
BRENDA BREWER: Good day, everyone. This is Brenda speaking. Welcome to the IRP-IOT call on the 17th of November, 2020, at 17:00 UTC. This meeting is recorded. Kindly state your name when speaking for the record and keep your phones and microphones on mute when not speaking. Attendance will be taken via Zoom. I will note that Kristina has sent apologies, and I'm turning the meeting over to Susan. Thank you very much.

SUSAN PAYNE: Lovely. Thank you very much, Brenda. Thanks, everyone, for those of you have been able to join. I've just had a last-minute semi-apologies from Kurt, who is caught up in another meeting but will join us shortly. So hopefully we'll have him, too. But I think we've got a reasonable turnout. I think we probably have enough to view ourselves as quorate.

So let's kick off. This is our meeting of the 17th of November. First off, just the usual review of the agenda and updates to SOIs. So I'll just start with that. Does anyone have any SOI updates that they want to flag?

Okay. I'm not hearing anything, and I'm just noting in the chat that Becky has also sent some apologies. Okay. So, reviewing the agenda, then we'll look back to the action items from the last meeting. There'll be a quick update from the subgroup that's been looking at the consolidation, intervention, and participation as an amicus section and trying to that forward. Then we'll continue our discussion on the time for filing, followed by AOB, if anyone has any that they want to raise. If you have any that you know of now, then please feel free to flag it now,

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either by putting your hand up or putting it in the chat. Otherwise, I'll ask again when we get to the end of the call. Our next meeting, just to note, is going to be on the first of December—this year has gone very fast—is our 19:00 UTC slot.

Circling back to Agenda Item 2—the action items—the first one we had was an item for staff. We talked about having a scorecard that would enable us to track our progress against the major items we need to tick off. Bernard, I'm not sure if there's an update on this one for now, but we may just keep it on the agenda for noting.

BERNARD TURCOTTE:

I haven't gotten around to that one. I should have it done for our next meeting.

SUSAN PAYNE:

Super. Thank you. Yeah, we'll just keep it on the radar.

The second agenda item was for ... Malcolm got a particular namecheck, but it was also for anyone else as well who had examples of issues that we could use to essentially try to stress test the discussions that we've been having on the timing issue, with thanks to Malcom for circulating earlier today a couple of examples that we'll come back to in a few minutes when we get on to the timing issue. It may well be that there might be some others that people want to raise during the call, or it may be that this stays on an item for us all to think about after this call and before the next one as well.

Item 3 is just a quick update on the Consolidation Subgroup meeting. The subgroup met last week for our first meeting, and I would say it turned out to be a fairly productive call. I think it was quite helpful. So on the subgroup—on the call at least—it was myself and Helen ... I'm going to say Scott. I'm already forgetting who else was on there. Liz was on there. Sam, unfortunately, was unable to make it, as was Kristina. Flip, I think, also was unable to make it but is one of our small group members. So were a fairly small group. Apologies if I've forgotten anyone. We did kickoff with a discussion and just did make, I think, some reasonable progress on the notion of the procedures officer. I think where we're probably coming down to is to favor more of an emergency panelist-type concept, who could consider any of the issues that come up as a pre-issue before there's a panel in place.

So the main issues would probably be, at the moment, if there were any applications for emergency relief, any of these consolidation-type applications, and indeed any applications for translation assistance.

So I think, as we talked round, it may be that that [that would] enough of a change that might need an additional public comment period. But I think, on of the very early calls, of this reconstituted group, we felt that the likelihood was that any amendment to the temporary rules that we did come up with would probably need to go out for public comment anyway. So certainly I don't think that would be a reason not to do something if it does seem to us to make sense.

Then we also started to have a discussion on which panel takes priority—whether it's a panel in place or whether we've got the rule right for how you choose panelists if cases have been consolidated

where you've now got more parties involved and who should be responsible for picking the panelists and so on.

So we've definitely got more to do, but I think, as I said, we made a good start on our first call. We have our next call next Tuesday. We're going to try and alternate with these calls, unless we feel we need to meet more frequently than that, in which case we can obviously schedule additional subgroup calls. But, for now, our next call will be next Tuesday, and then we'll be able to give another update on the next IOT call. Hopefully, we won't need to have too many calls before we feel that we've made a decent stab at coming up with a proposed new version of that rule that we can circulate to the wider group.

I'll just pause and see if any of the small group members want to add anything to that.

SCOTT AUSTIN: Yeah, Susan.

SUSAN PAYNE: Thanks, Scott.

SCOTT AUSTIN: When we were in the group—I haven't been able to pull it back up—there was a link that was given to particular ... I don't know if it was a transcript of the proceeding or it was some written material that tracked ... I think it may have been a report by the panelists because we were having some difficulty trying to determine if the term "emergency

panelist” or the alternate term that we’ve been having some trouble with—the “procedures officer”—was really the best choice for that role. As I looked at that transcript, it was clear that the function was an emergency panelist. I think that was really the term, and I think that’s one of the things that we talked about that we have some idea, some understanding, from arbitration rules of what an emergency panelist is and their roles and their limits and their function. But I think that there’s still some question about what a procedural officer is. So I think that it bolstered my support for the idea of relying on emergency panelists as the term, or at least tying that to a definition or tying that to the function and role. Just a note.

SUSAN PAYNE:

Thanks, Scott. I think that really is where we were coming out on the call—a feeling that we know from past experience that the procedures officer role has been causing some difficulties. So looking at it in the light of what happens in other arbitral rules and so on might help to alleviate that confusion, if you like. So I think, as I say, that’s where we’re coming out. Certainly, I wouldn’t say that that’s a definite decision yet but just really as an update to the group. But we’ll keep meeting in our small group and we’ll report back and hopefully have a draft rule for the wider group to review in the near future.

Welcome, Kristina. We had apologies for you, but it looks as though you’re able to join us after all. So that’s great.

Okay. So we are on Agenda Item 4, which is to continue the discussion on the time for filing. Just a really quick recap on what we discussed on

our call last week, I would say, in advance of the call, we had had some e-mails just in the run-up to the last meeting where we identified or established that we're talking about two different time limits. So, if one likes, the first prong or the first time limit is the time in which a particular claimant can bring their claim once they are aware or reasonably have become aware of the relevant action or inaction. We didn't really spend that much time talking about that last week. It's certainly something we need to circle back to. It's an area where there have been two public comments and, as a result of the initial public comment, the time limit for claimants to bring such a claim was extended to allow a much longer period of time.

