SUSAN PAYNE: Hi, everyone. Thank you very much for joining. This is the IRP-IOT call for the 21st of July.

As usual, if you're not speaking, please try to remember to stay on mute so that we don't have too much background interference. Please to remember to identify yourselves when speaking. I always say this and then I'm pretty sure that I'm one of the worst offenders of that, but let's all endeavor to try and remember.

For our call, we've got a reasonable turnout. There's not a huge number of participants on the call yet. We certainly have enough to have a decent discussion. I'm not sure that we have any final decisions to be made on it on this call, so I think we're fine with the level of participation that we've got.

First off, just a further reminder to submit the new form of SOI. Thanks very much. Most people have now done it. There are just a really small number of People who haven't yet sent through their SOI. So I think you'll probably be getting a chaser between now and the next call. Please do try to do that. I think it's important that we have those.

Just quickly, as usual, I'm just pausing to see whether anyone has any particular updates to their SOI that they need to make the group aware of.

Okay. I'm not hearing anyone, so that's fine. Obviously, if you do make any changes, please, if you can, note that on the list. But the main thing, I think, is that most people's SOIs, having been submitted in the last few

weeks, are up to date. We just have a very small number of people that we're still waiting on.

The first agenda item to circle back on is relating to IRP standing panel selection. We had a really good discussion about this on our last call and batted around ideas of our own views on the particular role that the community has in terms of reviewing candidate applicants to be standing panelists. It's a role in the bylaws delegated to the community to the SOs and ACs specifically to come up with a slate of panelists to form the initial standing panel. It's something that David Olive has been reaching out to the SO and AC leaders on and seeking their views and offering to support.

One of the suggestions, as we discussed last time, was that possibly the community might think about asking this IOT group to take that role and seeking thoughts on that. That was what we discussed on our last call.

I think generally it's reasonable to say that I think, generally, our view was that, whilst their might be individual members of this IOT who might well be interested in playing a part in that process, we really didn't think it was a role for the IOT itself as a whole, so, as discussed on the last call, I drafted a letter which I think is probably best placed to go to David Olive and the SO/AC leaders just giving them our thoughts and explaining our thinking and offering obviously our assistance as required and some suggestions. So I circulated that just yesterday, and I'm very happy to get people's input on that.

If people have any kind of high-level comments, particularly on issues like other comments we could make about how the community might

go about this actual exercise that you feel strongly we should add to the letter, then please let me know. I think I would be aiming to get this out sometimes towards the end of this week. I do know that David's team is looking to convene a meeting of the SO/AC leaders, so I think it would be helpful to them if we've written before that happens rather than after.

I'll stop talking. I can see Sam has her hand up, and then also David does. Sam, please?

SAM EISNER: Thanks. I wanted to just give a slight update about the SO and AC leader meeting that seems to be converging for next Monday. A couple weeks ago, there was a meeting among the SO and AC leadership where there was initial discussion about how the skillset among the IOT might be useful in helping to move the community selection of the standing panel. It was pretty clear from the input that we received back from the different groups that no one was extremely supportive unless there was a major change to the composition and the role of the IOT to use the IOT itself as that group. So I think the conversation among that team is probably moving away from that idea. In any event, they're recognizing that there might be individuals on the IOT who might be interested in doing other work as it relates to the standing panel selection. So, if that helps tailor the note for your consideration, I just wanted to make sure that you guys had the most up-to-date information.

Also, I believe we'll be publishing a summary of the inputs that we heard from the various SOs and ACs on to that wiki page that we have

regarding the standing panels so that there is a way to see the different inputs and how that came out.

SUSAN PAYNE: Great. Thanks, Sam. Yeah, that is helpful. I still think it's probably helpful for us to write. I'm conscious that these conversations are happening and we're not a party to them. It sounds like, as you say, the community is coming out in a very similar place to the place where we came out on our discussions. So that's good, but I think it's probably helpful for us to reflect that back to them.

David?

DAVID MCAULEY: Thank you, Susan. I appreciate the comments that you made and that Sam made. That helps.

I just want to say I did read your letter. I thought it was well-drafted. The only suggestion I would have is, where you say "well-qualified"—there's people in the IOT who may be willing to help who are well-qualified—you might say, "including with some knowledge of Bylaw 4.3," because some of this have been at this for some time. My hope is that you can send the letter sooner rather than later because, in ten days' time, that expression of interest period closes. So there will be a small pile or a big pile or something in between of expressions of interest that really, to be fair to the applicants, ought to get some attention pretty quickly. So I would encourage, as I used to do when I chaired this group, us in this group to think about helping our respective

SOs and ACs as they take us through. I recognize that's a daunting ask because, in my view, this is going to be a heavy lift. It's not the easiest stuff in the world, but it's so important to get a handle that's right somehow. This panel, when they do early decisions, are going to be establishing early precedent. This is really very important.

Anyway, thanks for the opportunity to speak to it. That's it.

SUSAN PAYNE: Thanks, David. Thanks very much for your suggestion. Yes, that's a really helpful reminder that the 31st of July deadline is coming up. I'm also aware that, in addition to David seeking to convene a call with the SO/AC leaders … I believe that the GNSO, which a number of us are members are … I believe the GNSO Council has this on their agenda for this week, which was another reason to want to try to get this out.

So, if I could encourage everyone, if they do have any particular strong views or particular things that they think really ought to be included and that are currently missing, to come back by the beginning of the day on Wednesday or something like that, that would allow that to send that out on Wednesday, I think—oh, hang on. Wednesday is tomorrow, isn't it? Sorry. Thursday morning, I suppose. Let's say close of business tomorrow, which is Wednesday. I'll put that in an e-mail as well because I think it's probably more important to get something just to them rather than have missed the opportunity.

