SUSAN PAYNE: Great. Thank you. Hi, everyone. Thank you for joining this IRP-IOT meeting on the 12th of May. And yes. Looking forward to hopefully concluding our discussion on the translation issue. This is fingers crossed and I hope I'm not being unduly optimistic on that. Could I just ask before we start? There's a participant in the room called "Studio A" and I'm just wondering who that is.

SCOTT AUSTIN: Sorry, Susan. I just happened to … It's a carryover from my wife's ballet teaching. She uses it for Zoom. I'll go in and come back as me.

SUSAN PAYNE: You should just be able to rename yourself, Scott, although I think your wife's ballet class sounds much more interesting than this.

MIKE SILBER: I was just about to say exactly the same thing. I think that sounds wonderful.

SCOTT AUSTIN: She was in New York City Ballet, so if anyone would like to take some classes, please see me after the call.

SUSAN PAYNE: Excellent. I like the sound of that. Okay. Thank you. Perfect. And as usual, I think everyone … It looks like everyone is on mute. But if you could try and remember to keep on mute if you're not speaking and also to introduce yourself when you speak—all the usual messaging that we get on all of these calls—that would be super.

So, first off on our agenda is the review of the agenda. So, we'll circle back on the statements of interest. As I said, I hope we can … On the agenda, it says, "Continue the discussion." I'm hoping we might be able to conclude the discussion on the translation issue. If we can, then we can at least introduce our next topic, which will be consolidation, intervention, and participation as an amicus. Our next meeting is noted on the agenda, which will be in two weeks' time. And then, we'll have an opportunity at the end, if anyone has anything they need to raise as AOB.

So, with that, I think it's a good time for us to get started. I'm just keeping an eye on who's joined us. We now have a good … We have a reasonably good turnout of the participants in this group now. I'm not specifically keeping an eye on whether we have quorum but it looks as though we have a good level of participation.

First off, just to circle back to the statements of interest, hopefully everyone now has had a time to review the proposed statement of interest document. I haven't seen any comments on the email. I haven't had any particular input on it. So, I think, at this point, I'd like for us all to just treat that as our statement of interest. And I'm going to ask if we could all please complete a statement of interest and send it through, I guess probably to Bernard, before the next call. Does that make sense,

Bernard, if they come to you and you will capture them in a place on our wiki space?

BERNIE TURCOTTE: I'll be glad to do that with Brenda. Thank you.

SUSAN PAYNE: Thank you. And I'm including myself in that. I realized, as we were putting the agenda together for this call, that I indeed haven't done that myself. So, I think it's an action item for all of us, including me, to just complete that now and send it in, please.

Okay. Next item, continuing the discussion on the translation issue. And if possible, Brenda, are you able to bring up the redline—the one that was circulated with the agenda? Thank you. Oh yeah. That's good. That's a bit easier to read than the version I've got.

So, if we can, I'd like us to just start at the top and read through it, if that's okay, just to be sure that we've covered off the whole section and haven't ignored any of it, and therefore that people have had an opportunity to look at it all. Obviously, as we get further down the document, we're more likely to have amendments where I've made suggestions coming out last call. And so, we may then have some more discussion. But I think if you don't mind bearing with me, if we could just quickly walk through the whole thing, I think that that would make sense at this point.

Obviously, please put your hand up if you have any kind of comments, suggestions, objections, amendments on any of it. But as I say … Ooh, Scott, straight off.

SCOTT AUSTIN: Sorry. I know that this is … And I don't know how picky you want to get. But when I read this the first time, the line three, where it says both "translation of written statements," there's a whole list there. And the "both/and," I was wondering if we could put something like "both translations of submitted written statements, documents, and panelist decisions," because what decisions are there? Maybe that's self-evident but just a thought.

SUSAN PAYNE: Sorry. I was talking away on mute there. Thanks for that suggestion, Scott. Say "panelist decisions" and it was "submitted written statements." I think "written statements" is a term that's used throughout the document. But actually, it's possibly even a defined term. No, maybe not. It has a section in section six but it doesn't actually look as though it's been given a defined term in the document. So, perhaps you're right that "submitted written statements" would help clarify.

SCOTT AUSTIN: I'm sorry to interrupt but the thought was just to distinguish between inbound items and outbound items. That is something coming from the

panelists. For somebody that has never done one of these before, there may be multiple decisions but they may not know what that means.