Then that was put out for public comment. I would say there was a fair bit of support for that change during that second public comment period. But, as a group, we will need to circle back to that and take a view on whether that has now set the right balance, if you like.

But what we did spend our time talking about was the other time limit or Prong 2, which is whether there should be, notwithstanding that Prong 1, some overall cutoff or repose period after which it's not possible to bring a claim so that if, for example, a claimant hadn't become aware or ought not reasonably to have become aware within a certain period of time whether, nonetheless, they might be barred from bringing an action because the time, be that twelve months or whatever period, had expired. So we spent our time mostly talking about that, and I would say I think we'd all agree that's the more challenging aspect of the timing rule and the one that has the very strong opinion, somewhat diametrically opposed, if you will.

So there is certainly a number of this participants in this group who feel very strongly that the notion of the repose is contrary to the bylaws and to the expectations that came out of the accountability work that developed those new bylaws. In our bylaws, there is talk of the time-for-filing rule, especially addressing the time for filing once the claimant becomes aware or should reasonably become aware of the action or inaction giving rise to the dispute.

Since the notion of who is an eligible claimant is basically predicated on them having become materially affected by the action or inaction in question, it's certainly possible that a repose has the potential to put a claimant out of time for bringing a claim before they ever become eligible to bring their claim because they simply didn't qualify as a claimant within that time period.

So that's certainly one perspective from a number of the participants in this group, including Malcolm and ... Not wanting to put words into their head, but I would say Greg was probably also arguing very strongly to that effect.

On the other perspective, there are concerns from a number of participants, again, that that concept of having any Board action or, indeed, staff action challenged forever puts the Board in an untenable position of having their actions potentially found to be improper years after the decision was made and years after they the others in the community have been acting on those decisions and, indeed, what would be the impact for those who've been acting [on] reliance on something as being a valid decision of the Board if it's then set aside years after the event.

Now, I would say we certainly didn't come to a meeting of the minds during last week's call, but there was some discussion, and Malcolm raised an interesting point that he thought it was possible that perhaps we were talking cross-purposes to some extent and that perhaps there are different types of decisions and maybe they need to be treated differently—for example, if there's an action that's from the Board that clearly ultra vires[—]and so just simply ought never to have been made, then, because it's exceeding the ICANN mission, for example, then that challenging of that ultra vires decision should not be time-limited in this way. But perhaps there are other decisions that might still be in breach of the bylaws and therefore would be qualifying as an IRP but don't necessarily rise to the level of being completely ultra vires. I think that's where we came to and something that we perhaps could usefully explore further.

With that in mind, Malcolm, as I mentioned, responded to the request that he come up with some examples that we could consider as a group that might help us to understand that position and where he's coming from better. So I don't know to what extent ... They were circulated relatively recently, so I'm not sure that people necessarily will all have had a chance to review them.

I think we've got Malcolm on the call, and I'm wondering, Malcolm, (if you are with us) would you like to start us off by talking us through the two examples? Then we can take it from there.

MALCOLM HUTTY: Yes. Thank you, Susan. I put together these two examples at your request. I was rather hoping, actually, that there'd be some scenarios on the other side to show what problems were anticipated if there was no repose. But I haven't seen any of those. I don't know if you've received any further examples directly from anyone else, Susan.

SUSAN PAYNE: No, I'm afraid I haven't which is why I think it may be something that we need to ... We may come up with some on the call as we're discussing this, but it might be something that we need to look to people to do following this call.

MALCOLM HUTTY: Okay. Well, I think that would be helpful. I'm not going to read out the full text of this, because it's relatively long and it would take up too much time on the call, but essentially what I produced here are scenarios that create the structure of a realistic case, even though the specifics and the facts involved are fictitious—some might say “fanciful,” and, indeed, in some of the minor specifics, I actually had a little bit of fund. But nonetheless, it raises some serious points.

I took two scenarios, one where the essence, the gravamen, of the complaint is that ICANN has a program that it is operating, and that whole program is ultra vires outside of the scope of the mission. The second scenario was one where ICANN had developed a policy, and that policy is being applied and, while it was possible to challenge the application of that policy for a particular case, somebody who was subject to it said, “No, I'm not even going to get into the details of the

application of this policy to my case.” Merely having a policy of that nature is ultra vires and explicitly prohibits it by Article 1[.]1C, the one that says that ICANN shall not seek to regulate the use of the DNS.

So they were the two broad scenarios there. Essentially ... Well, I'll give you the summary of each. The first one was one where ICANN creates a program. Actually, it's essentially modeled on something like the auction proceeds thing, where ICANN decides to spend large amounts of money that it's coming to as a windfall on some good works, and it happens to select training in developing countries and it provides this on a free-of-charge basis and runs into conflict with a local trading provider who sees it as unfair competition and is going to drive them out of business. They seek to argue that ICANN should never be in the business of providing training services. It's completely outside ICANN's role.

When they raise this with ICANN, ICANN is unpersuaded [and] wishes to carry on. So they seek to bring an IRP case, and this claimant is challenged on their rights as to whether they can bring this IRP case. ICANN says, “You can bring an IRP case as to how we've run this program in your country. Since we only decided this year to even provide this program in your country, you could actually even bring a case challenging our decision to select your country. But the whole program that we've been doing for five years now of running training programs using, essentially, auction proceeds is out of time. You can't challenge that now.”

The training company, the private commercial company, says, “No, I was only materially affected by this plan when you came into my

country and started competing with me. I've brought my challenge immediately upon that happening. I didn't know anything. I never heard of ICANN before. I acted promptly as soon as you started competing with me. I want to bring my case. I am acting in a timely fashion. I've acted within 120 days of being affected and of having a right to bring a case. I would like the declaration. Now, I know that the IRP has limited relief and all the rest of it, but nonetheless, it promises the possibility of a declaration that this program is out of scope, beyond the scope of ICANN's limited mission, and I ask the IRP to hear my arguments as to why they should give me that declaration."

In the second case, we've got essentially a scenario that posits the extension of something like the UDRP into a whole new area. The example here we've got is health. It's an example of a policy being adopted to say that it's abusive use of the DNS to promote things which are medically dangerous. Then some agency has taken that and is using that to seek to apply their national regulations on the labeling of food and a company that provides—a baker, basically—high-fat, high-calorie baked goods and is failing to comply with a particular country's regulations on disclosure of the dangers of obesity and all the rest of it, [which] is basically challenged by a national health authority, saying, "ICANN, you've got this policy on abusive use of the DNS. This is abusive use of the DNS. It's very bad for people's health. Take this domain away from them."