Bernard?

BERNARD TURCOTTE: End of business can be confusing for various people. We try to usually pick 23:59 UTC of the day we want to close things. That makes it fair for everyone.

SUSAN PAYNE: Thank you very much. That's a very good point, Bernard. That's a very good point: 23:59 UTC. I can guarantee that I won't look at it at 23:59 UTC, but that means it will then be in a position for me to send on Thursday, my morning, when I am up. Thank you.

Yeah. Kurt is saying, "End of business in the last time zone," which is—I don't know—probably you, Kurt.

All right. Unless there's anything else anyone wants to bring up in relation to that now while we're on the call, then I think we can move on—oh. Now Greg is trying to work out where the last time zone is. I have no idea, Greg. I leave that to you. I don't think we have anyone in the Cook Islands—do we?—in this group. I was working on participants in the group.

Anyway, sorry. Enough of a diversion. So, translations. This, again, is something obviously we've spent a fair amount of time on. I am just looking for my notes on this. On our last call, we had what I had hoped might be the final version of the 5B rule for translations. But we then had some useful input from Scott shortly before the call, so Bernard set up a Google Doc and gave IOT members an opportunity to add in any comments and suggestions before we finalize the language. As we discussed on our last call, the likelihood is that we don't, as a group, necessarily have to ensure that all of our drafting is perfect. There is a

role for Sam and Liz and the ICANN legal team generally to be tidying up language, particularly as things move on to ensure that terminology used in one section is making sense in the context of the rules as a whole and so on. So I don't think we need to get into the real nitty-gritty of some of the edits that people were making over the last period, where I think a lot of the edits are real drafting points, which is not to dismiss them but just to say that they aren't necessarily points of particular principle.

So, if it's okay with everyone, what I wanted to do was just focus on just a few points which seem somewhat more relevant issues of principal, if you like. Even then, I don't see any of this as being particularly controversial, but there were just a couple of points that I felt I probably should be making unilateral decisions on and I should at least be airing it on the call.

One of those is … Well, unfortunately, it's difficult to see the comment I made in this document, but I think it's fine. I will just talk through the comment. What I highlighted was this paragraph that you can see in the Zoom window at the moment, which talks about the request for translations services. It's Bullet 1. In particular, it had been an edit proposed which references requests by the claimant for their preferred language and, indeed, languages or have the potential for there to be multiple languages that the claimant is requesting. In the context of this particular paragraph, it's also particularly in relation to the translation of ICANN's written statement from English into the language that the claimant needs to the translation to be in. So it was a question for the group, but I think we had comments from Kurt and from David McAuley pointing out a concern about the reference to multiple languages,

particularly in this context. Given what we're talking about in this provision as a whole, it's about translation in the case of need. If a claimant has a need for translation of the ICANN written statement into another language, is there really a scenario that one could envisage where that need requests multiple language rather than just a single language that they identify? So certainly I think I was quite persuaded by Kurt's and David's comments but felt it was worth us circling back on this.

Scott has his hand up, so we'll turn the mic over to you, Scott.

SCOTT AUSTIN: Well, just a quick comment because it may reduce the amount of time we have to spend on it. The only reason that I put in languages in my addition, my comment, was because, if you look below in the next full paragraph—I'm reading off of what you sent us because it's just a bit easier to read, and I actually put a response in on this—it says it's already in what we were originally given. It has multiple languages in the sense that it has an "S" in parentheses. I didn't add that. That was in the original text. I was just trying to make it internally consistent. So I had no ax to grind on there being multiple languages or even providing for it, and I'm fine with leaving it [in] language. But I just wanted you to know where it came from.

SUSAN PAYNE: Okay. Thank you. That helps a lot. To my mind, I could just about envisage a scenario where, at some point, there's more than one language because it's perhaps the language of a document that a

claimant has or a translation of a bundle of documents. Theoretically, I suppose a claimant's documents might be in more than one language. But I think generally speaking we're almost certainly going to be talking about a single language, aren't we? So perhaps that can be fairly easily resolved. As you say, that's really helpful. We probably don't need to spend too much more time on it then. Thank you.

Then we can move on to the next one—

SCOTT AUSTIN: Susan, one comment. Maybe we should delete the parens around the "S" in the one that was already there, again, to make it consistent.

SUSAN PAYNE: Yeah. Thanks, Scott. I think that's the sort of tidying up that we'll hopefully get for the document as a whole. So that sounds perfect.

All right. The next one is again the next highlighted section, which, again, you can't read the specific comments in, but it relates to, again, these edits, which Scott had attempted to improve, I think, the process for appointing the emergency panelist. I think that makes some sense.

One thing I wanted to circle back to was that he's included a reference to a particular time limit, although currently without specifying a number of days. I was looking at this, and initially, when I was looking at the various comments that came in, I started trying to work out what time limit that would be and was almost picking a time somewhat a random as a suggestion for, what do people think?

Then it really occurred to me that, looking at the rules as a whole there, there are a number of places probably where we don't necessarily have time limits at the moment, or, perhaps, to the extent that there's a time limit, it's maybe contained in the IDCR rules and it's not contained in our supplementary procedures. For example, there's not actually any timing I could see in our rules for about when the respondent has to put their statement in, for example. I think there's also a provision that allows for perhaps a response to ICANN's respondent statement, which again, there's no timing [for]. It seems to me that the reason you might have some urgency for translation services might be because you need a translation, for example, of ICANN's statement in order to be able to take the next step.

