

ZOOM CHAT : IRP-IOT Meeting #73 | 6 July 2021 ! 19:00 UTC

Brenda Brewer to Everyone: Welcome to the IRP-IOT meeting #73 on 6 July 2021 at 19:00 UTC. This meeting is recorded.

0035:53 David McAuley (Verisign): we all reached for our phones, Brenda

00:37:55 Kristina Rosette: Hello everyone! Apologies for joining a bit late.

00:43:52 becky: I think that exists

00:43:56 Kurt Pritz: The Gazette might fall under the heading of 'implementation advice' or something similar

00:44:30 becky: oh, sorry. now I understand

00:50:03 Flip Petillion: Agree with that thought - it should inform and inform more formally, but maybe not more than that

00:52:19 Flip Petillion: Correct, Susan - but it's some time ago, pre-championship...

00:55:21 David McAuley (Verisign): good question - I have been thinking as a party specific issue

00:56:17 Sam Eisner: That's how I've been thinking of it as well

00:56:36 Flip Petillion: Re CEP: 'one party' - claimant does not necessarily have an interest in giving that notice - ICANN may have such interest - I see an imbalance here - I'd suggest we reconsider this point for restarting

00:59:17 David McAuley (Verisign): Kristina's reasoning makes sense to me

00:59:28 Kristina Rosette: @Flip - understood. But I think that's addressed by changing "one party" to "any party"

00:59:47 Kristina Rosette: Unless I've misunderstood

01:00:33 Flip Petillion: In practice that's mostly going to be ICANN

01:01:27 Kurt Pritz: Pas de problem

01:02:24 Kristina Rosette: Another way to address it would be to require that, if the potential claimant is a party to CEP, it must terminate CEP before filing the IRP.

01:04:39 becky: we changed rules for CEP. now the other party can flip to mediation

01:04:52 becky: as part of the transition

01:05:31 Kurt Pritz: "Maximum time" does not prevent a party from foot dragging until the time is elapsed and so, in effect, make CEP an optional process/

01:08:03 David McAuley (Verisign): My bad, misread it

01:08:15 Kristina Rosette: I think we may be making this (CEP issue) more complicated than it needs to be. Isn't it the case that the time for filing obligation (and potential tolling) is used affirmatively (e.g., as a benefit) ONLY by the potential IRP Claimant - and not ICANN?

01:09:23 Kristina Rosette: If so, all we need to do is specify that the obligation to provide notice to commence and notice to terminate is on the potential IRP Claimant?

01:11:29 David McAuley (Verisign): Glad to hear Flip's and Becky's statements

01:11:49 Flip Petillion: Kristina, in practice, it is ICANN who ultimately decides, I think

01:14:08 Sam Eisner: To Becky's point, the Bylaws state: (iii) Either party may terminate the CEP efforts if that party: (A) concludes in good faith that further efforts are unlikely to

produce agreement; or (B) requests the inclusion of an independent dispute resolution facilitator ("IRP Mediator") after at least one CEP meeting.

(iv) Unless all parties agree on the selection of a particular IRP Mediator, any IRP Mediator appointed shall be selected from the members of the Standing Panel (described in Section 4.3(j) below) by its Chair, but such IRP Mediator shall not thereafter be eligible to serve as a panelist presiding over an IRP on the matter.

01:15:14 Sam Eisner: I agree with your summation - the Bylaws are clear that either may terminate so with notice, so we can use that language

01:16:44 Sam Eisner: That's correct, Susan

01:21:44 Kurt Pritz: My point was that the CEP is optional for ICANN also, which is the perception of at least one party involved in the process; that ICANN won't address the issues at hand. So where the claimant want to continue the CEP, ICANN has cut it off. I don't know what to with that - as the bylaws say "good faith" and that is probably the best that can be done

01:27:16 David McAuley (Verisign): it seems the rational eis discovery but Rule 8 of the IRP rules addresses discovery

01:32:20 Malcolm Hutty: Apologies for joining late

01:32:47 Bernard Turcotte: time check - 30 minutes left in call

01:33:33 Sam Eisner: DIDP is for information that is appropriately publicly available. Discovery can lead to exchange of information that is NOT publicly available, so they're a bit different, though I understand the value in seeking what is available publicly/could be made public as part of reducing disputes

01:33:52 David McAuley (Verisign): Fair point, Sam

01:36:13 David McAuley (Verisign): That's a fair summary of my view, Susan

01:37:28 Kurt Pritz: I am for retaining the DIDP for tolling. Sam might be correct regarding the creation of confusion (and I accept that she is) but I think this is overcome by the need to preserve the rights of the claimant (and her/his ability to competently pursue claims), a more important concern than potential confusion

01:38:07 Kurt Pritz: Sorry I am one cycle behind everyone else

01:40:00 David McAuley (Verisign): Valid concerns raised by Sam in my view

01:40:25 David McAuley (Verisign): about tolling for ombuds

01:40:46 Kristina Rosette: <https://omblog.icann.org/index.html%3Fp=1143.html>

01:41:16 Kurt Pritz: An argument in favor of tolling for the Ombudsman is that the office is specifically named as an icann review mechanism and a claimant pursuing a claim can rely on that avenue to the (temporary) exclusion of other review mechanisms. (Not necessarily winning argument.)

01:44:56 Kristina Rosette: +1 Kurt

01:51:40 David McAuley (Verisign): But someone who knows of their claim only has about 120 days to file, isn't that right?

01:52:26 Kurt Pritz: Agree with David - I am a little, genuinely confused

01:53:11 Flip Petillion: Me too; I need to go but will listen to the recording for the last quarter. Best to all, Flip

01:54:27 Malcolm Hutty: Isn't the issue that the Claimant doesn't know whether it wants to bring an IRP until after it has received the outcome of these processes?

01:54:51 Malcolm Huty: Wouldn't refusing tolling force Claimants to file unnecessary IRPs?

01:54:56 David McAuley (Verisign): Good idea, Susan

01:54:57 Kristina Rosette: Yes, Malcolm.

01:55:54 Malcolm Huty: I'm not sure it's in anybody's interests to incentivise Claimants to file IRPs when they don't need to, other than to protect their right to file

01:56:57 David McAuley (Verisign): I have a list of things - fair amount of work yet to do

01:58:46 David McAuley (Verisign): I do

02:01:48 Malcolm Huty: The bylaws say IRPs are binding. If the parties agree to a non-binding process, does it qualify as an IRP, or is it some separate private arrangement?

02:02:04 David McAuley (Verisign): bylaw allows a non-binding irp

02:02:22 David McAuley (Verisign): 4.3(x) I think

02:02:34 Malcolm Huty: Oh really, I didn't realise. Thanks for the reference.

02:02:47 David McAuley (Verisign): near the bottom in any event

02:02:53 Scott Austin: Thank you

02:02:54 Bernard Turcotte: bye all

02:03:06 David McAuley (Verisign): Thanks Susan, Bernie, Brenda, and all