A judge happens to rule for the public authority, and the baker has the option under the UDRP of appealing that decision, but the baker decides not to take that option. They decide not to challenge the application of that policy to them but to instead say that merely having

a policy like that, of any kind like that, is specifically prohibited under the bylaws, under Article 1, Section 1.1C, which says that ICANN cannot use the DNS to seek to regulate the content of services that use the DNS and, therefore, they want the IRP to declare that this whole policy is invalid. Therefore, the UDRP case falls away completely.

ICANN argues that you can appeal this case under the UDRP or you could even do an IRP case and challenge how the policy is being applied to you, but you cannot challenge the policy itself. That was set many years ago.

The registrant says, “No. As soon as the case was brought against me, I filed this IRP case. I’m filing it in time.”

So those are my scenarios. I think they set out really the issue of what is at issue here in this debate. They also show, I think, what will be lost if there is repose because both of these cases speak to whether or not it is possible to challenge ICANN acting beyond the scope in an ongoing fashion based on a decision that was taken many, many years ago.

So that really sets that out there. I hope they’re useful. I hope somebody found some humor in there as well. But I hope it sets out the essence of the position and shows how merely challenging things on an as-applied basis is not substitute for being able to challenge it at root.

SUSAN PAYNE:

Lovely. Thank you, Malcolm. I would say I did find them useful, albeit, as you say, they’re pretty fanciful, and one struggles to imagine that you would get to that point without there having already been some

challenge, probably in both of those cases. But your point is well made. We can't assume that that would be the case. So, yes, thank you. You certainly have done what we were asking for. I found that very useful. Hopefully, others did, too.

I've got Kristina's hand up. Then I might also turn to Sam because I know she circulated a couple of quick comments by e-mail, literally just before the call started, and I confess I haven't read them. So I may try and put some on the spot. But Kristina first.

We're not hearing you at the moment, Kristina.

KRISTINA ROSETTE: Oh, sorry.

SUSAN PAYNE: There you are.

KRISTINA ROSETTE: Can you all hear me now?

SUSAN PAYNE: Yes.

KRISTINA ROSETTE: Okay, good. I apologize in advance. We're having another fairly breezy day. Given how wooded our neighborhood, the Internet has been going in and out. So I'll be quick.

Malcolm, I found these stress cases very, very useful. Something that I've been wondering about that may be able to help us a little bit—I should know this, I think, but I don't ... I'm wondering, is there a time limit anywhere that sets the deadline by which an ICANN consensus policy that has gone through the GNSO PDP process and has been approved by the Board must be implemented? Because, to the extent that there is or to the extent that there's any historical data that would allow us to figure out what that window is, that might allow us to set at least an outer boundary for any kind of repose period because, just picking up on the point that Malcolm was making in the UDRP stress test, it seems that, in some cases, the policy will itself be the issue, but in others it will be the implementation. Thanks.

SUSAN PAYNE:

Thanks, Kristina. I feel I should know that, too, but I don't. Sam has her hand up, so it may be to answer that question, or it may be because I said I was going to call on her. But, either way, Sam?

SAM EISNER:

Thanks. I'll first turn to Kristina's question, and then we can see if you want me to go on about my note. Kristina, I don't believe and [will] check with our policy team to confirm—that there's an outer limit or a requirement of time between the approval of a policy and the implementation. I think we have many structures that are developed particularly in the GNSO scenario because I know that there are other entities that make policy in ICANN. But with the GNSO for consensus policies ... We have other structures, such as the CPIF, where there's an

implementation discussion that happens with the community. So I think each policy on its own terms ... Some are far more intricate to implement. So some move faster, some move slower, particularly depending on the amount of discussion that has to happen within IRT. That's the Implementation Review Team from the community that supports ICANN in the implementation work. So I'll confirm with our confirm with our policy colleagues, but I don't believe that we have any sort of outer limit.

But I do want to confirm, for those who weren't part of our earlier conversations on the IOT, that, from the ICANN side, we see that every individual act—the bylaws now [stretched] about the Board and the Org—of the ICANN Board or ICANN Org can in and of itself be the subject that triggers an IRP. So, in a situation where we have an issue with implementation, even if that issue goes back to the more fundamental issues of the policy itself, if ICANN initiates the implementation and puts something into practice on a policy[—]there's [an action ICANN] can point to[—]that's what you can point to say that there's a potential bylaws violation that has given rise to an IRP. You don't necessarily have to trail everything back to the moment that the ICANN Board accepted the policy recommendations, if that's helpful.

SUSAN PAYNE:

Thanks, Sam. I've got a bit of a queue going now. Depending on what they raise, I might want to circle back to that as well when we look at in context of Malcolm's examples. But let's go to David first.

David, not hearing you either. I think it might be the dreaded double mute.

No, I'm still not hearing you, David, but ...

DAVID MCAULEY: Sorry. Can you hear me now?

SUSAN PAYNE: Yes.

DAVID MCAULEY: Thank you. I apologize—

SUSAN PAYNE: But a little quiet.

DAVID MCAULEY: Okay. I apologize for the delay. Is that better?

SUSAN PAYNE: Yeah. You're fine. You're a tiny bit distorted, but I think we'll be fine. So go for it. Thank you.

GREG SHATAN: You sound like you're down a well, David, but other than that it's great.

DAVID MCAULEY:

Sorry. I've been up since midnight on another conference. Anyway, I'll try and speak slowly and clearly.

First of all, let me say that I have been tied up for a long time. I have not had a chance to read Malcolm's scenarios, but I will do that. So I'd like to reserve some time to comment on them.

But I would like to say that, with respect to what Sam just said, I think that's right. I think the IRP is drawn up largely to be an as-applied accountability mechanism. I think, in the scenarios that Malcolm has, if I heard him correctly or if I gathered correctly from what he said, I don't believe that IRP is a declaratory judgement kind of action—this is my personal thinking on this now—that's open to anybody in the world to challenge something without the showing of harm. I think that it's clear that, in the definition of what a "claimant" is, they have to show harm or injury from the action or inaction that took place.

With respect to remedy, there are remedies for these kinds of way-off-the-track policies, including removal of Board members if they go off the tracks, Empowered Community rejection actions if that would be called for along the way, Empowered Community or even supporting organization IRPs, etc.