So what I was just going to suggest for everyone and see whether there's any disagreement with this is just that, perhaps rather than we try to bash out now what that timing should look like, this tidying up that needs to get done at the end to make sure things work. So, when we've got a set of rules at the end where we're clear what the timing is, for example, on putting in statements and making certain applications, we can then circle back and make sure that we've married this up so that time is allowed for things like these urgent requests.

The alternative to that, or indeed in addition to that, one could also include something to the effect that, if there is an urgency for translation services that has been particularly identified, of course, the timing of that request has to match up accordingly.

But, yes, as I was saying, really what I think is probably easiest for us, certainly at this point, is to park the decision on what the actual number

of days is and try to make sure that our rules as a whole, when we get to the end, make sense.

I've got Scott and then Kristina.

SCOTT AUSTIN: Again, just another quick point. The reason I put this in was, as a panelist in other areas, I thought it would be good to have some mechanics if was an emergency basis. I haven't done the research for the necessary analogues that might work in terms of actual amounts. Your reasoning is brilliant. I think the idea of waiting until we have more information so we know what timeframes would be in there … The only comment I add to that is that Kavouss last week seemed to be a bit taken aback that, if you propose these kind of timeframes, you don't at least put in some kind of example. But maybe a place keeper like TBD, hard brackets, or something like that just to remember that we at least look at the idea of what days would apply here and we're thinking about inserting something after we have more information. Thanks.

SUSAN PAYNE: Thanks, Scott. Actually, it was partly due to Kavouss' comments that I was trying to think about what the right timing was and came to this conclusion.

Kristina?

KRISTINA ROSETTE: Hi. I support that. I think perhaps just taking it a small step further, which I think could address some of the concerns, similar to those that Kavouss has raised, is perhaps we just drop a temporary placeholder footnote to indicate, for anyone who's looking at this, why we've left it in brackets and to avoid any confusion.

The other small—this is more of a housekeeping issue, and I apologize for not raising this sooner—is that one thing that—I'm happy to do it—I think there are some places here where it is in our interest to avoid using passive voice, to avoid any kind of future confusion or uncertainty as to who the particular actor is supposed to be. There aren't a whole lot of places where I think it could really be important, but I do think that there are a couple. If folks are okay with that, I'll set those out in the list. I will note that, seeing Becky's comment in chat, that I am [inaudible] myself because, as I think most of you know, passive voice makes me break out in hives. Thanks.

SUSAN PAYNE: Thank you, Kristina. And thank you very much for offering. That would be super. Very happy. Certainly won't object. Great. Thank you very much.

The final comment. This is one that came from Kurt and which I essentially just reiterated. It relates to the same section, I think, because we've got, included in here, a reference to there being an emergency determination in these cases where there's an urgent need. So, just to reminder people, Kurt's comment had been, "Does the reference to a preliminary … being determined. Does a preliminary issue mean that the

translation needs to be decided again by the standing panel, or just that the issue needs to be determined once and for all by an emergency panelist as a preliminary matter. Then Kurt's clear preference is for that latter—for this effectively to be a one-time decision—as opposed to an interim decision.

Again, I hope that this isn't terribly contentious. Certainly, to my mind, it seems as though what had been envisaged by Scott and what I would have envisaged myself is that this would be a one-time decision. So, if you get a ruling that needs to be made urgently because of some particular need for a quick decision, that decision is something that's going to stand. It's not something, at the moment, that you've got a full panel appointed for. You have to then go back and have it reopened, since it seems to me to not really make sense.

Now, having said that, I don't think anything ever precludes a claimant making a new application for new translation services if there's a change in their circumstances or a new document, or a new situation comes to light that requires new translation. But I was assuming that we were giving the role to this emergency panelist to make a decision once and for all, rather than a temporary decision. I'm hoping that that's not, as I say, too contentious, but I wanted to air it on the call before making that assumption.

I think I'm going to treat silence as golden. I'm not hearing anyone reacting with horror to that concept. So I think that is where most people were expecting this to be the case. So that all sounds perfect, in which case, unless anyone would like to go through—Bernard is giving us a time check—this is more detail, it's certainly a document that you

all have seen. The Google Doc for the purposes of commenting was open for about a week for people to comment.

I think, at this point, if people are happy, we can turn it over to Sam and Liz just to tidy up for us. That's what I would propose if that's okay with you, ladies, in which case we can move on to our next agenda item, which, I think, is circling back to our conversation on consolidation intervention and participation as an amicus, which we didn't get to on our last call. So it's good that we have had time to do that.

If possible, Brenda, would you be able to put up the notes that Liz produced for us and that I did just recirculate to the group shortly before the call, which are the notes that she had created on the comparison between the ICDR rules and the supplementary procedures? Yes. Thank you. It was a while ago now, but I hope people will recall that Liz had taken an action point to review what the ICDR rules say in relation to this topic and then make some comparison with what we have in our supplementary procedures to try and assist us with determining whether we need more clarity and also where we differ from what the ICDR rules say and what, if anything, of the ICDR rules would appear to still remain and be applicable because, certainly from my perspective, I do find it quite challenging to cross-refer between the two when you've got our set of procedures and separately a set of ICDR procedures which cover the same matter but don't necessarily cover the exact same things. So Liz had taken, as I said, the action item to review what the ICDR rules are saying.

The first part of this document conveniently sets out what the ICDR rules are saying. I hope that people have, over the course of the last

couple of weeks, had had the time to read Liz's note. So I don't think we need to particular go through the ICDR rules in detail but to note that, first off, there is ICDR Article 7, which is relating to joinder. This is a process that is in the ICDR rules, but we don't have a concept of joinder in quite the same way in the supplementary procedures.

