00:24:38   Bernard Turcotte: Becky also sends apologies, will try to join later

00:26:39   David McAuley (Verisign):   sorry to be late

00:32:21   Kristina Rosette: Apologies for joining late. I misread the time as 1900 UTC

00:41:31   David McAuley (Verisign):   I wasn't able to read them yet

00:42:16   David McAuley (Verisign):   if we do that then please capture in action items

00:47:03   Brenda Brewer: Please note, Pamela Smith will support the remainder of this call. Thank you!

00:47:29   Susan.Payne: thanks Brenda and pamela

00:53:14   Bernard Turcotte: time check - 60 minutes left in call

00:54:46   Malcolm Hutty: How long did it take between the initial decision to have a new TLD round and the first TLDs in that round going live? Anyone know?

00:55:15   Kristina Rosette: Thanks, Sam. Drat - having one would be useful.

00:56:17   Kristina Rosette: @Malcom - if my memory is correct, GNSO approved policy recommendations in September 2007, Board approved in June 2008 and application round opened in early 2013.

00:56:50   Malcolm Hutty: Application round opened in 2013...and domains actually launched?

00:58:38   Malcolm Hutty: From the point of view of a TLD applicant, the policy was "implemented" when the round opened. But from the point of view of a non-contracted stakeholder, implementation is only complete when the new registries open for business.

00:59:05   Sam Eisner: @Kristina, that's correct, give or take a few months on the opening of the window. If I recall, we had first new gs from the program definitely by some point in 2014 (though maybe in 2013?)

00:59:14   Malcolm Hutty: @David, when you read my scenarios you will see my fictitious claimants allege harm

00:59:22   Kristina Rosette: First RA was signed in Durban (July 2013), but not sure when it went live.

00:59:35   David McAuley (Verisign):   ok, will check them out

01:00:18   Malcolm Hutty: @Krtistina, OK, so we're talking about 5-6 years in that example.

01:01:04   Sam Eisner: @Malcolm, ICANN has to take action as it relates to each new g entering the root. The question is what is being challenged as against Bylaws and where is the harm - is the harm from introduction of New gs as a whole that goes back to the first point, or is it from a particular contract

01:01:07   Kristina Rosette: @Malcom: yep. That's why I was wondering if a time limit had been adopted since then.

01:06:49   David McAuley (Verisign):   I agree with how Sam put it about being about acts.

01:16:11   Sam Eisner: An IRP Panel can declare that ICANN's act in a situation is against the Bylaws. There is the ability for an appeal, but assuming that the declaration stands, then ICANN has the obligation to consider the next steps to address that declaration. The declaration also has precedential effect.

01:17:21   Susan.Payne: Chris in your scenario though, is it the timing that you're really taking issue with or that one party could challenge the community developed policy, irrespective of timing?

01:20:58   Sam Eisner: My overarching concern is that we'd build a timeframe (or lack thereof) on the corner case that the entirety of the ICANN community supported and the ICANN Board ignored that a policy was outside of mission. To Kristina's point, I concur that the IRP could consider whether a policy itself is against the Bylaws. But we should not be premising this discussion on the thought that NO ONE challenges the policy until years later though it was facially bad.

01:21:34   Sam Eisner: And the IRP is not the only vehicle for challenge

01:23:11   Bernard Turcotte: time check - 30 minutes left in call

01:23:59   Kristina Rosette: May I suggest another approach to this question? Let's put it on hold for now and decide whether we think the filing time should be tolled (Prong 1 of Susan's email) and, if so, for how long? Once we reach that decision, it may be useful in guiding the repose discussion.

01:24:55   Malcolm Hutty: @Sam I find it very problematic for us to implement a timebar on the assumption that surely someone else would have stepped in, especially since their standing to do so is dubious

01:26:58   David McAuley (Verisign):   I think time might be tolled for duration of CEP. What else could it be tolled for? I am not sure I understand

01:29:00   Kristina Rosette: @David: other accountability mechanisms (RfR, DIDP, Ombudsman)

01:29:57   Greg Shatan: I don't. think those accountability mechanisms would reach the issues and concerns here.

01:30:00   David McAuley (Verisign):   Thanks Kristina.

01:30:27   Greg Shatan: Other than recourse to courts, I think the only one we have is the Empowered Community.

01:30:49   David McAuley (Verisign):   Fair point, Greg but we could check. I don't know these all that well

01:32:02   Kristina Rosette: @Greg: of course, but a potential Claimant may want to exhaust all other options before filing an IRP. The magnitude of cost differential is HUGE.

01:32:32   Kurt Pritz: One important point goes to the goal of ensuring, "that could never happen." I don't think we are trying to create a process to address "never." Rather, there is diminishing value in extending the IRP timeline and, at the same time, increasing risks to ICANN (the big ICANN). Repose, I think, is meant to address that balancing. I also think that the suggestion of a 2-year repose was intended to err on extending the IRP availability well through the period of diminishing return.

01:32:45   Scott Austin: Seems a bit of a Socratic challenge. jousting with competing law school exam questions. Quite a request but time for us to rise to the occasion. Thank you Malcolm.

01:35:00   Chris Disspain: I guess my fundamental question is 'if there is a by-laws problem' is an IRP brought by a single complainant the right venue for dealing with it especially given the extremely limited response a panel can make

01:35:43   Chris Disspain: And is that what the community intended when it reached its consensus recommendations…

01:35:59   Chris Disspain: good point Greg..

01:36:06   Chris Disspain: Yes we should do that!

01:36:14   Susan.Payne: but Chris, all IRPs to date have been "bylaws problem" and often by a single party. But I think maybe you mean "if it's wholly outside of the Mission"?

01:36:33   Chris Disspain: sorry..Yes

01:36:41   Chris Disspain: I was referring to Malcolm's examples

01:37:23   Chris Disspain: and I absolutely agree with Greg about nuance!

01:39:43   Sam Eisner: To Scott's point, IRPs are fact intensive. A few of us on this call have testified in them - the same issue of recollection, etc. applies

01:41:41   Scott Austin: @ Chris and I agree that they should have the right to bring it. Given the fact intensive aspect it may take years for the damage to come to light.

01:42:44   David McAuley (Verisign):   I agree with Chris about the use of examples

01:43:44   Scott Austin: @ Chris,But then what time span would cure that concern. How narrow or broad would the time need to be that they should be around at?

01:44:30   Kristina Rosette: +1 to Sam's point about fact intensive. Also, very, very expensive, which is one reason why I believe having the period of repose is so important.

01:44:55   Sam Eisner: To Susan's question, I think that's where we need to recognize that the IRP is not the only way that the ICANN community can hold the Board or org accountable

01:45:25   David McAuley (Verisign):   the notion of precedent is important in this context

01:45:42   Chris Disspain: I agree Scott that the time span doesn't 'cure' but it does make the consequences more palatable

01:46:53   Chris Disspain: Malcolm the challenge is how we interpret what's written

01:48:33   David McAuley (Verisign):   we clearly have the role of writing rules and time for filing is a rule to consider. The first prong of time for filing is the minimum we must do in that respect in my opinion

01:49:37   Malcolm Hutty: I agree David. Nobody is disputing the need for a time for filing. And we seem to be broadly in agreement on how long that should be on prong 1.

01:53:45   Kristina Rosette: Bye, all. Thank you!

01:53:47   Bernard Turcotte: bye all

01:53:55   David McAuley (Verisign):   Thanks Susan and Bernie and all