

**Zoom Chat Transcript**  
**IRP-IOT Plenary #50 – 31 March 2020**

13:59:57 From David McAuley : Hello all

14:00:11 From David McAuley : on audio only - will dial in if I wish to comment

14:00:21 From David McAuley : we are well here yes

14:00:27 From David McAuley : I hope all here are well

14:00:39 From David McAuley : lock-down in McLean Virginia

14:01:33 From David McAuley : Good point Becky - I live about a mile or two from Georgetwon in DC

14:02:17 From David McAuley : that is surprising - I see airplanes coming out of National airport in DC and there are very very few

14:03:37 From David McAuley : no SOI change here

14:03:49 From Kristina Rosette : Hi. I'm the 1354 number.

14:04:19 From Brenda Brewer : Thank you, Kristina

14:04:47 From David McAuley : I dialed in - ending in 624

14:05:08 From Helen : Hi I also dialed in, ending in 1697

14:05:36 From David McAuley : agree - thanks to Kurt for kicking it off on list

14:15:49 From Mike Silber : hand

14:18:28 From Mike Rodenbaugh : I completely disagree that parties should be forced to litigate against ICANN in order to get translation costs

14:18:58 From Mike Rodenbaugh : That sort of thinking is exactly why we need detailed rules as suggested by Susan and Kurt's framework.

14:20:34 From David McAuley : on mute

14:20:37 From David McAuley : ?

14:20:54 From Flip Petillion : Susan, you are on mute ?

14:21:09 From Kristina Rosette : I have concerns that trying to set up a bright line rule commercial v non commercial at the outset will not result in outcome that meets the bylaws objectives for the IRP. I like including the commercial v noncommercial as a factor to be considered by the Panel.

14:21:48 From Robin Gross : Should we provide guidance to the panel as to what is a good reason in our view? As opposed to leaving it open to the panel to judge?

14:21:56 From Kristina Rosette : I will be relying primarily on chat today because the pollen count has wreaked havoc on my voice.

14:22:45 From Mike Silber : No - not a "commercial entity" but rather "commercial benefit"

14:25:01 From Mike Silber : Malcom - you misstated my comment completely

14:26:05 From Becky Burr : in every case I've found, unless the parties agree on a language, the arbitrators are called on to make such determinations taking into account procedural due process considerations. I don't see that as exclusionary

14:26:11 From Mike Silber : If you are going to respond - could you show me the courtesy of actually responding to what I said and not what you think I said

14:27:30 From Scott Austin : Agree with Becky. The panel and the representative of the party should have an understanding of "for good cause shown". @Robin, what standard or basis would you suggest.

14:27:30 From Hector Ariel Manoff : I am from Argentina and I am agree with Malcolm

14:28:26 From Mike Rodenbaugh : The general principle is set in the Bylaws: (r) ICANN shall bear all the administrative costs of maintaining the IRP mechanism, including compensation of Standing Panel members.

14:30:21 From Susan Payne : me too Flip :)

14:30:29 From Bernard Turcotte : time check - 60 minutes left in call

14:31:01 From Scott Austin : But if the concern Susan raises is that small businesses would be excluded shouldn't there also be an opportunity for request or apply for translation fees in advance as well as a post decision request for reimbursement of translation costs.

14:32:41 From Helen : Agreed, David. it seems like the ICDR (international centre for dispute resolution) takes a similar approach

14:32:44 From Robin Gross : I think we should provide some factors for consideration for the panelists. Commercialism would be one factor, but perhaps not entirely dispositive,

as there are situations of fairness and transparency could require translations, even in a commercial context.

14:34:06 From Robin Gross : I think factors for consideration is a better approach than a bright line rule, which could preclude equity in some instances.