Then the next article relates to consolidation, where one or more existing proceedings are consolidated together into a single action. In the consolidation section, we do have a concept of consolidation in our supplementary procedures. It is not identical. I would say I think Article 8 is in the ICDR rules is a little more detailed, certainly in some respects, in terms of the considerations of what a consolidation arbitrator should take into account and that kind of thing. So we do have something in the ICDR rules that relate to this similar topic.

Then we know that we also have the concept of participation as an amicus, which is not something that's envisaged in the ICDR rules. So that is also something that's specific to us.

If you wouldn't mind scrolling on a bit, Brenda, after the actual rules themselves, Liz had included some notes. There. I think this is it—yes. I think certainly the notes in relation to joinder I found helpful. Liz has looked back at some of the history of the IOT discussions and where there change was made because she did note that, in early discussions, early drafts of the supplementary procedures that were being drafted did still have the concept of joinder being referred to and that, later on, they were deleted and that that appeared to be as a result of a positive decision from the group that joinder isn't something that was

appropriate. So, instead, the notion of participating as an intervening party or participating as an amicus was adopted.

Liz also makes the point that it may be that the concept of joinder is not particularly appropriate to an IRP proceeding because of the very nature of an IRP, where a claimant is bringing an action because they are challenging some kind of conduct by ICANN under the bylaws. For example, one can't envisage another respondent being joined because there is only one respondent in an IRP that's possible, and that is ICANN. Similarly, it seems a somewhat unusual circumstance to envisage ICANN, as the respondent, attempting to join an additional claimant to bring an action against them. That doesn't really seem to appropriate.

I see joinder as something where it's not necessarily with the consent of the party being joined in the way that an application for intervention where, where that party is themselves making a positive decision that they want to join in. My assumption is that that is the discussion that this group had when they were making that change. So I don't personally see any reason to change that position. It seems to me that the group made a decision that it wasn't appropriate to have a concept of joinder in the supplementary procedures, and it wasn't accident but it was a positive decision from the IOT in its former discussions.

So I wouldn't propose that we reopen that unless anyone sees a strong reason to discuss that further or to reconsider that decision that was previously made.

I'm not hearing any voices at the moment, s I think that's probably a reasonable assumption.

In terms of consolidation, again, Liz has given us some very helpful notes that, again, I hope people have had the opportunity to read. They are, as you can see, up on the screen, so you also do have the opportunity to read them, if you wouldn't mind just scrolling up a little bit, Brenda. Yeah, that's probably fine.

I think this just makes the point that I was starting to touch on earlier, which is that I think that the ICDR rules are more detailed. This, I think, goes to something that we talked about certainly on the last time we discussed this section where we were talking about the procedures officer. We had feedback from Sam and also from Helen that there was a lack of understanding of the role of the procedures officer and what their responsibilities were and how it works. That is because the supplementary procedures on this area are perhaps not as detailed as even the ICDR rules are. For example, the ICDR rules have a more detailed process for appointing the consolidation arbitrator, who is someone holding a similar role to our procedures officer.

They also have some other areas of detail. There's more information, for example, about what the consolidation arbitrator should take into consideration when they're deciding whether to consolidate, and some considerations about things like specifying which action gets consolidated into which one and what happens to arbitrators if there's already a panel in place.

Those considerations probably still stand in relation to our supplementary procedures, since we don't have anything that supersedes them. But I think there's a lack of clarity and certainty because we currently are fairly silent on all of this.

So, to my mind, I think it would probably be helpful for our rules to have some of that detail included so that it's really clear for parties what the process is and the kind of considerations that the consolidation arbitrator or the procedures officer or whatever they're called should be taking into consideration when they're deciding.

David?

DAVID MCAULEY: Thanks, Susan. I delayed a little bit putting my hand up because I've been trying to recall why the joinder thing may have been dropped, and I can't recall, to be honest with you. And I was part of the group since its inception, and for part of that time I was the Chair. So I should know but I just can't recall.

So what I wanted to say is I'm not exactly sure why it was dropped. Even though, in an IRP, ICANN is the sole respondent, it does seem … What I'm asking is that we consider this holistically because it does seem possible that an IRP decision will have impacts on other parties than the ones involved in the IRP itself. So whether it's intervention, joinder, or amicus, all I'm suggesting is that we take a holistic approach to this and make sure that we come up with something that this group, on balance, thinks is the best way forward. In that process, I will defer to my colleague: Helen. She knows more about this than I do. But I just wanted to mention I was trying to recall exactly why that might have been dropped, but I can't, at least not at this time. Thank you.

SUSAN PAYNE: Okay. Thanks, David. Sam?

SAM EISNER: Thanks, Susan. I don't know if you want me to respond to David's question or if it's something that you'd like to defer. I don't want to tick the group off, but there is a little bit more information about why joinder doesn't seem to apply to IRPs. But I'll defer to you, as Chair, as to whether or not that's something we need to discuss right now or should defer to another time.

SUSAN PAYNE: Since we're talking about this, I think it would be helpful if you had that information at hand, yes. Thanks.

SAM EISNER: Sure. One of the things that I think is challenging for us as practitioners, even as familiar with the IRPs as we are, and then for community members like you—many of you are in arbitration in another setting—is that, even though the IRP is modeled off of arbitration, it's very different because the scope of the IRP is bounded by ICANN's bylaws. So the idea of joinder has a concept of bringing people in to a proceeding who might not be prepared. We know that they can't take the role of a defendant because an IRP must only be against ICANN because the only thing that's adjudicated in an IRP is whether ICANN violated its articles or bylaws or the wording that's laid out in the bylaws. So you can't join someone for the purpose of asserting claims against them.

The only other role that's defined is the role of the person who's seeking to have a complaint against ICANN. So it's someone who has standing to assert that they were harmed by an ICANN act that was alleged to be in violation of that article or bylaw or other defined words that are in the bylaws.

