

## Zoom Chat Transcript – IRP-IOT Call #72 | 8 June 2021

00:27:19 David McAuley (Verisign): Helen has been a wonderful colleague at Verisign - I will miss working with her

00:33:27 David McAuley (Verisign): Thanks for the proposal, Susan

00:41:30 Mike Rodenbaugh: Good point Malcolm

00:45:51 Mike Rodenbaugh: @Sam, but sometimes it is obvious who is affected, and ICANN does NOT do anything to notify even very obviously affected parties (i.e. specific TLD applicants)

00:47:38 Samantha Eisner: I'm not sure we're able to impact ICANN's operations in that way at this time to set out a dedicated digest page. That's quite broad for ICANN to do, and the difficulties in cataloguing add to those challenges

00:48:08 Samantha Eisner: People may challenge items that are not public, so we have to consider that

00:48:56 Samantha Eisner: We also need to consider how the "reasonably should have known" fits into this - we've never yet, as far as I know, have someone unable to file an IRP because they didn't know an action had taken place.

00:49:59 David McAuley (Verisign): agree with Nigel - in fact inaction can lead to IRP - how would we catalogue that

00:50:46 David McAuley (Verisign): Fair point by Sam and Malcolm

00:53:43 Mike Rodenbaugh: ICANN has claimed time bar in several IRPs

00:54:15 David McAuley (Verisign): Thanks, Mike, I was not aware of that.

00:55:00 Mike Rodenbaugh: I don't think they ever won the argument, but they definitely have raised it, and will again.

00:55:51 David McAuley (Verisign): I agree - nice sounds there with Flip

00:56:31 Mike Rodenbaugh: Is Prong 2 meaningless if publication on ICANN's website equals "reasonably should have known"?

00:57:56 Flip Petillion: We live in the middle of nowhere ... that's why the birds are here

00:58:12 David McAuley (Verisign): Thank you, Sam, that makes sense to me - will be interesting to see the draft

00:58:18 Malcolm Hutto: "reasonably should have known is fact specific", for the Panel to determine. In some cases sufficiently prominent publications will amount to "reasonably should have known", but not in others

00:59:39 Samantha Eisner: I think that Prong 2 has a lot of meaning; it's been the entirety of our discussion for the past few months. It can still be meaningful with a safety valve

01:00:22 Mike Rodenbaugh: Thx Susan, that is helpful. Malcolm..., not so much because we should not be fighting over meaning of 'reasonable' at the outset of the IRP

01:01:29 Malcolm Hutto: @Mike, well as you know, I would delete prong 2 anyway, but ...<shrugs>

01:05:33 Samantha Eisner: We have some practical concerns as it relates to Ombuds tolling, as those complaints are supposed to be confidential

01:08:53 Samantha Eisner: Under tolling, ICANN expects there wouldn't be a "new" clock started, but the clock that was stopped would be re-started

01:13:03 Mike Rodenbaugh: Agree that CEP needs a lot of our attention

01:19:47 David McAuley (Verisign): I think Kristina's point on checking with ICANN on status of clock is a good one

01:21:46 Bernard Turcotte: time check - 30 minutes left in call

01:22:10 Kristina Rosette: I think in most cases, these mechanisms run sequentially, not simultaneously.

01:22:14 Samantha Eisner: With apologies, I have to drop. Thanks for the great conversation today

01:22:36 Flip Petillion: Interesting but pure academical

01:34:00 Kristina Rosette: W/r/t Ombudsman complaint, the tolling could be calculated after the fact and, if the person/entity filing the Ombuds complaint wanted to, they could waive that confidentiality (as is my understanding).

01:36:14 David McAuley (Verisign): I thought the outer time limit Liz mentioned was w respect to the interim accountability mechanism

01:37:37 Liz Le: @Kristina - yes, a claimant may waive confidentiality for Ombudsman complaint

01:37:47 Kristina Rosette: What one person characterizes as gamesmanship can be characterized by another person as an effort to seek resolution without having to filing an IRP.

01:37:56 Kristina Rosette: oops. file an IRP.

01:38:49 Mike Rodenbaugh: agreed

01:39:52 Mike Rodenbaugh: ICANN just closed a CEP that lasted eight years. So I don't think it is practical to put an absolute outside limit as ICANN suggests now.

01:41:02 David McAuley (Verisign): isn't the ombuds complaint confidential for all parties whose conduct is complained of, including staff or board member?

01:41:53 David McAuley (Verisign): Jarndyce v. Jarndyce CEP?

01:43:24 Mike Rodenbaugh: Nope... No resolution of any issue.

01:43:31 Mike Rodenbaugh: IRP filed last week

01:43:49 Liz Le: Indeed, there are claimants that have utilized accountability mechanisms as intended to resolve disputes, but there have also been claimants that have abused the AM process for gamesmanship

01:44:06 Kristina Rosette: @David: yes, an ombuds complaint is confidential, but it's my understanding that the outcome is not and is published on the Ombuds blog.  
<https://omblog.icann.org/index.html%3Fp=1143.html>

01:44:15 Kristina Rosette: for example.

01:44:36 David McAuley (Verisign): Thank you, Kristina

01:45:48 Malcolm Hutty: @Kavouss I was shocked to hear of an 8-year CEP too

01:48:00 Mike Rodenbaugh: It is an outlier :)

01:48:10 Malcolm Hutty: I should hope so!!

01:49:07 Mike Rodenbaugh: Correction: it was 7 years

01:49:10 Bernard Turcotte: Time check - 4 minutes left in call

01:52:59 Flip Petillion: Thank you - Good evening.

01:53:11 Bernard Turcotte: bye all