So, while I haven't read the scenarios, based on what Malcolm said, I think the IRP panel isn't a declaratory judgment panel. They do need to have a harm to say it was occasioned by an action that was in violation of the bylaws or the articles. Thank you.

SUSAN PAYNE: Thanks, David. Greg?

GREG SHATAN: Thanks. Sorry I missed the first probably 25 minutes or so because I had a business call which actually was supposed to last longer.

I've been giving this some thought. Excuse if this is actually ground that was gone over before. I was just typing out a reply [to] an e-mail that I had [left] too long from Chris Disspain. But, in any case, the old IRP was pretty clearly a tool aimed at challenging a decision on procedural grounds only. So it was the process by which that decision was reached, that was challenged, which to some extent resulted in kabuki theater because the challenge was always really about the substance of the policy because clearly you wouldn't challenge the process by which a policy was arrived at if you like the policy. So it was an interesting setup and one that was deeply dissatisfying.

I see the policy as it stands now clearly aimed at challenging the substance as to whether it is in within the scope of the bylaws or not. That's obviously a very simplistic version of whatever test might be applied, but it's a substantive question and not a procedural one. But the question becomes, is this still about reviewing a decision, or is it about reviewing the underlying policy—the thing [that] was decided? Maybe this is growing pains for the policy. I'm not actually sure where this comes out logically, which I'll admit.

If we're only focused on the decision, then the time at which the decision was made is important, and it's repose from decision-making that is being sought. If that's being sought is to make a policy itself incontestable after a period of time, from all parties, even those who come along later and newly find that whatever it is they're trying to do is barred by a policy they believe violated the bylaws, what is their recourse if it's not the IRP? Obviously, the "R" stands for review, the last time I checked. So that goes against the grain of where I think we ended up in substance, which is a tool for challenging policies or the implementation of those policies in ways that it outside the bylaws. I think that speaks in many ways against repose. The criticism is not necessarily that the decision was wrongly administered in some fashion but that the result stands as a continuing problem under the bylaws. So it's, in a sense, a different posture. If we think that the posture of this is still only a decision-making posture, then I think we maybe missed the mark several years ago when we were looking at what was wrong with the accountability aspects of the IRP. Thanks.

SUSAN PAYNE:

Thanks, Greg. Sam?

SAM EISNER:

Thanks, Greg. I'd like to piggyback off your point because I think the way you framed that makes a lot of sense. So the IRP, as I understand it, through the changes that were made during the accountability process, is not solely about decisions. It's about acts. So an act can be a decision, but an act can be something else. So, if the IRP is envisioned as

something where you only allow review of the originating act and we're setting up a timeframe under which you get to the originating act, then I understand why we're having this conversation—because then it seems like you're always out of like unless you've acted within that very short timeframe. Indeed, there might be circumstances within which you don't even know in that short timeframe because of the discussion we've been having about implementation or something else.

But that's actually not the case. That's not how we understand it within ICANN. That's not how we understand the intent of the bylaws, which don't limit itself to a decisional basis but is really about acts—acts of the ICANN Board or ICANN Org. So we've created this big expansion that goes to places that is really about, what has ICANN overtly or failed to do in certain situations that could give rise to a harm sufficient for someone to bring an IRP?

So I think that that's a really important concept to make sure that we're on the same page about because, if we see the IRP solely as the ability to challenge a decision, I think that we are severely limiting the reach of the IRP. That is not how ICANN itself observes it. Internally at Org, we look at everything we do. Are we acting within the mission? Are we doing this the way that we're supposed to be? So that's how we expect to be tested. We don't expect to be putting into place things that just can't be undone in the future because then you have to look at the practical impact of what an IRP says in an as-applied circumstance.

So, taking one of Malcolm's examples, if the IRP panel comes back with a declaration in either of these situations that ICANN is implementing this program in the country that you created or having this policy that,

as implemented, goes to content that's against the bylaws, ICANN can't just turn around and say, "Oh, this is just about this one incidence." It still has the impact of causing ICANN and the ICANN community to step back and look at the totality of what's been done. First these have forward-looking impacts, so are IRPs are binding. They have precedential effects. So ICANN couldn't keep replicating the same action because it would be subject to the same bylaws violation every single time it does it. So it has to go back and change its working methods as it looks at the impact at the declaration that says, "This, as applied, as against your bylaws." So it would be impractical to say that ICANN would just look at this as an as-applied circumstance and not look at it more holistically.

So this might be part of the discussion we've been missing over the past couple of years—that we actually see the potential impacts of an IRP declaration as bringing about the change that Malcolm and others—not just Malcolm, of course—have been saying they want to see. What if ICANN is doing something that's so fundamentally wrong? If there's just a single point of challenge, doesn't that go to just a single one? Or does it impact things more broadly? From the ICANN perspective, we would say it impacts things more broadly. So, if people have a different understanding, I think that that's probably worth talking about to see how we could play it out because I think that that's where the stress testing is needed—not necessarily about individual examples, but what's the broader impact of a declaration that says, "ICANN, something that you're doing today is against your bylaws?" and then talking about what that means for ICANN in the future fixing that problem.

SUSAN PAYNE: Thanks. Malcolm?

MALCOLM HUTTY: Thank you. I think we need to get to the heart of what's meant here by "as-applied" versus a facial challenge, and I tried to bring this out with these examples. Since we got a second one on the screen, let's just look at this and think what this means in those terms.

Now, in this example, it is postulated that there's no dispute that Get Baked would be allowed to challenge how this policy, which sought to prohibit dangerous statements on the Internet, using the UDRP as an enforcement tool ... It is open to get Get Baked to challenge how that was applied to them by, for example, saying, "Our statements are not dangerous. Our cakes are lovely and good for you." That's not in dispute.

But what Get Baked wants to do in this is something much stronger than that. They want to say, "I don't want to argue about whether our statements are dangerous and have to litigate the medical facts around this." Our case is, "ICANN, you've got no business telling me what I'm allowed to put on a website. It says so in terms in your bylaws—that you've got no business doing that." And I want to make the case that that is indeed what those bylaws means before the IRP.

That's not an as-applied challenge. That is a facial challenge. Sam, I noticed in your e-mail just before the e-mail started, you talked about recent facts and so forth, but you'll notice that, in [n]either of these

scenarios, the [recency] of facts, or any facts, really, is all relevant. This is an entirely facial a challenge. Maybe that speaks to one of the things that Susan was referring to at the beginning about at the beginning about the possibility of cross-purposes and maybe the opportunity for compromise.