14:34:44 From David McAuley : I agree to an extent, Susan, for instance the concept of materiality, envisioning help in UN languages, things like that

14:35:43 From Kurt Pritz : Based on Flip's and Malcom's comments, there should be a presumption in favor of a party that claims a need exists

14:36:18 From Malcolm Hutty : I thought David's factors very helpful

14:39:30 From David McAuley : Interesting point, Kurt about play within a play. We should also note history here, translation not an issue apparently so far - maybe we're overthinking this

14:40:35 From Malcolm Hutty : Maybe a "strong presumption" in favour of translation is going too far. I prefer David's idea that it should be a question of need; mere preference shouldn't suffice.

14:41:22 From Flip Petillion : Agree !

14:41:26 From Scott Austin : @Becky +1

14:41:43 From Kurt Pritz : @Malcolm: I agree there should be "need" but there should be a presumption in favor of the party expressing that need.

14:41:44 From Helen : +1

14:42:01 From David McAuley : I agree with Becky

14:42:19 From Malcolm Hutty : I agree with Becky's last comment

14:43:51 From Kurt Pritz : I don't believe we need to translate "everything." Just those documents that the panel requires to be considered. I also think the complainer should demonstrate (provide evidence of) the need.

14:44:26 From Helen : Anyone else having a hard time hearing Hector?

14:44:38 From Flip Petillion : inaudible

14:44:48 From David McAuley : my audio all the way up now and I can hear but not easily

14:45:07 From Scott Austin : yes his mic is low

14:46:01 From Mike Silber : however the by-laws are in English ... so translation is a convenience

14:51:55 From Kurt Pritz : Think of this as a scenario. 1) Party requests translation;2) the panel asks both parties whether requests should be granted.

Should ICANN expend resources to publicly discredit the request of non-English speakers to communicate on more equal terms? Forceful advocacy by ICANN on this sub-issue to disadvantage the non-English-speaking party is not where we want to be - but this is where we might be leading them.

14:52:49 From Sam Eisner : To the extent we can reduce any need for motion practice on this, we should do that

14:53:05 From Mike Rodenbaugh : Agreed!

14:53:17 From Flip Petillion : Agree Susan

14:53:17 From Mike Silber : So you expect that the panel will not make supplementary rules to evaluate requests (non-adversarial)

14:53:17 From Sam Eisner : It would be a loss to all involved in an IRP if we are encouraging substantial briefing around needing translation

14:53:53 From Flip Petillion : +1 Sam

14:53:53 From Mike Rodenbaugh : Agreed Sam.

14:54:12 From Mike Silber : Agree Sam. Why does it need to be adversarial ....

14:54:46 From David McAuley : would it help to ask ICDR if they have any useful insights from international arbitration translation issues in non-ICANN context (understanding this has not been an issue in IRP so far)

14:54:58 From Sam Eisner : I don't think that it needs to be. I hope as we're developing the factors, we focus on not making this adversarial

14:54:59 From Mike Silber : Good idea David

14:55:46 From Helen : I also like the idea of using the past experiences of the ICDR

14:55:57 From Sam Eisner : I do too, David

14:56:13 From Flip Petillion : David: don't think they have; who calls upon ICDR, accepts cases will be initiated in English

14:56:15 From Malcolm Huty : Going to further language might cause practical difficulties

14:56:31 From Sam Eisner : I can take that as an action to go back to them for some experiential notes

14:56:36 From Flip Petillion : or Spanish

14:57:32 From Mike Silber : Article 18: Language of Arbitration

If the parties have not agreed otherwise, the language(s) of the arbitration shall be the language(s) of the documents containing the arbitration agreement, subject to the power of the arbitral tribunal to determine otherwise . The tribunal may order that any documents delivered in another language shall be accompanied by a translation into the language(s) of the arbitration .

14:58:38 From Robin Gross : The UN 5 seems a reasonable compromise, with rare exceptions for a different language.

15:00:06 From Bernard Turcotte : time check - 30 minutes left in call

15:00:53 From Kurt Pritz : With regard to the number of languages: “need is need” - I think translation from all languages should be accommodated. Why wait for the rare exception that demonstrates that our work is non-inclusive.

