

Zoom Chat Transcript
IRP-IOT Call – 6 October 2020

12:06:28 From Scott Austin : looks great

12:06:30 From David McAuley (Verisign) : Para 11 is improved in my opinion, thanks
Liz

12:06:55 From Flip Petillion : Thanks SUSan, good approach

12:07:11 From Liz Le : You're wellcome :)

12:07:46 From Flip Petillion : Thanks Liz

12:08:52 From Helen Lee : Susan, I am interested in volunteering but I need to
confirm in the next day or so.

12:09:53 From Flip Petillion : Happy to help

12:10:02 From Scott Austin : I volunteer

12:10:49 From Scott Austin : as well

12:10:53 From Becky Burr : greetings all

12:12:23 From Flip Petillion : agree with Bernard's approach

12:12:30 From Kristina Rosette : I will be poll watching on November 3, but happy to
complete my portion beforehand.

12:12:34 From David McAuley (Verisign) : nothing else happening on Nov 3rd

12:12:46 From David McAuley (Verisign) : election day in US

12:13:01 From Sam Eisner : I will likely not be at work on Nov 3

12:13:04 From Chris Disspain : there's an election?

12:13:17 From Kurt Pritz : Election Day is not a holiday in the US and we are voting by
mail in any event

12:13:18 From Flip Petillion : you should have voted by mail by now, no?

12:13:38 From Sam Eisner : There are a lot of in-person poll watching efforts going
forward

12:13:51 From Kristina Rosette : I've already committed to poll watch so won't be
available that day.

12:13:53 From Becky Burr : true in California (vote by mail) though not everywhere
else

12:14:02 From Flip Petillion : to be clear: we are very focussing on these elections and the events around here in Brussels !

12:14:20 From Kristina Rosette : that works.

12:14:33 From Kristina Rosette : We can work beforehand.

12:14:36 From Kurt Pritz : 10th is when the election results will be announced

12:14:45 From Sam Eisner : So soon, Kurt?

12:14:46 From Flip Petillion : 26/11

12:15:35 From Sam Eisner : I concur with David on meeting earlier

12:15:48 From Chris Disspain : ICANN69 finishes on 22 Oct

12:15:59 From Chris Disspain : So the following week should work

12:16:14 From David McAuley (Verisign) : That's what I opt for

12:16:42 From Kurt Pritz : I vote for the 3rd

12:16:49 From Flip Petillion : 3rd

12:16:53 From David McAuley (Verisign) : either is ok with me

12:17:10 From Scott Austin : 27th is fine with me

12:17:16 From Helen Lee : 27th

12:17:19 From Sam Eisner : 27th is fine

12:17:38 From Kurt Pritz : I am fine with both

12:18:04 From David McAuley (Verisign) : 27

12:21:50 From Bernard Turcotte : Next meeting will be Tuesday October 27th 19:00

UTC

12:30:10 From Bernard Turcotte : Time check 60 minutes left in call

12:35:17 From Scott Austin : shouldn't usage dictate that "affect" be changed to "effect" in the last line of subpara 1? As used here "effect" appears to be used as a noun meaning "a change that results when something is done or happens."

12:36:11 From Kurt Pritz : What discussion has there been for a tolling approach as opposed to a cap? (I am afraid that question demonstrates my ignorance on this.)

12:37:25 From Scott Austin : Oh nooo. British English will win hands down.

12:38:29 From Scott Austin : But I don't think it is a cultural usage distinction.

12:51:29 From Flip Petillion : I'll have to leave in 5 minutes - suggestion: set up a new group to discuss experiences re CEP and make proposals for the future - quite relevant and important for the launch of an IRP, or to avoid a launch

12:53:13 From David McAuley (Verisign) : Good idea Flip, thank you

12:53:24 From Flip Petillion : good point Chris - happy to discuss and focus

12:54:53 From Chris Disspain : thanks Flip

12:55:19 From Chris Disspain : I fear that the board is going to be put in an invidious position if we are not careful here...