SUSAN PAYNE: Yeah. Sure. Understood. And I think that certainly makes sense to me. I'm happy to make that tweak, if I'm not hearing any objections from anyone. So, let's keep going. So, if you don't mind I will … Yeah. Thanks. [Christina] is making a comment about my imperfect use of terminology. Sometimes I have called it a "written statement of claim" rather than a "written statement of dispute." And you're absolutely correct. I think when we're talking about the claimant's document, it's the written statement of dispute. So, that's perfect.

Right. So, I think if you don't mind, I'll just quickly read it through. So, first paragraph. "As required by the ICANN Bylaws, article four, section 4.3 (l), 'all IRP proceedings shall be administered in English as the primary working language, with provision of translation services for claimants if needed.'" And that was a quote from the bylaws. "Translation may include translation of written statements, documents, transcripts, and decisions, as well as interpretation of oral proceedings, ensuring that no party is disadvantaged by language." And I've noted the suggestion from Scott to make those couple of clarifications in relation to the items that we're talking about.

Next paragraph. "The claimant's written statement of dispute must be submitted in English. No adverse inference as to the need for ICANN to provide translation services will be drawn from the fact that the

statement of dispute and/or request for translation services is in English."

That was just a minor amendment that I made into that paragraph to make it clear that what we're talking about here in this particular paragraph is the request for ICANN to be providing the translation services. And that's why—the fact that the claimant has been able to translate for the purposes of their written statement of dispute. That was the area where there shouldn't be an adverse inference drawn. It was as we discussed last week and I thought that clarification might help, although very minor.

Next paragraph. "A request for translation services, one, may accompany the written statement of dispute and must do so if the claimant is seeking reimbursement of the costs of translating the written statement of—" That word will now be changed to "dispute"—"into English and/or seeking translation of ICANN written statement in response, from English into another language. Where the request of translation services is made with the written statement of dispute, it does not count towards the page limit for the statement of dispute." And that one probably should be, also, "written statement of dispute," for completeness, for consistency.

"Or, number two, may be made subsequently, if a new need for translation services arises during the course of the proceedings." So, I think that's terminology … That's language that we had in the previous draft and I didn't make any changes to that. No particular questions or comments came up in relation to that last time around. And thank you for moving the document down. That's perfect.

So, next paragraph. “Any request for ICANN Translation Services must identify the language or languages in question and include an explanation of why the claimant needs such services in order to be able to fairly participate in the proceedings. Each request shall be made on the designated form and shall not exceed five pages of text, double spaces and in 12-point font.”

Now, to refer to the easier amendment first, I think, or the more straightforward one, as we discussed on the last call, we felt that five pages of text was reasonable to keep but that we felt that it would be helpful for claimants to understand that there wasn’t necessarily an expectation that they would need five pages. And so, I’ve included a note to that effect. And my suggestion is that when we create a designated form that there is a note to that effect on that form.

And again, as we discussed on our last call, I think there was really quite a lot of support for the idea that it would be really helpful for a claimant to have a form for them to complete to make this an application, rather than being expected to have a blank sheet of paper.

And then, to go to the more substantive amendment. I’m hoping that this has addressed the concerns that people had on the last call and has struck the right balance. But this may be one where we need more discussion. We were trying to make it clear that because the translation services being provided by ICANN are where there is a need, that we wanted to ensure that the claimant understands that their explanation has to be as to what their need is and that that should be … The feeling was that the need that we’re trying to meet here is the need for the claimant in question to fairly participate in the proceedings and not be

disadvantaged. And so, that obviously would reflect things like their language skills but might include other explanation as well.

As I say, that's the proposed amendment that I've made coming out of last week's call. But I'm happy to just pause. I'm not seeing any hands but I'll just pause briefly in case anyone has any thoughts on that. Okay. I'm not seeing anyone so I think let's keep going.

So, next paragraph. "Requests for translation services generally should be determined by the IRP Panel, unless ICANN has already agreed to the request." And that is an amendment that was made, again coming out of the last week discussion. And I think it was Mike Silber who pointed out that we should address the point that ICANN may not be opposing this. And so, there may be no need for an actual formal determination from the panel.

Carrying on. So, "In exceptional circumstances, the request may also be dealt with by an emergency panelist—" and here is some new text—"selected from the standing panel, or if no standing panel is in place, a panelist appointed by the ICDR, pursuant to the ICDR rules, as an interim measure if a determination is required as a matter of urgency before the IRP panel is seated."