So joinder and bringing someone in as a party that never intended to assert a claim against ICANN (because that's the only place you could bring someone in as a party) seems to not make any sense and to actually not be aligned with ICANN bylaws. So that's why we don't have a concept of joinder in the rules right now. I'm not sure it was necessarily [inaudible] affirmative decisions, but there were discussions about what it means to be in alignment with the bylaws in terms of how you look at the party status of people and what it doesn't.

But of course, we also do, to David's point, have areas in the supplementary procedures that allow for intervention and that allow for consolidation of matters that come out of a similar nucleus. We have the amicus rights that are in there now to allow people who aren't properly a claimant and don't wish to assert a claim against ICANN as a way to preserve their own rights in participation in the IRP because, again, the IRP is not supposed to identify and adjudication of rights between other parties. It's answering the question of, when ICANN took an action, was it acting in accordance with its bylaws or articles of incorporation?

So, with that, the question, I think, for the IOT is, do the rules [and] the supplementary procedures that we have in place give enough

opportunity for the right people or entities to participate in the right manners that are aligned with the ICANN bylaws?

SUSAN PAYNE: Thanks, Sam. Thank you for that. That certainly makes sense to me. That was how I assumed that the conversation must have gone in the sense that, as I was saying, not nearly as clearly, I see joinder as being a process whereby you're not necessarily a willing participant. You might be willing, but the concept of joinder seems to encompass also being more of an unwilling party being brought into proceedings and that, as you say, where it's someone who is going to be effectively joining an action against ICANN because they're asserting a claim in relation to the same set of essentially the same circumstances, then having a process that allows that party themselves to voluntarily bring themselves into the dispute seems more appropriate. That's what the intervention concept does. Then, as you said, we also have this concept of being an amicus participant to deal with the situation where there may be someone else who has a strong interest in the outcome of the dispute but they don't qualify as a claimant because they don't actually themselves have a claim but they may be tied up in the nature of the circumstances that have led to the dispute. So it's helpful to me to have you express that.

I guess I do think, as you say, it's important for us as a group to feel comfortable that that is the right process and that we have got that right and that we don't need to be reconsidering it or at least that probably do reconsider it but we, in doing so as a group, just need to

feel comfortable that what we've got does give the necessary rights for the right parties.

Happy to hear anyone's thoughts on that now, particularly if anyone feels uncomfortable with the thinking that Sam has just explained. We can also obviously circle back to this on a future discussion. But, if anyone has any immediate reaction to that—particularly any immediate negative reaction—please do put your hand up.

Okay—ah. Scott.

SCOTT AUSTIN: I really don't have a positive nor negative on this point, only because I have a couple of questions in terms of the genesis of some of these provisions and, because of that, what analogues we may need to be looking at. I know there were several—I think very useful—materials that we were given, from Supreme Court rules, the multi-district [re-litigation] rules, and others.

But I'd be interested, with Sam's background, on the text that we're looking at right now, if that came from a particular proceeding or a series of proceedings because we're noticing a distinction with ICDR. That may be because of, obviously, different subject matter. But I'd just be interested in if there's something we could go back and look at to see how even the existing text that we have was arrived at to see which of the analogues, for example, that you provided to us, Susan, might be more applicable because it's a very complex process. I've been through it in the legislative context with changing rules and corporate statutes and LLC statutes and things like that, but [I wonder, with] the

complexity and the cross-referencing and the impact, even within a particular set of rules, how much changing one can affect others and so forth. So I just was wondering what structure of framework we could look to if we wanted to.

SUSAN PAYNE: Thanks for that, Scott. Before we perhaps answer that or see if there's any kind of response to that, I'm conscious that Helen has to drop at the top of the hour and that she has her hand up. So I'll ask Helen if she wants to go first.

Not hearing you at the moment, Helen.

HELEN LEE: Oh. I think I'm unmuted.

SUSAN PAYNE: There you are. [inaudible]

HELEN LEE: Thank you so much, Susan. I think you asked for reaction to Sam's comment and the idea that the ICDR rules provide for joinder but that the IRP supplemental procedures don't. It's for a particular reason, which I do understand.

I do think that the lack of the possibility for joinder might underscore the need for intervention such as amicus. I think obviously the amicus participation is limited because there is no claim against ICANN.

However, there might be some frustration at the limited role of amicus if we were talking about parties that feel that they may have a strong need to participate and yet don't have a particular claim against ICANN.

So I don't think we are at this point revisiting the role of amicus, but if we are talking about limiting parties' roles based on this lack of joinder, I will just say that there may be just some frustration at the limited role of amicus.

SUSAN PAYNE: Thanks, Helen. I can see that, but I suppose my reaction—this is just a personal reaction—is also that I'm really conscious that it is a dispute that a party is bringing against ICANN where they feel that they've been damaged in some way. So there's a limit to which perhaps that party in question would feel that others should be getting involved in their dispute, if you know what I mean, to which I assume the notion of the amicus was to try to get a level of balance because we understand that the IRP proceedings are very public-nature proceedings and there's potential to create precedent and so on. But, nonetheless, it still is at its heart a dispute between two parties or so on.

But, again, I think, if you have particular concerns or, perhaps more specifically, particular suggestions, if you feel perhaps that the balance that is currently set with the amicus process isn't quite in the right place, we'd all find that helpful to hear that. I'm not necessarily putting you on the spot, and I know that you do need to drop shortly, but please do feel free to think about that further and make any proposals if you feel that the balance isn't set in the right place.

All right. I'm going to quickly turn to Sam in case you have any comment in relation to Scott's question. It may be that that's not something that could be immediately answered, if at all, but it may be something that you know off the top of your head. I'm not sure.