But these cases here, these scenarios, are about saying ... It's not how you apply this policy. You should not have such a policy. It's not about how you ran this program. You should not have this program. That's not an as-applied question. That's a facial challenge. Thank you.

SUSAN PAYNE:

Thanks, Malcolm. If I hear Sam correctly, she is arguing that, by virtue of the [as-applied] application, if you like, the original decision is back on the table in terms of being challenged.

MALCOLM HUTTY:

I've written some words into ICANN Legal's mouth in these scenarios—fictitious ICANN Legal of course, not the real ICANN Legal; yeah, this is a fictitious scenarios—as to what ICANN Legal would argue under the circumstances where repose was written into the bylaws. I'd like to ask Sam, does she believe that I've represented that accurately, or would ICANN Legal not say the things that they're represented as saying in these scenarios under those circumstances?

SUSAN PAYNE:

We've got Chris and David with their hands up, but would you like to go first or would you like Sam to respond to that first?

MALCOLM HUTTY: You're the Chair.

SUSAN PAYNE: Let's do Chris and David first, and we can come back to Sam. Give her a bit of time to think about it.

CHRIS DISSPAIN: Susan and Malcolm, I have a couple of questions, if it's all right. I don't want to put anybody on the spot at all, but I'm struggling a little bit.

My first question is—Malcolm, I understand the scenario completely; let's take the second one because, as you rightly said, it's on the screen—what do you envisage the outcome ... Let's assume that the argument is made that you suggest they want to make, which is perfectly fine. The argument is made and they are successful. What do you envisage the practical outcome of that would be?

MALCOLM HUTTY: I think the outcome would be that, if the IRP upheld that, they would issue a statement saying, "Yes, we agree. This policy is incompatible with this section of the bylaws. Any policy of this nature is fundamentally inconsistent with his provision. ICANN Board, you must now go away under the bylaws and consider how to react to that [inaudible]. So I would imagine the ICANN Board would be left with essentially no choice—no realistic choice—but to revoke the policy,

which is the ultimate outcome that the claimant in this case is looking for.

CHRIS DISSPAIN:

Right. So a single body, a single organization, believes that it is being harmed by a policy that the whole of the community has got together and made. The decision on whether that policy ... because it's been accepted by everybody else, it has run perfectly well for how many years we've talked about, and a decision about whether or not that policy is ultra vires on a claim brought by one party is being left to be made by an independent review panel—not a court, but an independent review panel.

I don't want to get into an argument on what the bylaws say and how you interpret the bylaws and how you should for the moment, but that's the fundamental problem I have with the example that you've given and going to the length that you have. To me, it cannot be right that an independent review panel can ... There are enhanced community mechanisms in place if the community believes ICANN is acting outside the bylaws. There is legal action available in court if people believe the company is acting outside of its bylaws. But to have a situation where the community itself has set a policy, with all the checks and balances that are in place, and has, by definition, decided that that policy is within the mission—because otherwise the GNSO wouldn't haven't set the policy in the first place—and that that can then be tested five or ten years down the line by one organization, and the decision is left with an independent review panel? To me, that's the problem.

MALCOLM HUTTY: Thank you, Chris. That's very helpful in clarifying it. I must say, for my part, I think then your dispute is not with me but with the CCWG Accountability that constructed this scheme and the process that was then went through to take that and implement it as the accountability mechanism.

CHRIS DISSPAIN: The dispute is our interpretation of what the bylaws were intended to achieve or what the recommendations and the subsequent bylaws were intended to achieve. So the dispute is not that. The dispute is that I interpret them one way. I say my interpretation has been [inaudible]. So my belief [is that is what] the community intended. And you quite fairly take an opposing view, which I'm fine with. I completely understand your view. But what I'm saying is we are at odds as to our interpretation of what was intended.

SUSAN PAYNE: Thanks, Chris. David has his hand up, and so does Kristina. So David first.

DAVID MCAULEY: Thank you, Susan. So here's a question. Do I sound like I'm down a well still?

CHRIS DISSPAIN: Yes.

SUSAN PAYNE: You're better, but somewhat.

DAVID MCAULEY: I apologize. Anyway, I'll be quick. I'll say that I believe with Chris, but I'll speak to a point that Sam made, and that is that ICANN can't simply keep [inaudible] doing violation after violation. They'll have to address it. The reverse is true, too. If an IRP rules in ICANN's favor, a whole bunch of people can bring the same claim, but the notion of precedent will be used, I think, to have the claims dismissed.

The one thing I'd like to say about Malcolm's scenario—again, I say with it trepidation because I haven't read it myself, but based on what Malcom said—is, when a UDRP is filed against the company Get Baked, they may be able to say--they're not going to defend but they're going to go file an IRP—"The application of the UDRP, to me—just the filing of the complaint against me—is a harm. And that's what I would like to challenge." So it still, to me, might be falling under the as-applied notion. I don't know how an IRP would deal with it, but I just want to say that they may still have a remedy in that case. But I haven't moved off the as-applied notion myself. So thank you very much.

SUSAN PAYNE: Thanks, David. Kristina?

KRISTINA ROSETTE:

Thanks very much. Chris, I certainly understand the point that you're making. I think one of the concerns that I have in response—I'm noting Susan's point in chat—is, is it a timing issue or is it a single-entity issue? As for the latter, I think the thing that I would like us to be careful about from that perspective is that it is not the case that every entity that is affected or will be affected by ICANN consensus policy participates in ICANN. I think we can all agree on that. So I think taking the position that a consensus policy could never basically be challenged by a single entity that, if it didn't participate in the policy development process—I am by oversimplifying and/or misunderstanding your point ... But I have some real concerns with that. I think that would be problematic.

I do think it's the as-applied point, and this is where I was going indirectly with my question about deadlines for implementation because, in many cases, I do think, at least as with regard to consensus policy, it may be it's not until we actually see the implementation or potential implementation that an entity that would otherwise have standing[—]a potential claimant[—]believes that it's been harmed. Thanks.

SUSAN PAYNE:

Thanks, Kristina. Scott?

SCOTT AUSTIN:

Thanks. I guess there's something about the approach ... I really appreciate Chris' comment because it really sets up the two positions. But, in an attempt to find some middle ground, I guess the question is whether there could be a way that the IRP could, for lack of a better

term, blue pencil or excise that part which goes beyond the UDRP. The UDRP [max] may go beyond the bylaws, but yet there could still be some of the policy that would be sa[fe]. It seems to me that we're maybe setting ourselves up for the false dilemma of an all-or-nothing—that the entire policy would have to be deleted/excised, rather than just the new social[ly] harmful activity that may pertain to this particular UDRP [register], or the one who list—respondent, I should say. I wonder if that's a possibility—there being a way to thread the needle or navigate Scylla and Charybdis. Pick your metaphor.