That amendment—the concept of that, I would say the notion of generally the decision being one for the IRP panel except in case of urgency … The draft reflected that concept last time around and I had included a suggestion that we might be able to slightly amend the later section—I think it's section 10 of the rules—which talks about interim measures of protection.

But when I was going through and making some revisions to the rules, it felt to me that it actually was going to require more amendment to that section 10 than maybe was worthwhile. And so, in the end, I effectively reflected the element from rule 10 that was the relevant one, which is how one finds an emergency panelist if needed.

And whilst I'm pausing to see if there are any comments, I'm noting your comment, Scott, in the chat, about the standing panel and the IRP Panel. And David has responded. But yes. Just to note David's point or to note David's response that the standing panel, Scott, is something that's designated under the bylaws and actually is also a definition in the rules, that already exists in the interim rules, that explains the standing panel. And the standing panel is effectively the pool of potential panelists that will be standing ready and from which the three panelists for a particular IRP will then be drawn. So, I think we're good and we do have that defined elsewhere in the rules. But thanks for raising it.

So now, moving to the next paragraph. Oh, sorry, Scott. I can see your hand.

SCOTT AUSTIN: Sorry. Just a quick note. Yes. Now I understand that that's the way it's being used here. I have been down the IRP Panel road before with PICDRP. But I just wasn't sure if we needed to clarify here, for those who may have not been involved in the process, since we've done that with things like "written statement of dispute" and that kind of thing.

Anyway, if everyone feels it's unnecessary, that's fine. We'll leave it as is.

SUSAN PAYNE: Yeah. Thanks, Scott. I think we can always revisit it at the end if we come to the end and we feel that there's a term that hasn't been defined or hasn't been well-defined, we can hopefully pick it up in a final wrap-up. But I think if and when you go back to the rules, you'll see that the standing panel is a term that has been defined. And I think it will be reasonably well-understood by that point. And as you say, it's the same concept as you have with the PICDRP, where there's a standing pool of panelists who might be drawn down from to hear a PICDRP action. Thank you.

Okay. So, next paragraph. "The IRP panel shall have discretion to determine, one, whether the claimant has a need for translation services, two, what documents and/or hearing that need relates to, and three, the language for which translation services will be provided."

Actually, I may have missed that and that may have actually been a redline I'd made previously to address Kurt's objection to hanging prepositions. But in any event, if it is one that we'd previously approved, I don't think it's the end of the world that I didn't catch it. But hopefully, again, that's meeting everyone's understanding of the what the IRP Panel's discretion covers.

So, I'll move on the next paragraph. "In exercising its discretion, the IRP Panel should bear in mind the purposes of the IRP, set out in ICANN

Bylaws, article four, section 4.3 (a), and in particular purpose seven, and should have regard to the following non-exhaustive considerations."

And I will just pause there and explain that, just to be on the safe side. The first two of the considerations that had been in the earlier draft, I'm proposing to delete. And I have explained in notes why I've done that. The first of those is, in fact, what is contained in the Bylaws, article four, section 4.3 (a)(7). And that is that one of the intents of the IRP being to secure the meaningful, affordable, efficient, accessible, transparent, etc. settlement of a dispute.

And this is one of the topics we discussed at some length on the last call. And there were some differences in view. I think overall, there was a feeling that a reminder to the panelists or the panel of why they're there and what the purpose of the IRP is was not unhelpful when they're thinking about a request for translation services.

But I certainly was persuaded by comments that Kurt had made that, in fact, those kind of purposes are why we have the IRP. And so, they're not, strictly speaking, factors for the panel to take into account when they're thinking about translation. They're the reason the IRP exists in the first place. And so, that was my reason for moving the reference to purpose seven up into the more introductory language.

And then, the second one of those was one that I deleted altogether and that was the reference to the need to ensure fundamental fairness and due process under the ICANN Bylaws. And the reason I did that was because when I went back to the Bylaws and reconsidered this, that's effectively a direction to us at the group who is developing the rules and

later to the standing panel, to the extent that they might revise rules in future. It's a consideration for us to bear in mind when we're developing these rules, as opposed to, strictly speaking, a consideration for the panel when they're thinking about translation.

And so, whilst both of those, number one and number two, that have now been deleted, I think, are extremely important, they're not, strictly speaking, directly considerations for the panel when it's making its decision about whether to allow for translation and specifically whether for ICANN to provide translation services to a claimant who is arguing they have need. So, that's the reason for the deletions there.

