

Zoom Chat Transcript
IRP-IOT Meeting – 8 September 2020

12:02:32 From David McAuley (Verisign) : I believe Helen will join but a bit late

12:03:11 From Greg Shatan : No cocktail emoji available

12:03:53 From David McAuley (Verisign) : Irish coffee?

12:08:21 From David McAuley (Verisign) : Thanks Bernie

12:08:32 From David McAuley (Verisign) : and Susan

12:09:53 From Greg Shatan : @David, Currently contemplating Schnapple....

12:11:14 From Becky Burr : hello all apologies for late join

12:16:23 From Helen Lee : My apologies, just joined

12:16:32 From Robin Gross : Sounds good to me.

12:20:24 From Bernard Turcotte : Belated apology from M Silber

12:20:31 From Bernard Turcotte : and Nigel

12:22:33 From Mike Rodenbaugh : Q: What is “publication” and who controls when and how that happens?

12:23:29 From Mike Rodenbaugh : Sometimes it takes ICANN weeks to post things

12:23:56 From Kristina Rosette : go ahead, flip

12:24:47 From Scott Austin : @Flip +1

12:25:39 From Liz Le : Once an IRP filing has been perfected, ICANN org will publish the Notice of IRP and associated materials filed by the Claimant(s) on the ICANN IRP webpage within 24 hours.

12:30:04 From Flip Petillion : Good point Sam

12:30:14 From Bernard Turcotte : time check - 60 minutes left in call

12:32:59 From David McAuley (Verisign) : and Flip

12:33:06 From David McAuley (Verisign) : I believe

12:33:35 From Mike Rodenbaugh : Bylaws say six months

12:33:53 From Mike Rodenbaugh : Total time. Which is laughable based on experience.

12:33:55 From Helen Lee : In the usual IRP, does that generally get followed

12:34:00 From Kristina Rosette : .amazon was 16 months from filing to final declaration.

12:34:01 From Helen Lee : asked and answered

12:35:00 From Mike Rodenbaugh : Only one has been less than six months, when claimant failed to pay panelists deposit fee

12:35:32 From Sam Eisner : I think that it's the IOT's job to try to develop rules that can support that Bylaws timeframe, as we are not in a position as the IOT to recommend a change to the Bylaws on the timing

12:35:57 From Mike Rodenbaugh : Yes, panelist selection typically takes months

12:36:14 From Sam Eisner : Hopefully as we streamline through rules, we make it more possible to meet that aspiration from the Bylaws

12:36:40 From Mike Rodenbaugh : And when a Standing Panel is in place, that should save months

12:37:11 From Kristina Rosette : Scott - here's a link to the first scheduling order in .amazon, which issued 7 months after filing. <https://www.icann.org/en/system/files/files/irp-amazon-icann-report-prelim-conf-sched-order-redacted-04oct16-en.pdf>. Gives you some idea of the timing (under old bylaws, btw).

12:37:55 From Sam Eisner : agree with Mike as well that once seated, the Standing Panel will save months

12:38:44 From Bernard Turcotte : Time check - 30 minutes left in call

12:39:32 From Mike Rodenbaugh : If a later IRP is timely, they should be able to consolidate any already-filed case that could have prejudicial effect?

12:39:58 From Mike Rodenbaugh : Or risk inconsistent decisions

12:40:54 From Scott Austin : Flip thank you so much for the insights as your significant practitioner experience and fact specific circumstances should be taken into account to make any proposed changes credible and workable by ICANN and the parties filing requests.

12:41:06 From Flip Petillion : @Mike - yes / we'd need to define what is 'timely'; and timely according to what?

12:41:26 From Mike Rodenbaugh : Timely per the Rules

12:41:42 From David McAuley (Verisign) : Sounds like it, Suan

12:41:47 From David McAuley (Verisign) : Susan

12:42:31 From Scott Austin : Kristina, thanks for that, does the .amazon timeline appear to be unusual or one we could model these decisions on.

12:42:37 From Kristina Rosette : Maybe use a dual factor - within [21] days of publication of the later IRP or within [60] days of publication of the earlier IRP, whichever is earlier.