MALCOLM HUTTY:

It would be, Scott, but you've got to get into the IRP first. If you're time-barred, then you don't have any of those options.

SCOTT AUSTIN:

Then maybe I'm missing the point in terms of the time aspect. We're saying that, only because of the five years or post-120 days, this would not apply. Is there something about the level of the damage here that would make it more equitable to allow them in? What am I missing?

SUSAN PAYNE:

Scott, I'm not sure that are you missing anything. What we're really grappling with is just whether we have that repose time limit in there or not. If it's there, then the scenario that Malcolm is positing, as he expresses it, they never get to an IRP because they're time-barred. If we don't have the repose, then they have the option to bring that challenge. It's for the panel to make whatever determination they think

is appropriate, and, indeed, for the Board to do whatever they then think is appropriate in response to the decision of the panel. But I'm not sure if that answered your query or not, really.

But Chris has his hand up, so I'm going to go back to Chris.

CHRIS DISSPAIN:

Thank you, Susan. A couple of things. [inaudible]. I don't imagine for one nanosecond that there's an easy solution to this, and I acknowledge completely that the questions that people are raising are very valid and important questions.

On Kristina's point on timing, which I completely get, I must admit that I had thought that Maybe I misunderstood, but I heard at the beginning of the conversation we're talking about that she asked, is there a maximum time in which policy can be implemented, etc.? I had anticipated that a claim's timing would run from the policy itself became used rather than it would run from the time that the decision was made that it should exist. So, if the Board said the policy is that everybody should paint their computers green and go away and implement it, and it took Org three years to implement that, in my head I anticipated that, until it was implemented, you wouldn't know what would happen and, therefore, your challenge would be running from that time. So that was in my mind from a timing point of view.

But in respect to Scott's question, I think that's a very good question. I don't have an answer for it but perhaps Malcolm does. I hope I've at least tried to address one part of what Kristina raised.

SUSAN PAYNE:

Thanks, Chris. Kristina has made a suggestion that we pause this discussion, having reached some of an understanding of where we are all, and perhaps think about Prong 1 briefly. It would certainly allow everyone to give more thought to the scenarios that Malcolm suggested. Indeed, we might usefully, if people have other scenarios from the counter-perspective, share them over the next week or so before we pick this discussion back up.

I'm not managing to follow the chat terribly well, so if people have been making really good points in the chat, they might want to make them on audio.

Malcolm has his hand up, so I will go to Malcolm. Before we do park this, I think Malcolm originally did have a question for Sam that he was hoping she would address in terms of whether his view of what ICANN's legal perspective would be was a correct one. Now, that might be unfair in putting Sam on the spot when she hasn't had much opportunity to give this detailed consideration, but I'll give Sam the opportunity to respond to that, or alternately to suggest that we come back to that. But, first, Malcolm, you've got your hand up.

MALCOLM HUTTY:

Thank you. And I'm quite happy for Sam to take that away and think about it and come back at another date.

What I put my hand up for, actually, was to ... You just gave an invitation for others to come up with other scenarios. I'd like to invite you to turn

the pressure up on us a little to turn that invitation into a request. I was asked to show what the harm I thought would be done by repose and come up with some concrete scenarios that show some concrete harm. And I've done so. I would now like to see the same thing for the other side of the argument. What harm do you think would be by [having the rule in] the way that I proposed that it be? Show us the harm in a concrete scenario in a similar fashion. What would be done? We may, from that, be able to find some solutions. We may be able to find some other mitigations that could be put in place that would either reduce or remove those possibilities of harms. But I don't know what they are yet. So can we turn that invitation up to a request? Thank you.

SUSAN PAYNE:

Thanks, Malcolm. I guess I thought I had made a request, but I'm obviously being much too polite. So, yes, your way of putting it is much more appropriate. That is what we would like to see. That was obviously what we had been hoping we would see over the course of the last couple of weeks. But, yes, please. And they can be fanciful. Malcolm's is fanciful. And it's easy to criticize the particular scenario and argue that that could never happen, but the point of these is to try to have some scenarios where we can work through the issues. They have to be fanciful in order to be able to do that effectively. So, yes, that is an action item for people, please.

Sam?

SAM EISNER: Thanks, Susan. First, on the question about whether or not ICANN legal would respond in the way that Malcolm posited that we might, it would be very hard for us to come with a definitive yes or no on that based on a hypothetical situation. I did include some thoughts on that in my e-mail that I sent, which was that ICANN would never give a potential claimant permission to file an IRP. ICANN doesn't hold that power. ICANN would never direct a claimant as to what or what not they could file their IRP over. ICANN in each situation, based on the facts, asserts the defenses that are or discussions that are available to it. ICANN would clearly test and ask the IRP panel to consider whether or not the claimant met all of the requirements for standing and bringing an IRP. So those are things that ICANN would do. But the particulars of how ICANN would address those situations? I don't think we could provide too much more detail on that.

MALCOLM HUTTY: Sam, though, if ICANN Legal thought that a claimant was out of time, it would make that argument to the IRP, would it not?

SAM EISNER: Yes. Yes, it could. That goes into the entirety of reviewing to make that the IRP is being used within the bounds of the bylaws and within the rules that have been set. I do think that one of the things that we need to consider as we're looking at trying to prov the negative is, are there situations where this would cause concerns? Well, from the ICANN Org side, I know we have some examples, and we'll revisit those. I would imagine other people on the call have some ideas of things that they

could consider if a decision that they relied on was overturned years later and how that might impact them.

But I do think it's also important to realize that the IRP is not the only form of recourse that exists within the ICANN system. When we get to something as fundamental as basing the idea that everyone within the ICANN system is essentially complicit in allowing an ultra vires policy or program to be done, we have and we would again expect to see the ICANN community acting through formal or create their own channels to challenge that action and not necessarily only having then IRP available to them. So we don't require the ICANN community to go through an IRP in order to raise concerns or issues that they have about things. That's one formal channel.