SAM EISNER: Thanks, Susan. It's a challenging question because we do have the record of an IOT proceeding earlier through which we had the evolution of the text there. This is a difficult one because of the [inaudible]. We want to have an IRP that looks as close to an arbitration setting as possible, so we have a familiar rule set that makes it easier for the arbitrators to have a predictable outcome. But we have a type of claim that isn't one that's typically the contractually arbitrated claim. We want to give other people a right to it or a right to participate in some way, and that really is not where arbitration is. Arbitration is meant to be a private dispute resolution process. So there you do have to go to other types of corollaries, like better rules or court rules that are about litigation and things that are based on having a public record of litigation. There are two. It's not the exact corollary because of the difference in the necessary limitation of party status. You don't just have the whole realm of complaints and countercomplaints and process complaints and people serving as parties in multiple ways within the proceedings in an IRP as you would in litigation.

So here really is where we're stuck with the IRP as a unique animal. It's unique because ICANN is doing it. There might need to be some tweaks. But then there are other things we find within ICANN that are really unique because ICANN is doing it. I think that establishing both this way

to preserve third-party rights in some way, shape, and form, and then the IRP balancing and the need to remain true to the purpose of the IRP is one of those really challenging times.

SUSAN PAYNE: Thanks, Sam. I think we're saying goodbye to Becky—thank you, Becky, for joining—and probably also saying goodbye to Helen and to Kristina. I think there are still a fair few of us remaining. So I think, if people are happy to keep going, we can do so. But, if anyone else has to drop, just please let me know. If we run out of too many people, we would perhaps need to wrap up.

Okay. I think perhaps we're losing Nigel as well. That's what I'm seeing. All right. Not to worry. Thanks, everyone. For those who can stay on, that's helpful.

If people don't mind, I think it would be useful to circle back to the document that we had on the call—not the last call but the one before—which was an annotated version of Rule 7 of our supplementary procedures. I'm just going to quickly recirculate that so it's back in people's inboxes. I'm hoping that way it can then loaded up. I should have recirculated before. Apologies.

Whilst that's being loaded, I think, as I say, one of the things I don't think we probably would find useful—so I'll start with that—is—this is probably for you but maybe for Sam … Liz, do you think it would be possible for you to take on the task of beefing up the section that we have to bring it more into line with what's in the ICDR in terms of some greater detail that makes it clear that, of the procedures officer or

whatever name they finally end up with, it's a responsibility of theirs to actually make these decisions.

I think we heard previously that, in the web case, as I understand it, one of the issues was that the procedure officers themselves didn't really understand their role and so didn't necessarily feel it was appropriate for them to be making the decision about the consolidation. So even though that was the expectation in the supplementary procedures—that that is the role of the procedures officer—there was then a certain amount of delay in trying to get the procedures officers to try to understand their role. Then they were somewhat unwilling to make a decision and wanted to refer things on to the full panel when they were in place.

So, with that in mind, I think having something in the rules that would actually make it clear up front that the procedures officer is being appointed and will be empowered to make that kind of decision might be helpful—indeed, possibly some more detail on the kind of powers that they have and so on to bring it more into line with the kinds of provisions that are in the ICR rules.

Liz?

LIZ [LE]: Thanks, Susan. I just wanted to respond to the ask. I think that we would like to understand a little bit better in terms of [inaudible] what principles when looking for the revisions on. Maybe it is something that we can take a pen to once we have more principles from the IOT

[inaudible] at the discretionary powers, but at this juncture, I think we would need a little more clarity before we could take a stab at it.

SUSAN PAYNE: Okay. You obviously are having a slightly challenging work environment today, so sorry for putting you on the spot. Yes, I think, perhaps as we go through this, we'll be able to pin down a bit more what we think we need.

Oh, good. Here is the document. I think a lot of those notes we talked about last time, so I'm not particularly wanting to flag them in particular, but I just thought it would be helpful—I always find it helpful—to have the relevant rule in question that we're talking about in front of us. So I thought it would be helpful for people to have it.

First off, I … Let me see … I had some particular comments. I do feel that the ICDR rules contain more information about how the appointment of the panelist is to be dealt with and some of the considerations that the procedures officers or the consolidation arbitrators should take into consideration when they're deciding whether to consolidate—issues such as the stage at which the proceedings have got to, the nature of the proceedings, and the similarly between the cases and that kind of thing. I think we have some of that in here because there is a provision in here which talks about, in the case of consolidation, for example, that there is a sufficient common nucleus of [authoritative] facts. That probably is the main consideration, obviously. If there wasn't that, then obviously the cases shouldn't be consolidated. But there may be circumstances where that still wouldn't really be appropriate. Whilst

you'd like to think that the procedures officer would bear in mind things like how far the other cases already got to when they're making a decision about whether it would foster the just and efficient resolution, which is what it says in that consolidation section, some consideration like that that we could flag to them for things that they could bear in mind would seem to me to be helpful. As I say, one might think it's common sense for the procedures officer, but perhaps spelling it out isn't the worst thing also for the parties to bear in mind.

I think it's quite difficult to do this on a call, but perhaps this is something where we need some suggestions from me that people can look at that will help us decide whether we think those are appropriate and needed and necessary to include.