And so, moving on, we now have just a smaller list of considerations, although it is, as proposed, non-exhaustive, that the panel should be thinking about when they're going to make a decision on whether to provide translation services.

The first of these, now, would be "the materiality of the particular document, hearing, or other matter or even requested to be translated, including the need to ensure that all material portions of the record of the proceedings are available in English."

The second one would then be, "the claimant's ability to fairly participate in the proceedings, due to the level of understanding of spoken and written English by an officer, director principal, or equivalent with a responsibility for the dispute, and to the extent that the claimant is represented in the proceedings by an attorney or other agent, that representative's level of understanding of spoken and written English."

The next one—and, indeed, it's the final one on the list—is "the level of understanding as above in another official language of the United Nations, i.e. Arabic, Chinese, French, Russian, or Spanish. Where the claimant or its representative has a suitable level of understanding to permit fair participation in more than one language, of which one is a UN language, then Translation Services will be limited to that UN language where possible."

And then, just to explain, the other deletion that came from that list over the version of the document that we had previously, was the reference to the cost of delay incurred by the translation. And this one did cause me some pause for thought. Initially, I was minded, as I said in a comment, to move that down the list so that it was perhaps the final consideration and to include some kind of a note, to the effect that it wouldn't be a deciding factor alone.

But on reflection, again, I think … Reflecting on the conversation we had during the last call and the points that I think were being made quite strongly by Kurt and others, and indeed the reason for the provision of these translation services, in order to be to fairly participate, it seemed to me that if the panel have determined that the document or whatever it is that needs translating is material and there's been a determination about the ability to fairly participate because of language skills or lack of language skills, then really the cost and the delay are not the relevant factors here and shouldn't be …

Arguably, they might still be things that the panel is thinking about but it seemed to me that they weren't what's appropriate. What's

appropriate is this need to be able to participate in the proceedings. And that's, I think, what the three subclauses reflect now.

So, this is perhaps an area where there may be further discussion and further thoughts. Or you may feel that this, now, does get the balance right, based on what we were talking about on our previous call and over previous weeks. So, again, I am going to just pause briefly. Okay. I'm not seeing any hands so I'm hoping that's a good sign. And I'm going to keep moving down.

So, next paragraph. "All translation services ordered by the IRP panel shall be coordinated through ICANN's language service provider and shall be considered an administrative cost of the IRP, paid for by ICANN, unless the IRP Panel later orders otherwise, pursuant to ICANN Bylaws article four, section 4.3 (r)." That concept was in our previous version. I tried to tweak the language slightly to make it more clear.

And also, in response to a comment that came up last week, I included the reference to the specific section in the Bylaws. And section 4.3 (r) is the section that deals with cost of proceedings. And just as a reminder to everyone, in case it's not burned into your memory, it essentially says that "ICANN shall bear all the administrative costs of maintain the IRP mechanism, including compensations for standing panel members. Except as otherwise provided," in a previous paragraph, "each party to the IRP proceedings shall bear their own legal expenses, except that ICANN shall bear all costs associated with the community IRP, including the cost of all legal counsel and technical experts."

And then, “Nevertheless, except with respect to a community IRP, 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.” And I hope I read that right because I stumbled a bit there. So, this is essentially trying to ensure that where the translation services are being provided by ICANN, that if we feel those translation costs should be borne by ICANN, then we designate them as an administrative cost of the IRP proceedings because that way, under the Bylaws, those fall to be paid for by ICANN.

And then, moving onwards, the next paragraph is that “the claimant determined by the IRP panel not to have a need for translation services must submit all materials in English.” And I think we don’t necessarily need to go further than that and talk about translation in those circumstances. If the claimant is determined not to have a need then they have to submit in English.

But because we want to be absolutely clear, the next paragraph then goes on to say that “if the claimant arranges for its own translation, either because translation services are not requested or are denied, such translation shall be considered part of the claimant’s legal costs and so borne by the claimant, pursuant to ICANN Bylaws, article four, section 4.3 (r) and not an administrative cost to be borne by ICANN, unless ordered by the IRP Panel.”