So, as people are looking at those examples, for both sides—I'm talking about the sides of repose for no repose—I think it's important to consider if there are other ways that we've seen the ICANN community come up against something but not in a formal process. Are there other ways to achieve the result, which is to tell ICANN, "Look, you did something wrong." It's not just about the fact that someone picked it up a few years later, but the IRP is just one part of the accountability of the system. I think we also have to look the accountability of each of the actors in the system. So, if someone thinks that you've really done something wrong, we don't have the experience in the ICANN community that they just sit back and wait until ICANN does something to further that wrong. [They spin]. They speak out. So I think we have to look at this a bit from the realities of the ICANN system, too.

SUSAN PAYNE:

Thanks. Greg?

GREG SHATAN:

Thanks. I somewhat agree with what Malcolm said earlier in the chat, which is that basing the idea of repose on the idea that somebody else should have acted and therefore, if no action was taken, it's fine. I think that's not the case. We're talking about a substantive issue. And I don't think it's an issue of being complicit or not if an issue arises and someone recognizes that, in fact, there is a violation of the bylaws/problem and recognizes that somewhere down the road. Of course, the ICANN community is a malleable concept in the sense that tomorrow's applicant might not be in the community today and they may be the one who has the problem, and other people come and go. There's also the fact of the matter that there's only a limited bandwidth to pay attention to all of the problems and successes of what we're doing.

But, in any case, in terms of what other avenues there, I think the other avenues are fit for different purposes. The question, I think, comes back to whether this is an avenue to challenge a policy that violates the bylaws, allegedly, or is it an action to challenge a decision to an act/a policy that violates the bylaws, allegedly?

Some of the concern about unintended consequences I think we could deal with in terms of the questions of retroactively. Most decisions are not retroactive around these sorts of things. They're forward-looking. I think, if we could clarify that—that you can't go and say, "Well, now, if we've decided this violated the bylaws, every action that was taken over

the last eight years that was in compliance with this policy is now voided ... I mean, there are situations where you have that, like a dirty cop. You can void a conviction based on false testimony. But in most other cases, you can't necessarily go after things retroactively. So I think that's one of the concerns that's been raised. It's a valid concern, but I think it's one that needs to be dealt with.

The last point I'll make—then I'll shut up—is that maybe all of us need to go back and look at the policy recommendations and the legislative history of how we go here because that may help us all decide all it was we decided to do in the first place, whether we agree now with where we were at or not. I might go back and look and find out that what we actually decided is not what I think should be the right thing and that we would have to essentially begin a new process of changing the bylaws in order to accommodate what I or we or some of us now think is the right way to approach this. But in fact what we decided is that this is basically a policy about decisions and that decisions are temporal in time as opposed to about policies which are continuous. Who knows? I don't know. Let's go back and look.

If worse comes to worst, we have to get policy guidance or something. We might need to do that. But, hopefully, if we all go back and look together, there might be a clearer path than each of us is positing because I think there are pros and cons to every argument here. It's not black and white. It's not like there's a truly right answer and a truly wrong answer based on fundamental principles. It's unfortunately more nuanced than that. Thanks.

SUSAN PAYNE: Thanks, Greg. Sam?

Sorry. I've lost you, Sam. Was that an old hand?

SAM EISNER: Yeah. That was an old hand. Sorry.

SUSAN PAYNE: Sorry. Scott?

SCOTT AUSTIN: Hi. I appreciate what Greg has said, but I want to get back to what Chris has said because what I was trying to articulate before was it's a beautiful fact pattern, Malcolm. And I've written law school exams, so I appreciate the time that it takes, often, to do that.

The thing that I'm trying to articulate is I'm not sure where this fact pattern goes with getting at the time issue as much as the issue as Chris has put it of one person coming back and essentially using the IRP process as a appeal process for a lost UDRP case. What we're trying to do ... That's, I think, where we're getting into a pretty deeply philosophical and nuanced discussion of the purposes of policy, and that being it's to discourage or encourage certain action.

My initial premise in confronting the time issue was—I've worked with legislatures before. The use of statutes or repose was all about people's memories fading after a certain period of time. This doesn't seem to apply in that context, and certainly there are other points. But that was

one of the things that I had to get through. But we're dealing with something very different here. It seems to me that the facts could change very much as the policy could evolve over time. It's much more of that issue.

I'm just still trying to see, even in this scenario, when the case was brought or [if] the time tying in here is really affecting our decision on whether this policy should be removed or not removed because there's something in here that deals more with someone coming back to ICANN as ICANN and saying, "Hey, the UDRP doesn't work. We lost, [" so we're just going to say, "Throw the baby out with the bath water." That is the way it appeals to me.

SUSAN PAYNE:

Thanks, Scott. Chris?

CHRIS DISSPAIN:

Thank you. Scott, I appreciate what you just said. If I understand the decision correctly, I think that the arguments against repose is simply that a party should not be prohibited from bringing an IRP simply because they weren't around at the time and if they are suffering because of it.

Now, of course, one of the challenges with that is precisely the fact that you can create a circumstance where what you do creates the case. In other words, I will make sure that I operate in a way that brings me outside of this policy. It is very, very hard to reach, I think, a decision point on the principle based on examples because examples are useful

for explaining what you mean, but I'm not sure that they're useful for dealing with the principle.

I completely understand that I am doubtlessly interpreting the bylaws in a different way or saying, even if the bylaws are interpreted in a particular way, that I'm not sure that was intended. But it seems to me that we built a mechanism—I was there, and so was Malcolm, and so we Greg—that had huge powers invested in the community to have the community step in in the event that there was a problem.

What I'm concerned about at the moment is that we are in danger of building a mechanism whereby a party way outside of what would normally be a reasonable period of time is the sense of "The policy exists. I've arrived in this business, and I walk in the door knowing what the rules are." So I may not have been aware of it when it was granted, but I've stepped into the business, and I stepped in knowing what the rules are. It seems to me that we're in danger of creating the ability for the community itself to be outgunned, outguessed, or overturned by a single IRP or a single review panel. I just don't believe that that's what was intended. It just doesn't make sense to me. Let me be clear. I'm more than happy to be wrong about this. Well, I'm not more than happy. I'm prepared—let's put it that way—to be wrong. I just think that the examples are fine, but as for the principle level, that's where I struggle.

SUSAN PAYNE: Thanks, Chris. I put myself in the queue because I wanted to react to something that you'd said. Now I want to react to two things. Then I can see Malcolm has his hand up, so I'll go to him after that.

