

Zoom Chat Transcript – IRP-IOT Call #69 | 13 April 2021

11:58:56 From Bernard Turcotte to Everyone : hello all

12:15:04 From becky to Everyone : it's legislative history

12:16:02 From David McAuley (Verisign) to Everyone : As for drafting I would ask Sam if she could send to list before next call what that line might be

12:22:28 From Sam Eisner to Everyone : To Kavouss' point, we know that there are expected touchpoints, such as acceptance of a policy and implementation of a policy. So in that way we can anticipate how these items could be applicable in the future

12:28:19 From Scott R. Austin to Everyone : Then as part of that analysis what have we decided as a starting point of the statute of repose.

12:31:01 From Sam Eisner to Everyone : With apologies, I have to drop. Just to clarify, we were suggesting in my note that given that we are measuring from acts, there is no need to have an "as applied" distinction.

12:31:09 From Sam Eisner to Everyone : Liz will remain on the call

12:37:36 From Kurt Pritz to Everyone : Solution: We could: (1) establish a repose, and (2) provide that the ICANN Board or the Standing Panel could waive the repose in order to avoid an "injustice" or something similar. This might work with the presumptions that: (1) the circumstances clearly demonstrate the potential injustice or that IRP is the preferred forum for both parties, and (2) the Board or Standing Panel will operate in good faith to come to the appropriate conclusion.

12:37:40 From David McAuley (Verisign) to Everyone : In sum, I personally like the way forward where there would be a repose period (say, e.g., two years) but, on application by a claimant, the IRP Panel could waive the time bar to avoid a significant injustice. At the end of the day we will describe the basis but the panel will implement it.

12:37:55 From Kurt Pritz to Everyone : Rationale: I think the former can be determined in a straight-forward manner, and if the latter is not true, we are all sunk.

I think that requests for "extra-repose" IRPs would be rare and the solution would provide a backstop in the event a certain set of circumstances did come to pass. I recommend this with the assumption that the Board review process could be streamlined and include a clear set of elements for making a determination.

12:38:20 From David McAuley (Verisign) to Everyone : Phe panel, that is, would decide whether something is exceptional

12:38:33 From David McAuley (Verisign) to Everyone : The, not Phe

12:40:17 From Kurt Pritz to Everyone : Maybe to Malcolm's statement: one of the standard's for the Standing Panel waiving the repose could be that the claimant was barred from asserting her/his right earlier

12:40:48 From David McAuley (Verisign) to Everyone : we are getting back close to drafting which is good

12:46:47 From Scott R. Austin to Everyone : I agree with Malcolm in concept regarding eligibility as the waiver safety valve to the statute of repose to allow it to be considered. Since the current bylaws do not currently anticipate a statute of repose the waiver encourages by providing fairness "comfort".

12:47:36 From David McAuley (Verisign) to Everyone : On the waiver idea I support the waiver being granted by the panel, not the board

13:00:32 From Bernard Turcotte to Everyone : time check - 30 minutes left in call

13:07:29 From Arasteh to Everyone : Malcolm, there are many colours between black and white

13:08:47 From Arasteh to Everyone : Malcolm all you said we are already considered in the empowered community provisions

13:11:36 From Malcolm Hutto to Everyone : The alleged "brokenness" of ICANN is not on our agenda though. The item on our agenda is whether in these circumstances a claimant would be able to bring such a claim through the IRP, or would be barred by the time rule. That is all. Other problems this might uncover, and other processes for addressing them, are simply not on our agenda.

13:21:02 From David McAuley (Verisign) to Everyone : I think the examples are fine

13:23:38 From Scott R. Austin to Everyone : Agree Malcolm +1

13:24:19 From Liz Le to Everyone : We will review and respond on list

13:25:49 From Arasteh to Everyone : Malcolm, may I request you respectfully to table your option

13:31:07 From David McAuley (Verisign) to Everyone : Thanks all, good bye

13:31:15 From Bernard Turcotte to Everyone : bye all

13:31:18 From Flip Petillion to Everyone : Thx