

Zoom Chat Transcript – IRP-IOT Call #70 | 27 April 2021

00:41:41 Greg Shatan: Call #70. Woo-hoo.

00:45:30 Kristina Rosette: Greetings, all! Apologies for being late. Another call ran long.

00:49:11 David McAuley (Verisign): Sorry to be late

00:56:00 Sam Eisner: The Panel cannot require the panel to revoke the policy

00:56:28 Sam Eisner: New hand, Susan

01:07:47 Sam Eisner: From the ICANN org side, we do not agree with Malcolm's interpretation of the scope of the Bylaws on this.

01:09:14 David McAuley (Verisign): Agreed, I see things differently

01:09:31 David McAuley (Verisign): as well

01:10:01 Malcolm Hutty: It is stated very plainly in Article 4 Section 4.3 of the bylaws

01:10:17 Malcolm Hutty: In addition to the reconsideration process described in Section 4.2, ICANN shall have a separate process for independent third-party review of Disputes (defined in Section 4.3(b)(iii)) alleged by a Claimant (as defined in Section 4.3(b)(i)) to be within the scope of the Independent Review Process ("IRP"). The IRP is intended to hear and resolve Disputes for the following purposes ("Purposes of the IRP"):

(i) Ensure that ICANN does not exceed the scope of its Mission and otherwise complies with its Articles of Incorporation and Bylaws.

01:10:31 Malcolm Hutty: *shall have*

01:28:19 Greg Shatan: Kristina's point makes good (common) sense.

01:32:53 David McAuley (Verisign): I don't know enough about the ombuds process to know how that fits in this discussion for tolling - will have to check that out

01:36:58 Kristina Rosette: FWIW, David, my recollection is that the Bylaws don't contain time limits on the Ombudsman for her/him to perform and write up an investigation.

01:37:46 David McAuley (Verisign): Thanks, Kristina - is it an accountability mechanism or more like mediation

01:38:35 Sam Eisner: I have to drop, but I think that it might be helpful to identify the various accountability mechanisms that this group thinks are appropriate for tolling

01:38:49 Bernard Turcotte: time check - 30 minutes left in call

01:39:09 David McAuley (Verisign): I agree with Sam on id'ing them

01:39:49 Kristina Rosette: AMs appropriate for tolling: RfR, DIDP, Ombudsman and CEP (although I think we can deal with CEP when we focus on those rules).

01:39:57 Kristina Rosette: My \$.02

01:40:46 Flip Petillion: Documentary information disclosure policy

01:41:25 David McAuley (Verisign): and CEP has to have an identifiable beginning and end if it is to toll, IMO

01:48:47 Kristina Rosette: sorry!

01:51:27 Kristina Rosette: That certainly works, Susan. We do need to address it, IMO.

01:52:39 Kurt Pritz: Perhaps the 120-period begins when an alternate accountability process closes. So the 120-day period is not "tolled," instead, it starts when the Ombudsman, or RfR, or CEP closes.

01:52:46 David McAuley (Verisign): I have no view on ombuds value, is it a true accountability measure or just a talk shop

01:52:52 Greg Shatan: Yes, with regard to Ombuds.

01:52:53 Kristina Rosette: I vote yes.

01:56:35 Kristina Rosette: From Section 4.2 of the Bylaws: (l) For all Reconsideration Requests that are not summarily dismissed, except Reconsideration Requests described in Section 4.2(l)(iii) and Community Reconsideration Requests, the Reconsideration Request shall be sent to the Ombudsman, who shall promptly proceed to review and consider the Reconsideration Request.

(i) The Ombudsman shall be entitled to seek any outside expert assistance as the Ombudsman deems reasonably necessary to perform this task to the extent it is within the budget allocated to this task.

(ii) The Ombudsman shall submit to the Board Accountability Mechanisms Committee his or her substantive evaluation of the Reconsideration Request within 15 days of the Ombudsman's receipt of the Reconsideration Request. The Board Accountability Mechanisms Committee shall thereafter promptly proceed to review and consideration.

(iii) For those Reconsideration Requests involving matters for which the Ombudsman has, in advance of the filing of the Reconsiderat

01:57:52 Kristina Rosette: oops.

01:57:55 Kristina Rosette: (iii) For those Reconsideration Requests involving matters for which the Ombudsman has, in advance of the filing of the Reconsideration Request, taken a position while performing his or her role as the Ombudsman pursuant to Article 5 of these Bylaws, or involving the Ombudsman's conduct in some way, the Ombudsman shall recuse himself or herself and the Board Accountability Mechanisms Committee shall review the Reconsideration Request without involvement by the Ombudsman.

02:04:29 Kristina Rosette: Thanks, Flip, that's what I thought, too.

02:06:25 David McAuley (Verisign): Flip, do CEPs have discernable start and end dates now?

02:09:32 Flip Petillion: Yhc