And so, again, that’s referring back to the same section in the Bylaws, which sets administrative costs as being ICANN’s costs, and sets legal costs as being the party’s costs, but does include at least the ability for

the IRP panel to make a different determination and therefore to shift the cost—and so, in theory, to shift the costs onto ICANN by determining that something wasn't a legal cost and was, in fact, an administrative cost.

And I think the obvious place where that would come in would be right at the beginning, where the written statement of dispute was translated upfront and the claimant was asking for translation services but had already picked up the cost for certain translation services upfront. And so, that is what the intention is behind this. Mike?

MIKE SILBER: Thanks, Susan. Good day, all. Susan, the last time we spoke about the types of documents to be translated. And I made the point, and I think there was general concurrence, that translation needs to be limited to documents that are relevant to the matter. A claimant can't now require the translation of the ICANN Bylaws into a different language—that it was very much specifically related to the claim and supporting documentation and not other documentation. Now, I think we had at least some semblance of coherence, if not consensus on that. But I don't see that reflected at all.

SUSAN PAYNE: Thank you. And you don't because I missed it. I'm very sorry. I think I had been assuming the materiality of the particular document was capturing our intent sufficiently. But you're absolutely correct that that does not reflect that something like the ICANN Bylaws … I think you're saying the ICANN Bylaws would be material. And consequently, that's

not what we're really intending. Yes. There's are few people in the chat saying that they interpreted materiality the same way. But I think your point is a good one, Mike, and it's one that I hadn't properly picked up. So, we need to just make a slight tweak to reflect that.

MIKE SILBER: And I suggest we do that in the first paragraph.

SUSAN PAYNE: Yeah. Perfect. Thank you for that. I will take that on board. And thank you. And apologies for not picking that up.

MIKE SILBER: You're doing a sterling job. I don't think anyone takes it amiss that something got missed.

SUSAN PAYNE: Well, it certainly wasn't deliberate anyway. But I'm sorry because have really been hoping that we would get to the end of this and I would be able to tick we've completely finished and there's nothing to change here.

Okay, and then just final paragraph. "The IRP Panel may order that the deadlines for the submission of documents, etc. and for the timing of any appeal be amended to take into account reasonable delays generated by the translation of documents/transcripts." Perhaps that ought also—reading it now out loud—perhaps also ought to reflect

decisions because I think that's the most crucial issue. If the decision were needing to be translated into some other language from English, that seems to be the most crucial point at which, certainly, the timing for an appeal or something would kick in. So, if people don't object, I will include a reference to decisions in that final para.

And other than that, that's got us to the end of that document or that proposal in the series of proposed redlines. Again, I'm pausing, I think, in case anyone would like to raise anything. Liz?

[ELIZABETH LE:] Thank you, Susan. I think one of the things that we had talked about at the last meeting is in the second to the last paragraph, we considered adding something about a standard for translations that may be arranged by the claimant themselves so that there is some kind of a certification and it meets that standard so we know which records would be really the official stand record of the proceeding versus one that may be translated but doesn't meet the qualifications that we would consider to be part of the proceeding.

SUSAN PAYNE: Thanks, Liz. I'm assuming here you're thinking particularly about documents. So, for example, if there's part of the evidence of the claimant and they have chosen to translate that themselves, that one would want that to be something—certify translation. Is that correct?

[ELIZABETH LE:] Yes. That's correct. I was just thinking of a situation where a claimant could go ahead and have documents translated, him or her, itself. And that translated document may not necessarily meet the standards that we would have for what you would say a certified transcript and become a dispute over certain material terminology. So, to avoid those kinds of situation, should we put in, maybe, one line about translated documents that are arranged by the claimants themselves need to meet a certain standard in order for it to become an official record of the proceeding?

SUSAN PAYNE: Okay. Thanks, Liz. Hopefully, others may have some views on this, too. I have a question for you—maybe for all of us. If we're talking here about, for example, a written statement of dispute or some other written statement—so, not an evidentiary document but one of the claimant's statements, do we feel that that should also be a certified translation or are we simply saying that the English version is going to be taken as the correct version of that statement, if you like? I'm not sure if I'm making sense but do you think that this is a necessity, both in relation to evidentiary documents and in relation to written statements or do you think, actually, that the certified nature of it really kicks in more when we're talking about a specific document?

[ELIZABETH LE:] I personally think that the certification comes in when we're talking about translated documents from English. And probably, it would be

statements or documents that would be considered evidentiary materials.