12:43:57 From Kristina Rosette : @Scott - at one point, I could tell you exactly how long the average IPR took. Not any more. :-) @Flip - how does 16 months compare to the ones you've handled?

12:44:34 From Flip Petillion : @Scott - Thanks - Happy to fill in gaps where usefull

12:46:16 From Flip Petillion : @Kristina - I think the exact timing of each case (till the Amazon case) has been listed in the book I published on the topic - 16 m is probably a good average but I think most take / took longer

12:46:39 From David McAuley (Verisign) : Good point about discretion, Susan

12:46:46 From Scott Austin : @ Kristina, was the amazon case what skewed the average or something else. Did geography of parties or some other factor account for the 6 month busting duration?

12:49:34 From Kristina Rosette : @Scott - you may find it helpful to spend some time poking around the IRP page. <https://www.icann.org/resources/pages/accountability/irp-en> You'll be able to see the "docket sheet" for each proceeding and get a sense of timing.

12:50:37 From Becky Burr : yes, wondering about these two issues

12:51:07 From David McAuley (Verisign) : Yet another reason why a standing panel is important

12:54:00 From Flip Petillion : Yes Susan - that is possible

12:54:37 From Mike Rodenbaugh : Effectively, even if not intentionally, i.e. as to other applicants for same TLD string

12:54:45 From Sam Eisner : It's definitely possible that the claimants are seeking differing outcomes

12:56:37 From Scott Austin : @ Kristina I have but hearing Flip, Mike and you share the experience is context, causal elements a read of the docket does not always provide. I will follow up.

12:58:12 From Becky Burr : good point/question

12:58:56 From David McAuley (Verisign) : Thank you, Flip

13:00:13 From Bernard Turcotte : time check - 30 minutes left in call

13:01:12 From Sam Eisner : Can we give guidance in Rule 7 about when it would/wouldn't be appropriate?

13:01:58 From Mike Rodenbaugh : IRP panel has discretion to make whatever "recommendations" (at least, if not "orders) that they want to make. So risk of inconsistent and/or prejudicial decisions is what we are trying to avoid.

13:03:01 From Helen Lee : +1 Sam

13:03:34 From Mike Rodenbaugh : Bye all, must leave early.

13:04:22 From Sam Eisner : Just a caution that the IRP is different - it's not about making plaintiffs whole (class action), it's about whether ICANN violated its Bylaws

13:04:38 From Sam Eisner : So there's not a fully neat fit

13:04:47 From Malcolm Hutty : +1 to Greg's advice to look elsewhere for guidance. These issues are hardly novel.

13:05:43 From Sam Eisner : I think that there are some uniquely ICANN concerns - what do we want IRPs to uphold/protect against? As well as external guidance as well

13:08:39 From Sam Eisner : @Flip, is it third parties to intervene to be heard? Or is Amicus status enough?

13:09:03 From Scott Austin : But is there a concern that the second party/intervenor might not be aware of the cause of action or violation of the Bylaws until after the 1st party has filed?

13:10:14 From Flip Petillion : @Sam: both I would say

13:10:29 From Scott Austin : intermeddling v intervening

13:11:13 From David McAuley (Verisign) : agree w/Greg - discretion will be important, especially once we have a standing panel which will grow an appreciation for these issues

13:12:36 From Flip Petillion : US colleagues: can you look at ABA rules? I'll look at IBA rules

13:13:33 From Flip Petillion : I'll even look at some EU rules :-)

13:22:49 From Sam Eisner : The higher we go, the more we get to an en banc panel view

13:23:01 From Sam Eisner : We also need to consider how this goes to efficiency of proceedings

13:25:17 From Flip Petillion : sorry

13:25:43 From Flip Petillion : For the hand

13:26:16 From Sam Eisner : We can come back to the group with a detail of what is currently into the ICDR rules so we all start from the same baseline understanding

13:26:35 From Flip Petillion : Indeed

13:26:50 From Flip Petillion : No Susan, it is very interesting

13:29:20 From David McAuley (Verisign) : Interesting discussion, thank you Susan. Thanks also to Bernie, Brenda, and all

13:29:20 From Flip Petillion : Thank you; very good call.

13:29:47 From Robin Gross : Thanks, Susan and all. Bye!