha.eisner : (My opinion, not ICANN Org position)
- 13:54:55 From mikesilber : I would guess that if a complainant feels sufficiently aggrieved by an issue - it could initiate a compliant with English speaking counsel and a request to submit further documents in another language with translation
- 13:55:47 From Kristina Rosette : Perhaps we all endeavor to discuss further via list with a goal of reaching a consensus decision in our next meeting?
- 13:56:39 From Mike Rodenbaugh : Let's just talk about UN languages.
- 13:57:23 From Kristina Rosette : David's point about translation arguments potentially applies to all translations, not just the Claim.
- 13:58:00 From Mike Rodenbaugh : And I agree that ICANN should not be responsible for translation of the Complaint — the words are the Complainant's. But ICANN should pay for it.
- 13:58:13 From David McAuley (Verisign) : CEPs are 'encouraged' - do we know if they happen in all cases?
- 13:58:20 From Mike Rodenbaugh : Yes they do.
- 13:58:44 From Mike Rodenbaugh : Otherwise there is risk of IRP panel requiring Claimant to pay ICANN's lawyers fees.
- 13:58:48 From Kristina Rosette : Although what actually happens in CEP likely varies considerably
- 13:59:04 From Mike Rodenbaugh : That is another set of rules we are looking at, right, re CEP?
- 13:59:06 From David McAuley (Verisign) : Thanks
- 13:59:53 From Scott Austin : @samantha Understood but what distinctions lead you to that conclusion, is there a better one. Are there any disputes of record involving IDNs or disputes over auctions of names in non-English (or non_Latin) TLDs.
- 14:00:06 From Bernard Turcotte : 60 minutes into the call - 30 minutes left
- 14:00:14 From Mike Rodenbaugh : And yes, they vary immensely, except I believe none have ever resulted in settlement.
- 14:01:09 From mikesilber : I work all over Africa. There is competent English speaking counsel all over the continent (including many who are not first language English speakers). I think a complainant must at least make the effort to start the process and make a request for further translation

14:07:45 From Mike Rodenbaugh : We could allow a complaint in any UN language, requiring an English translation filed by complainant within ten days at their expense. Then, if complaint not frivolous then ICANN reimburse reasonable translation expense.

14:07:56 From Scott Austin : @mikesilber Agree.

14:08:24 From Justine Chew : Just to add a real-life example: In the jurisdiction where I practise, English is not the official language so for filing pleadings, we are expected to file in the official language with the OPTION to append an English translation. Filing party is responsible for the translation, its accuracy, costs. Authoritative copy is the official language copy. So since ICANN Bylaws state English to be the operating language, similar practice could apply.

14:09:21 From Helen : I think the definition of "not frivolous" may open another can of worms

14:09:36 From Mike Rodenbaugh : Yes, but it is there already.

14:10:03 From Mike Rodenbaugh : Standing Panel makes that decision

14:10:44 From Kristina Rosette : Sam/ICANN staff - does ICANN provide translations (at meetings or for documents) for languages OTHER THAN the UN languages?

14:12:29 From samantha.eisner : Under our language services policy, I believe that we will go beyond the UN languages if it is the language of the location of the meeting (for example, I believe we provided Japanese in Kobe)

14:12:40 From samantha.eisner : We provide Portuguese for the GAC

14:13:12 From Kristina Rosette : Well, that's good, but not the neat and tidy answer I was hoping for.

14:13:37 From Kristina Rosette : I support English and the five other UN languages.

14:13:49 From Mike Rodenbaugh : Me too.

14:14:08 From David McAuley (Verisign) : I'm not sure Kavouss agreed with me on that but as I recall that is where we ended up

14:14:11 From samantha.eisner : From the ICANN side, our regular access to qualified translators who can generate certified translations that we would expect in legal process is definitely in the UN Languages

14:17:12 From David McAuley (Verisign) : One point we can keep in mind as we help our respective SOs/ACs on establishing (with ICANN) a standing panel – among diversity elements for panelists language facility is one to remember

14:17:29 From David McAuley (Verisign) : in mind

14:17:52 From Scott Austin : Could we be shown examples about what types of documents have been submitted in IRP proceedings would be translated, e.g. discovery evidence, depositions taken in non-English languages do they have to be translated. non-English statutes, local rules, etc.

- 14:19:11 From Mike Rodenbaugh : There's been very little of that. I think we are talking about pleadings and motions more importantly than evidence.
- 14:20:56 From Kristina Rosette : @Scott - you can get a pretty good sense of that by skimming the "pleadings index" on ICANN's site for the IRPs to date.
- 14:21:52 From Scott Austin : Agree, English +UN5. @Mike R. would you be satisfied with reservation for a hardship exception appeal process?
- 14:22:15 From samantha.eisner : @Scott, you can view the documents from
<https://www.icann.org/resources/pages/accountability/irp-en>
- 14:22:43 From Scott Austin : @Samantha. Thank you.
- 14:23:18 From Greg Shatan : +1 Sam
- 14:23:49 From Mike Rodenbaugh : @Scott, not sure what you mean: reservation for a hardship exception appeal process
- 14:25:34 From Greg Shatan : +1 Malcolm
- 14:27:22 From Mike Rodenbaugh : Hadn't seen this yet. Very interesting recent procedural decision in the .WEB IRP. Talking a lot about this IOT! <https://www.icann.org/en/system/files/files/irp-afilias-panel-decision-phase-1-redacted-12feb20-en.pdf>
- 14:28:35 From Flip Petillion : Apologies but I have an emergency to look into. Good discussion. Talk to / Read you later - Flip
- 14:28:44 From David McAuley (Verisign) : Good luck Flip
- 14:29:21 From Kristina Rosette : Hope all is OK, Flip.
- 14:30:02 From David McAuley (Verisign) : Good idea, Susan
- 14:30:41 From Mike Rodenbaugh : That .WEB IRP decision discusses the amici issue, heavily
- 14:31:29 From Bernard Turcotte : The ICANN IOT google drive, which you need a google account to access, is located at <https://drive.google.com/drive/u/0/folders/0ABZSBeyUM5fOUk9PVA>
- 14:31:36 From Kristina Rosette : That would be hugely helpful, Susan.
- 14:32:02 From David McAuley (Verisign) : Good bye all – or, in Tagalog, paalam sa lahat
- 14:32:07 From Kristina Rosette : bye everyone. Talk to you in March.
- 14:32:09 From Mike Rodenbaugh : Thanks Susan!
- 14:32:12 From Robin Gross : Thanks Susan and all, bye!
- 14:32:26 From Bernard Turcotte : bye all
- 14:32:26 From Malcolm Hutton : Thank you all
- 14:32:34 From Greg Shatan : Paalam Sa Lahat!