One of the other things I did feel would be helpful to do—it's not a particularly big point—is … At the moment, I find the rules quite confusing in the sense of how things are structures/where things are placed. We have a section on consolidation, which is a very short paragraph, for example, and then we have a much longer section on intervention, which is fine, but once you start reading the intervention section, it actually includes some considerations that apply both to intervention and to consolidation. For example, there's some procedural stuff in that section under the heading of intervention, which talks about how you bring your motion and what it should contain and what information there should be and what your timing is and the fact that there's a fee. It seems to me that that's not particularly helpfully structured at the moment because, if you're looking for what the provisions are relating to consolidation, it's not the natural place to look. Now, I don't think any of that is particularly substantive, but I do

think it would be helpful to have that restructured in a way that is more user-friendly.

Oh, sorry. Sam?

SAM EISNER: Thanks, Susan. Listening to you speak, one of the things we might be able to do, because I know that we have previously flagged a concern about the role of the procedures officer and how to better reflect who would be responsible for decisions on the intervention or amicus … That's one thing that we could probably do sooner rather than later in terms of our proposed revisions to the rule.

You can also look at a bit at the restructuring, though I think that that's also one of the more holistic things. You want to look and make sure that everything makes sense in terms of how it's structured and laid out. That's the opportunity we have in really taking the time with a set of final rules to make sure that it all makes sense. I think some of that restructuring probably happens once we've laid out all the principles that we're drafting to. Then we can make sure, once we know that we have the principles reflected correctly, that the different pieces of the puzzle are in the right places.

But if you wanted us to start off with something around the role of a different entity other than a procedures officer in this section, we could take that back and do that.

SUSAN PAYNE: Thanks, Sam. Well, I do think it would be helpful. If I'm perfectly honest—I'd love to get the thoughts of others—it always seemed to me that it's not really the procedures officer role that's necessarily the problem. I think this is something that you said. It's more that the procedures officer didn't really know what their role was. Whether they're called the consolidation arbitrator or whether they're called the procedures officer, it doesn't matter as long as they're really clear on what their job is. I don't know if it's just because that the rules aren't clear. They're a bit [light-]touch on this topic. Or perhaps the title "procedures officer" made the person appointed believe that perhaps it wasn't their role to be making important decisions. But all of that, I think, can get fixed by a bit more clarity about what the task is and what roles and responsibilities are being allocated to this person. Yes, I do think that that's one of the things that I know you had flagged really from the outset as having been an issue. Indeed, it may be that, if we go back to using the term "consolidation arbitrator," maybe using that term is a bit more familiar because it's a role that already exists under the ICDR rules and therefore maybe it makes more sense to the person who has the role because it's more familiar with them. I don't feel strongly about the name, but I do think it would be helpful to have that kind of clarity for their benefit. Great. Thank you.

Moving on to cover another couple of issues that we have talked about before and that I think we probably hopefully make some progress on in terms of principles—actually, it's the second paragraph here, which is the highlighted paragraph about the page limits—we did talk about this when we had our last discussion on this topic. Then Sam very kindly did a review of how other arbitration rules treat this concept where you

have parties joining into the proceedings and how the concept of page limits does tend to be dealt with elsewhere in other rules. I don't have immediately at hand in front of me Sam's summary document where she looked into this, but from recollection, generally I would say it seemed to me that it's not particularly usual to be saying to the parties where you're consolidating cases or where you're having a party intervening in the proceedings. It's not particularly usual to be expecting them to keep within the single party page limit and to have to collectively agree, effectively agree, on a joint statement because they're having to submit their case within that single 25 pages of page limit. I think that that lines up with the comments that Helen made on the last call, which was that, in .web IRP, the situation that the parties were finding themselves in was that the intervening party … I think there's a prospective and intervening party, and they're not parties who are necessarily in agreement with each other. Consequently, expecting them to also try and share their 25-page page limit and agree to something was adding an extra level of contention into what's already a somewhat contentious situation.

I would say my feeling from seeing the information that Sam very kindly circulated to us was that it would seem more appropriate that each individual claimant or each individual party should be entitled to their own individual page limit. I don't necessarily see that as being … I hope that's not particularly controversial, given the information that Sam circulated, but obviously, at the moment, we have this provision in the supplemental rules that says that there's a single collective page limit of 25 pages. So we would be making the change or we would be proposing a change to that.

Does that seem reasonable?

Greg?

GREG SHATAN: Thanks. That seems completely reasonable. I think what we have in here with the collective page limit is just silly. The way you described it without saying so just made me feel like it was silly and that each claimant or other party, such as the amicus, should have their own page limit. I don't want to go into the details of why it makes sense because I think it's just common sense and we shouldn't make the change. Thanks.

SUSAN PAYNE: Thanks, Greg. David and Scott. I see both of you have your hands up. David first.

DAVID MCAULEY: Thanks, Susan. I agree with Greg and I wanted to answer your question: yes, it seems reasonable to me.

And I wanted to add one element of backdrop of this. I'm harkening back to the statement that Sam made about that this is a unique thing. There's elements where it seems like a private arbitration, but there's elements of ICANN's uniqueness, etc., that complicates that. The bit of the backdrop I want to add is that ensuring that an issue is full aired from all relevant points of view is important because IRP panel decisions will be creating precedent. At least that's the way that I read the bylaws,

especially precedent with respect to the development and implementation of policy. So I just wanted us not to lose sight of that. Thank you.

SUSAN PAYNE: [inaudible]. Yes. Thanks, David. Scott?

SCOTT AUSTIN: I wholeheartedly agree with David on that: there is going to be substantial precedent created and great concern over that. But I also agree with Greg. I don't know how you could possibly determine a page limit based on all claimants.

I guess the question here—it's anticipated there'll only be a small number—is I wonder whether that will be the case if in fact it is a critical bylaw issue or one that has affected multiple registrars or registries or multiple parties.

That also begs the question of, how would that 25 pages possibly be allocated? Would it be first-to-the-trough where an initial claimant could get most of the 25 pages, or they have to settle it amongst themselves, even if they are from different geographical locations? I just think it could create a nightmare.