SUSAN PAYNE: Okay. Thank you. And Sam is suggesting maybe we could also see what ICDR says, in terms of the standards for translation, which there's certainly some support for in the chat. So, that sounds promising. Maybe we can take that offline afterwards to check what ICDR says in relation to this. And if there's something adequate in the ICDR rules, maybe we don't even need to address it. But generally speaking, its probably better, even to have something specific in our rules so that we know that people are aware of their obligations and which rules apply. If that's okay with everyone, I can take that offline and perhaps circle back with this, and Sam if needed, to see what the ICDR has to say on this topic.

Perfect. Okay. All right. Pausing again. Any more thoughts, views, objections, concerns? If not—and I'm encouraged—then I will clean that draft up and make those few minor, last few changes, and perhaps send round the redline and a clean version so that hopefully we are all good with that. And if possible, we maybe can try to agree this before—to have any further discussion over the email so that at the start of next call we can very quickly touch on it, just to make sure that everyone is finally happy.

And [Christina] is making a point in the chat that actually is one that I would wholeheartedly support. [Christina]'s comment, in case anyone isn't in the chat and reading it, is saying, "Can we number these

paragraphs to make it easier for future reference by us, by claimants, by ICANN, etc.?" I would love to see all of the paragraphs in the whole of these rules numbered, which is, I think, what you really mean because it's clearly not limited to just the translation section. To my mind, it would be much, much easier to cross reference, to refer people, when talking with others or if one was in a dispute, to actually be able to refer to the relevant paragraph by reference to a number.

None of the document, at the moment, has paragraph numbers. And I suppose, from that perspective, I just have a question, which I think is probably for Sam and … Sam has just put in she can take that as a drafting note, as Org supports the drafting of the language of the final document. Thank you. Yes. I did wonder whether there was some particular reason why the rules don't have paragraph numbering and it sounds as thought that isn't the case. So, thank you very much, Sam. It would make me much happier as well. Thank you for the suggestion.

Okay. So, we are, I think … We're certainly as far as we can get with this for now. And so, I'm just going to switch topics, if that's all right. And very excited to be able to say … We have mentioned before that we took the view at the next topic that we would come onto as a group would be to look at the section on consolidation, intervention, and participation as an amicus. I think for the purposes of this call, I just wanted to introduce that next section—it's section seven in the interim rules—and give us just an opportunity to have any preliminary discussion about that section seven that we want to have.

What we will have, for the purposes of the next call, is that Bernard is working on a summary of the past discussions and the past input from

public comments on this section, as we had for the translations section. And that will be finalized and circulated in advance of our next call so that everyone has an opportunity to get themselves up to speed on, basically, the kind of legislative history and how we reached the version of the interim rules that we have.

But as I say, in the meantime, I thought it was helpful, before we have that, to just introduce the topic and to flag up some of the issues that have already been identified as being ones that, as a group, we'll need to consider. And therefore, you can have these in mind when you're reading through section seven and getting yourself up to speed.

And obviously, I'm really happy to get any feedback or input now from anyone, if they've got particular thoughts on any of this already. And also, if anyone, as we're going through it, has any additional considerations and issues which they feel, as a group, need to be addressed in order to improve and finalize this section seven, then happy to have that flagged now, or over email in advance of the next call, or as we start discussing it.

So, it's quite a big section because it's covering three different means of third-party participation, I suppose is the best way to put it. So, consolidation is, as I'm sure you all know … The notion of consolidation is where there would be two separate disputes and those are being brought together to be dealt with as a single dispute going forward.

Intervention is essentially where a dispute is underway. An IRP has been brought by one party and a second party, or third party if you like, who also has standing to be a claimant and would qualify to be a claimant,

petitions to be able to be added to the dispute as an additional claimant if you like.

And the notion of participation as amicus curiae is where there is also a third party, or group, or entity that has a material interest in the dispute but they don't satisfy the requirements to be a claimant. And so, that could be circumstances, for example, where, in fact, they would be impacted. If the claimant was successful, they would be materially impacted. And so, they effectively are potentially joining forces and arguing for reasons why the claimant maybe should not be successful. But there could also be third parties who want to intervene in support of the claimant's case by they don't qualify themselves as being a claimant. They don't have skin in the game in the same way as the claimant does.

And so, there were a few issues that Sam identified in the document that she circulated to us back in February, of potential areas for consideration. One of those was the notion of the procedures officer, which is introduced at the beginning of this section seven. And the idea, under the current interim rules, is that there's a procedures officer who would be appointed and they would make determinations in relation to requests for consolidation, or intervention, or participation as an amicus.