15:01:59 From Mike Silber : translation of official documents or documentary evidence from any language should be accommodated

15:02:47 From Kurt Pritz : I cannot pronounce the languages Greg is mentioning, but if a bone fide party is mired in one of those obscure languages, that is the type of claim we do not wish to bar

15:03:03 From Scott Austin : @Mike Are the bylaws the arbitration agreement? I reviewed a number of international arbitration tribunal rules but they anticipate an arbitration provision in an agreement, as well as parties with multiple non-English languages. The bylaws are the operative document and much of what the rules provide anticipates a consensual agreement between the parties seeking arbitration. Do we have that here?

15:03:22 From Greg Shatan : @Kurt, at what cost?

15:03:42 From Mike Silber : That was a copy from the ICDR rules

15:04:00 From David McAuley : @Kurt, if an individual complainant speaks X but not English and his lawyer speaks X plus English would that be a 'need' situation in your view?

15:04:03 From Mike Silber : I think it is reasonable to conclude the bylaws are indeed the arbitration agreement

15:04:16 From Malcolm Hutton : I'm ok with that Susan

15:04:19 From Mike Silber : David +many

15:04:32 From Scott Austin : My apologies but I have to drop off for a call.

15:04:42 From Greg Shatan : ICDR Rules only work if the parties have entered into an arbitration agreement...

15:04:57 From Greg Shatan : I need to drop as well...

15:07:50 From Kurt Pritz : While I might be coming across as a zealot with regard to providing translation, I think at the end of the day, it will be employed scarcely and in instance where translation is triggered, costs can be managed. I think ICANN's policy / principles should be inclusive rather than wait for the instance where a party is disadvantaged. I think making translation available is "cheap insurance."

15:08:54 From David McAuley : my phone battery is done - moving back to audio only

15:10:43 From Mike Rodenbaugh : Agreed with Kurt.

15:13:55 From Mike Silber : the IRP Panel may shift and provide for the losing party to pay administrative costs and/or fees of the prevailing party in the event it identifies the losing party's Claim or defense as frivolous or abusive.

15:14:11 From Mike Silber : the key is .... and fees

15:17:21 From Flip Petillion : appropriate

15:17:26 From Mike Rodenbaugh : important

15:17:39 From Robin Gross : Yes, important.

15:17:50 From Mike Silber : appropriate - but how practically do you do that?

15:17:51 From David McAuley : I'm not sure

15:18:09 From Mike Silber : In my view the only way is if the panel directs it

15:18:24 From David McAuley : are we saying ICANN cannot use its current translation services providers?

15:19:21 From Kurt Pritz : Yes - it cannot. We are trying to avoid the appearance of conflict.

15:19:24 From Mike Rodenbaugh : Legal document translation is different that transcribing meetings

15:19:45 From David McAuley : how does a claimant choose a translator?

15:19:49 From Mike Rodenbaugh : There are many, many legal translation services available.

15:19:56 From David McAuley : aren't translators certified professionally?

15:21:17 From Bernard Turcotte : time check - 9 minutes left in call

15:22:44 From Flip Petillion : what you are looking for is 'sworn translations'

15:22:54 From Kristina Rosette : Would this address conflict concerns: allow ICANN to use its currently retained translators, but require that (I) ICANN legal not be involved in the translation process and (ii) the translator certify that the translation is complete and accurate ?

15:23:18 From David McAuley : +1 @ Kristina

15:25:45 From Bernard Turcotte : Time check - 5 minutes left in call

15:27:11 From David McAuley : I think the time limit rules should address these kinds of intervening delays

15:28:17 From David McAuley : Thank you, Susan, and best wishes to all and thanks to those who are participating at very late/early hours

15:28:39 From Kristina Rosette : thanks all. stay healthy.

15:28:41 From Robin Gross : Thanks, Susan, bye all!

15:28:55 From Flip Petillion : Thanks Susan and All

15:28:56 From Bernard Turcotte : bye all