So I think it clearly has to be similar to some of the ones that were presented in the materials that you provided and that it would be on a per-claimant basis.

SUSAN PAYNE: [inaudible]. Yeah. Thank you. I'd certainly … Greg is suggesting we use a private auction. I don't think we want to go there, Greg. That's a whole different call. Thank you. Thanks, everyone, for that. It makes sense to me. I think, at the risk of having too voluminous materials, that's a much lesser risk than the very real risk that we've got: parties that are at odds with each trying to then fight over how they agree [to] a 25-page or divide the page limit. It doesn't, to my mind, and clearly to some of your minds as well, make any sense.

Bernard has given us a time check. We have nine minutes, but there is just one other thing that perhaps we could usefully think about now, and that is—if you wouldn't mind scrolling up, Brenda; it's at the beginning of the next page … Ooh, just a little bit further down, actually. Yes. There. Whilst I know I just did say that perhaps we think about timing at the end holistically and so on—perhaps this is something that needs to be thought about again holistically towards the end—I wanted to at least tee up people to think about the timing for these motions to intervene or to consolidate.

The rules currently, as it's highlighted right at the top of the page that you can see, say that all motions for an intervention or for consolidation of proceedings have to be made to the IRP panel within 15 days within the initiation of the IRP. Now, leaving aside the fact that obviously we don't have an IRP panel yet and we've dealt with that already by having our procedures officer, we don't need to worry about that aspect of it. But 15 days to be making those applications seems to me to be really short, so I wanted people to think about and express their views about firstly whether the same period seems appropriate for an application to intervene and for an application for consolidation, bearing in mind that

[in] an application for consolidation, the two proceedings are already underway, and therefore making that application is a relatively light-touch thing, versus an application to intervene, where a party that isn't currently in a proceeding becomes aware of an IRP having been commenced and decides that they want to be involved in that procedure and therefore has to get their act together and make that case, including the situation where that might even be a group/a part of the Empowered Community. 15 days, to my mind, for intervention seems incredibly short.

Also, I did wonder, just as a matter of practice, would the fact that an IRP has been initiated by a third party … How quickly does that become public knowledge in any event? How quickly is that commencement of the IRP published on ICANN's website? Is 15 days even doable? That's the question. That's probably the easiest part to answer because I'm hoping either Liz or Sam would either know or be able to find out. When an IRP is commenced, how quickly does it get published on the website?

Sam?

SAM EISNER: Thanks, Susan. Once we have confirmation that the filing has been perfected through the appropriate filing fees, etc., we get it up within the matter of a day, I believe. So we do have it publicly available on ICANN's site. Also, there other places within the supplementary procedures where we have notice requirements to some other defined impacted entities, like, if this is coming out of the New gTLD Program, people who were parties to the same underlying expert panel

proceeding or something like that. So there are some other mechanisms through which people who would really likely be impacted might come to find out about it.

I also placed into chat that we can take this back and give some [inaudible] pointers through a survey of the ICDR rules and maybe some other jurisdictional practices on how long this timeframe tends to be, if there is a defined timeframe, because then this also has to be weighed against an ideal that an IRP has concluded within six months.

So we have short and long timeframes that we have to worry about, but we can take that back and get some information to the IOT about how this timeframe might be treated in other places.

SUSAN PAYNE: Thank you. Yes, that would be incredibly helpful, I think. I totally take the point that things need to be commenced in a timely manner, that the IRP itself has time limits, and that there is, as you say, a desire under the bylaws that the proceedings be wrapped up within a certain period of time. Nonetheless, it struck me. Certainly, without more information, 15 days for an intervention seemed like really not very much time at all. So, yes, that would be super if you would be able to look into that and give us more guidance. I think it might help guide us perhaps to a time limit that strikes a reasonable and fair balance.

I think we're coming very close to the end. We've got a few action items and things where Sam or Sam and Liz have very kindly volunteered to do some research or take things on for us. I think, to help guide the further discussion on this, it might be helpful for us to have some kind of a

straw-person suggestion of some of the changes that would be helpful. We've certainly agreed to some things insofar as we're able to, in terms of things like the page limits. We'll be able to talk further about the timing for commencing/for intervening when we've got the outcome of the research. So I will do my best to see if I can come up with a straw-person.

I'm losing people. Bernard, you've got your hand up.

BERNARD TURCOTTE: Just wanted to review the action items so I can list them properly in the [inaudible]. I've got that Sam will be taking over the translation document now. Is that correct?

And I just lost my Chair. All right. So, just for the record, I've got Sam taking on the translation document. Sam will be drafting something, taking a second look at the procedures officer. I have Sam doing an offer to do research on time limits. Susan will be looking at a straw-person for the topics we are looking at right now. Is that correct?

SUSAN PAYNE: Yes, I think so. Then I also will remind people to let me have any final thoughts on the letter so that I can send that out this week. I'm going to do that now before I log off for the evening.

BERNARD TURCOTTE: Yes. People's comments should be in by tomorrow (Wednesday, 24:59 UTC).

SUSAN PAYNE: Yes.

BERNARD TURCOTTE: And please remember, if you haven't filled out your SOI—there are only a few of you now—we would greatly appreciate it you could get it done. Thank you.

SUSAN PAYNE: Yes. Thank you very much.

BERNARD TURCOTTE: All right. I will note these things.

SUSAN PAYNE: All right. Lovely. That takes us to half past the hour. Lots of people are dropping off for other calls. Thank you very much, everyone, for joining. I'll speak to you by e-mail and on our next call shortly. Thanks, everyone.

[END OF TRANSCRIPTION]