But as I think we heard from Sam, the experience to date has been that the parties have found it difficult to understand the concept of the procedures officer and have found it quite a cumbersome process. And so, one of the questions that Sam raised for our consideration was

whether it's better to leave these considerations to the IRP Panel in their own discretion.

One thing I would note is that the ICDR rules have the notion of a consolidation arbitrator. And that's someone who, again, would consider these requests for consolidation. And it does seem to be quite similar in concept to the notion of a procedures officer in these ICANN interim rules. And so, it may be that there are some participants in this IOT group who have experience of other arbitrations under the ICDR rules, who have had experience of this notion of a consolidation arbitrator, and maybe have some thoughts to add onto whether we need a procedures officer or, as has been suggested, whether we are perhaps better to just leave this for the IRP panel's discretion.

And I think, obviously, leaving things to the IRP Panel does impose some timing issues, I think, or potential timing issues, because there is a period of time before an IRP Panel is seated. And I suppose it also, then, does give rise to some issues about the selection of the IRP Panel itself, since, in the case of consolidation and intervention, we have other parties being brought into the dispute who one might assume would want to have a say in the panelists' appointment. And I think that may be why the notion of the procedures officer was adopted, in order to try to address that.

So, I think that is definitely an area that we need to consider. And we may get some light shed on that from the legislative history or how this section developed. But certainly that's, I think, one area that we definitely need to consider.

The other that Sam identified was that … I'll paraphrase this. There was a certain degree of lack of clarity over the procedure for intervening, particularly in the case of intervention about the need for those requests to be in writing. And I think, probably, in the case of all these different measures, the extent to which the third part being brought into the proceedings has access to documents in the evidentiary record, in order to be able to be on an equal footing—certainly if they're joining as some form of a claimant. And so, again, that was another area that Sam identified for us to consider and review whether we think the balance is currently right.

And then, before I go on, I'm just going to have a quick look at the chat because I realize I've been talking away. Aha! So, it's going back to our previous document, actually. Scott has suggested we have hyperlinks to Bylaw references that might assist. And I think that's probably quite a good suggestion, too, Scott. Thank you.

[Christina] flags up that the .Web panel has issued a decision relating to Amicus. And I'm questioning whether there are any other panel statements on this particular issue, to which Sam's response is no. She doesn't think that there are. But she'll flag any if there are any others. But thanks, [Christina]. That's a good reminder to all of us that, actually, in getting ourselves up to speed, we probably would all benefit, I think, from reviewing the relevant comments from the .Web case, as they relate to joining as an amicus, and ensuring that we take those into consideration when we're reviewing this section.

So, then, moving on. Not specifically identified by Sam in her document but a couple of other considerations that came to my mind as I was just

quickly looking through this. I think we will need to consider the restrictions on written statements, for want of a better explanation. The second paragraph of this section seven talks about whether these are requests for consolidation or intervention, that the restrictions on written statements set out in section six should apply to all the claimants collectively, and in parentheses for a total of 25 pages exclusive of evidence, and not individually.

Whilst I can understand the desire to keep the volume of documentation as tight as possible, that seems to me practically not to work, although as we discuss this, I'm very happy to be persuaded that I'm wrong. But in the first case, it seems to me that where cases are consolidated, you therefore already have two IRPs. So, you've already got two separate written statements and the two separate sets of proceedings. And so, quite clearly, they will have both been individually working to their 25-page limit. And unless this is actually intending that the parties, then, have to get together and draft a joint statement that replaces that, it doesn't seem to me that it works.

Similarly, in the case of intervention, there you have an additional claimant effectively joining late into the proceedings, at a point where the first claimant who brought the IRP proceedings has already drafted their 25-page written statement of dispute. And it seems to me, again, that I'm not sure that it would be the intent that that newly-joining claimant has no ability to draft their own written statement of dispute because the page limit has already been used up by the other party.

I don't think that would be the intention. As I say, I'm maybe misunderstanding things. Becky is saying there's lots of precedent for

this. Yeah. As I say, it may be that I'm overthinking things and that it's not as complex as that. She's suggesting, "Could we get an overview of the variety of approaches taken?" I think we can certainly try and do that. Yeah. Is that something that either Sam or Liz could maybe help us with?