The first part was that I wanted to react to your comment about that this seems to be an argument that the parties shouldn't be prohibited from an IRP because they weren't around at the time and that their actions can create that scenario for them. I don't think that is what we're talking about here. I'm not trying to argue here one way or the other in terms of the outcome, but we're not talking about them not being around at the time, although they may not have been. We're talking about that the bylaws tell you when you you're a claimant and what you have to be to qualify as a claimant. And they aren't a claimant because they're not damaged. So it's not that they're not around at the time. It's that they don't qualify to bring an IRP at the time. So that's, I think, the difference, to my mind, that we're grappling with.

CHRIS DISSPAIN: But that doesn't apply to Malcolm's example, though. Sorry, I was referring to Malcolm's example.

SUSAN PAYNE: Well, I think it does.

CHRIS DISSPAIN: Really?

SUSAN PAYNE: Well, does it not? I mean, they're not—

CHRIS DISSPAIN: So they were there at the time and they did nothing about it, but—

SUSAN PAYNE: But they're not impacted until the policy is applied to them.

CHRIS DISSPAIN: So I should consider the possibility ... The problem with that is that no one can legislate for the future. So how do you deal with that on that basis? If you can say that a business action I had taken ... I was involved in the decision-making process, and, in five years' time, I take a business decision, that means I'm suddenly impacted by a decision that I was involved in and therefore I can bring a claim? That can't be right. Can it?

SUSAN PAYNE: Well, I think that might be something we need to explore. I think we talked about it a bit on the last call, where I said I was having problems with the idea that perhaps you weren't a registrar and therefore you signed up to become a registrar, knowing that the policy said a certain thing, and then you turn around and challenge it. I agree with you. I have a bit of a problem with that.

And I think Malcolm's Scenario 1 perhaps is an easier one to look at. They aren't a claimant because there's nothing for them to bite on in

the context of the bylaws until ICANN brings that project into their territory. That's what I'm sensing we're trying to balance.

Anyway, I'm going to shut up. I've got Malcom's hand and Greg's, and then I think we have to wrap up.

MALCOLM HUTTY:

Thank you, Susan. Yes, I know we focused very much on the second scenario, but the first one, I think, is clearer on that particular point. And it was intended in the way that you described it. So you did indeed read that right.

I just wanted to respond to when Chris had said that we are in danger of building something that could have these terrible consequences of which he warns us. No, we're not. We didn't build this. This was built for us. This committee is here just to implement rules of procedure, not the whole structure. The structure is written. What we are now discussing is whether or not the very fine and particular power that we've been given to create a deadline for filing, a deadline by which the papers must be filed, can properly be used to challenge a structure that you think might have these dreadful consequences of overturning community positions.

Well, I'm going to turn back on you, Chris, with greatest respect, something that you've said many times in this context here. You said here that, many times, these claimants may be in the wrong venue. I would respectfully put it to you that you are in the wrong venue here in trying to cure the problem that you are speaking of through the mechanism of the time for filing. That is not an appropriate way of

dealing with that problem. The proper way of dealing with that problem is to actually challenge that the IRP can indeed do the things that it appears to be able to do. Trying to shut people out of it because you just like the possibility of them being able to win that using such a micro thing as the deadline for filing is really abusing the powers that we've been given here.

SUSAN PAYNE:

Thanks, Malcolm. Greg, I think you're going to have the last word.

GREG SHATAN:

That's scary. Briefly, I think there is a concern if the community thinks that they got this right, and a particular claimant thinks that it was wrong. But, ultimately, the test is whether something violates the bylaws or not. I think that, overall, while we do have the Empowered Community, if the community wishes to challenge a decision or a policy. There's standing issues there, potentially, too, but there are much bigger standing issues that Susan went into, which is, no matter how much somebody thinks something is right or wrong or violates the bylaws, they can't bring an IRP unless they have a harm that they can demonstrate to themselves. Essentially, you can't just bring a case, which I guess goes back to some of the discussion about declaratory judgement, perhaps, earlier. But that's more of an advisory opinion.

But it really goes to the question of ... We are limiting in many ways how a decision can be challenged because we need the challenge to come from someone with a harm and not just someone with a theory. But the

question is whether there's a reason why that harm comes too late to challenge a policy.

Ultimately, I'd agree with Malcom that we need to look back to the IRP itself to see whether there is a reason to say that a harm can exist without a remedy merely because of time. Thanks.

SUSAN PAYNE: Thank you. Apologies, Scott. I can see your hand is up. I was thinking that was an old one, but I will just—

SCOTT AUSTIN: It is an old hand. Sorry.

SUSAN PAYNE: Okay. Perfect.

All right. Thanks, everyone. I said Greg was going to have the last word, but obviously it's not the last word. There's clearly more for us to do.

Circling back to the request for other examples and specifically examples that we can use from both perspectives, well, we have the examples that Malcolm has provided of where he sees the harm come if we do put it in a repose. So let's have some for the harm if there isn't one that we can also consider.

It's been interesting listening to the debate. We've got Sam and ICANN Org arguing that this IRP is not the only process that you can use that one would have expected if ICANN is acting so far outside of its mission

that the community would have rebalanced. That's a perfectly valid point, but at the same time, one could also say, "Well, when in that case, what's the harm of building in this failsafe, which will probably never apply because, in these terrible scenarios, someone else will already have challenged it?"

So there are two perspectives on all of this, and we're trying to find a middle ground. Perhaps there is no middle ground, but it may be that there is a middle ground of different types of disputes that perhaps need a slightly different treatment. If we can try and explore that, I think that might be helpful. Otherwise, we do have these very clear and diametrically opposed positions.

I also would really like to understand further exactly what it is that Sam is arguing in terms of the implementation, in terms of, in the scenarios in these stress tests, if it's the implementation as it applies to the particular proposed claimant that gives them their right of action. Does that enable them to reopen the original decision, or is that reopening of the original decision time-barred, which is how I've always interpreted this and clearly how Malcolm interprets it? But perhaps we're wrong, and ICANN Legal views this in a completely different way. Maybe we are all talking at cross purposes, but I'm not sure yet.

So lots of homework. Let's, if we can, try to keep exploring this on the e-mail. It certainly would be preferable for us to keep the conversation going rather than all pause for two weeks and then come back to it.

But thanks, everyone. We're out of time now. So I will see you all in two weeks' time, hopefully. I think that's all I need to do. Any other

business? I didn't have any raised at the beginning. I forgot to ask. If anyone does have any, then speak quickly.

Okay. I'm not hearing anyone. So we can wrap this up. Thanks very much. Pamela, we can stop the recording.

[END OF TRANSCRIPTION]