12:55:28 From Scott Austin : @Flip +1

12:56:37 From Flip Petillion : I'll listen in to the next 35 minutes - sorry, busy day and lots of ICANN meetings already - Thank you Susan et all!

12:56:55 From Sam Eisner : We could compare that to the EC timeframes as already set out, and whether there is a need for an EC carveout

12:59:16 From Sam Eisner : For the history on this issue, prior to the "new Bylaws" there was historically a limit on the time for filing an IRP - it used to be tethered to the publication of the minutes of the meeting where the action was taken, and was far shorter than the 12 months currently allowed. As the Bylaws now allow for acts other than Board actions to be challenged, the publication of minutes could not be used as that measurement of time any more.

12:59:29 From Chris Disspain : Malcom you may be right but if you are then it will fall to the board to do so and you may think it is better for the group to at least make a considered recommendation to the board

12:59:42 From Chris Disspain : Re repose I mean

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

13:08:11 From Malcolm Hutty : Nigel, I agree that ordinary civil disputes and disputes as to the constitutionality of an action are handled differently. The Bylaws sets out the purposes of the IRP explicitly, and it is not to provide civil damages, but to hold ICANN to account and to enforce the bylaws.

13:08:22 From Scott Austin : Thank you Sam for providing some legislative history here.

13:09:40 From Malcolm Hutty : @Chris, I believe if the Board introduces a rule of repose it will be acting contrary to the Bylaws

13:10:34 From Chris Disspain : ...And I disagree with that interpretation Malcolm but 'aye..there's the rub'..

13:10:58 From Sam Eisner : To Malcolm's argument, if the Board, for example, is accepting policy that is seen as potentially violating the Bylaws, there's a role during the PDP to use the multistakeholder model to ensure such a policy is never recommended to the Board

13:11:38 From Scott Austin : We need to see those memos from outside counsel

13:14:14 From Scott Austin : Did either memo trigger the removal of the prior 12 month repose?

13:14:45 From Sam Eisner : Jones Day advice does not necessary equal ICANN staff's legal position

13:15:07 From Malcolm Hutty : They work for you Sam. It's their job to represent your position!

13:15:22 From Sam Eisner : However, it is ICANN's legal position that it is not inconsistent with teh Bylaws to include an outside limitation on when to file an IRP

13:16:54 From Liz Le : Memo from Sidley:
<file:///Users/elizabeth.le/Downloads/Sidley-ResponsetoCertifiedQuestionofCCWGIRPIoT-January42017-0001.pdf>

13:17:40 From Liz Le : Jones Day's response to Sidley's input:
<https://community.icann.org/download/attachments/59643726/Jones%20Day%20input%20received%20by%20Sidley%20on%206April2017.pdf?version=1&modificationDate=1525784946000&api=v2>

13:18:55 From Liz Le : Sorry the link for the Sildey Memo didn

13:19:10 From Scott Austin : @ Chris and Nigel, well then perhaps the analogue likening this to a US constitutional scenario is too narrow.

13:19:16 From Liz Le : *didn't' come through. Here it is again:
<https://community.icann.org/download/attachments/59643726/Sidley-ResponsetoCertifiedQuestionofCCWGIRPIoT-January42017-0001.pdf?version=1&modificationDate=1525782850000&api=v2>

13:19:35 From Sam Eisner : The CCWG set a path to defer this issue to the IOT

13:19:49 From Becky Burr : FWIW, I really don't think the CCWG wrestled with this issue

13:21:01 From Malcolm Hutty : Having stated very clearly the basis on which the deadline would be set, I don't think the CCWG believed that we would be faced with a determined effort to set that basis aside

13:23:56 From David McAuley (Verisign) : Agree with Malcolm that IRP power is declaration only as to whether there was or was not a violation of articles or bylaws

13:29:14 From Liz Le : Will do

13:29:39 From David McAuley (Verisign) : Thanks Susan, Bernie, Brenda, and all

13:30:45 From Bernard Turcotte : bye all

13:30:48 From Kristina Rosette : Bye, everyone.