SAM EISNER: Susan, just to be clear—to identify current process as it relates to page limits and consolidated proceedings?

SUSAN PAYNE: I think that's what Becky is suggesting. Yes.

SAM EISNER: Yeah. We can take that on. Sure.

SUSAN PAYNE: Thanks very much. That would be really helpful because as Becky says, absolutely no point in reinventing. And I, as I say, may well overthinking it but that just was one of the things that occurred to me that didn't seem to be making sense in the rules as currently drafted.

The next item that also occurred to me was that in relation specifically to, I think, for joining as an amicus and for joining as an intervener there are statements to the effect that they should put in a request for consolidation that much contain the same information as a written statement of dispute. And it seems to me that that's fine and, no doubt,

they should. But what it doesn't specifically say is that it should also explain why the intervention or the joining as an amicus is appropriate. Clearly, that's the intent but I think that might be one of the things that Sam was flagging up, where the rules are a big vague and so might be helpful for us to address

And then, I think we probably also would … In the case of the amicus for sure but probably also in the case of intervention, we probably want to at least spend some time reviewing the identification of who is eligible to be an intervener or to join as an amicus and make sure we feel that that balance has been correctly set.

And so, yes. To my mind, at a minimum, those are probably the areas that we want to spend a little bit of time on. We may well identify more, either through discussion now or, indeed, as we have an opportunity to review the history of the development of this section seven, that may also cause people to identify other areas where we feel that the rules, perhaps, could benefit from some additional clarity or, indeed, if we feel that rules have got the balance wrong on something like who can participate as an amicus.

I suspect that that particular section on who is eligible to participate may be one that warrants some particular attention—not that I have any particular objections but it just seems to me that that's something fairly new and there certainly was public comment on that topic. And so, we will want to just remind ourselves of what those comments were and what the outcome, and whether the rules now reflect the comments that were received.

So, just referring to the chat, Scott is saying he has no ties to the parties in this case but for convenience, in considering issues relative to amicus, here is the claimant's response to the amicus' filing in the Web proceeding. Okay. Thanks, Scott.

Maybe the answer is for us to circulate … In sending around the reminder of what we'll be covering next week and circulating materials that members will want to get up to speed on, we should take the opportunity to send round the relevant materials from the Web dispute. I don't think we want to be—clearly don't want to be sending round all of the materials but there has been argument on this topic and ultimately a panel decision. So, it's a good opportunity for us to make sure everyone has those particular documents conveniently to hand.

So, that is … As I said, I'm happy to begin discussion now, if people think it is helpful. Or indeed, if anyone has identified other particular issues with section seven that they think we need to add to our current list, if you like, of topics for consideration and review when we're looking at this section, really happy to do that.

On the other hand, no one was particularly prepared in advance of this call, I think, for a detailed discussion on section seven. And we don't, as yet, have the benefit of the legislative history document. And so, if people would prefer, we could wrap up at this point. I don't want to wrap up without giving people the opportunity to raise anything now or flag anything now that they think is worth discussing. But otherwise, we could, perhaps, just move on and consider if there's any other business and then wrap up the call.

Okay. I'm not seeing any hands. Thank you for your comment, David. That's very kind of you. I'm not seeing hands or any comments on this section seven topic at this point. And so, I think perhaps we are better to proceed with a more substantive discussion when we've all had the opportunity to review the section, review the underlying materials, and get ourselves up to speed.

In which case, as I flagged when we reviewed the agenda, our next call is in two weeks' time and is in the later timeslot—so, 19:00 UTC. So, we have a couple of weeks. We'll endeavor to get the … I'm hoping we'll be able to get the background documentation out, ideally with a week or so to go, in order that there's time to review and get to grips with it before we start a discussion. I'm very happy if that discussion wants to kick off on email, first of all.

In terms of any other business, I do not have anything particular to raise. But I will pause and see whether Sam or Liz do, or Bernard, or indeed, any of the group members have anything they want to raise. Okay. I'm not seeing anything.

And so, I think, in that case, we are probably in a good place to let you have a little bit of your day back. And we can hopefully have—possibly finalize that. And I really just have to spend a few minutes at the beginning of the next call, just doing a final once-over on the translation section before we can get into a good and substantive decision on section seven, consolidation, intervention, and participation as an amicus.

Okay. Thanks, everyone. So, we can stop the recording. And have a good rest of your day.

[END OF TRANSCRIPTION]