

Zoom Chat | IRP-IOT Meeting #80 | 2 November 2021 at 17:00 UTC

12:01:54 From David McAuley (Verisign) to Everyone:

hello, sorry late

12:02:18 From David McAuley (Verisign) to Everyone:

Thank you, Susan

12:02:56 From Bernard Turcotte to Everyone:

we are light on attendance so we will, start a few minutes light

12:13:45 From Susan Payne to Everyone:

@All, the 365day/12 month for repose that Bernard has used is the time in the current rules. We have of course been discussing a longer time that this in the WG - either 2 or 3 years

12:13:59 From Kurt Pritz to Everyone:

I joined a few mins late. Can the link to this doc be posted?

12:15:12 From Brenda Brewer to Everyone:

Kurt, the document was shared in Bernard's email with agenda

12:20:51 From Susan Payne to Everyone:

so, scenario 3 imagines there being no tolling/FAT. In other words the claimant is out of time because the 120 days has run

12:27:44 From Sam Eisner to Everyone:

It's not necessarily true that awareness of an adverse affect (Reconsideration) is the same awareness as of the injury or harm that is necessary for an IRP. They might be the same, but they might not be

12:29:13 From David McAuley (Verisign) to Everyone:

I very much appreciate the work that went into this

12:34:54 From Scott Austin to Everyone:

Rise of the machines. We are under the control of the table lines.

12:35:07 From David McAuley (Verisign) to Everyone:

I think that would help

12:37:07 From Susan Payne to Everyone:

to be clear, these are not proposals from Bernard. They are scenarios for us to visualise what would happen if we do not toll, versus if we toll, or apply fixed additional time

12:38:52 From becky to Everyone:

I don't understand why anyone would ever be precluded from filing IRP to challenge outcome of RFR. Makes no sense

12:39:02 From Mike Rodenbaugh to Everyone:

Agree!!

12:39:43 From Scott Austin to Everyone:

What is the average time for decision on an RFR; do we have those statistics.

12:39:48 From becky to Everyone:

It's only if the basis of IRP is different than outcome of rfr.

12:41:15 From Mike Rodenbaugh to Everyone:

In practice, almost every IRP has arisen from denial of RFR

12:42:07 From Kurt Pritz to Everyone:

I agree that that the Bylaws do not explicitly state the processes are sequential but do not agree that creating some degree of interdependence is prohibited by the Bylaws. The Bylaws are just silent on the issue.

12:42:42 From Malcolm Hutty to Everyone:

Don't people who are contemplating bringing an IRP generally file an RFR first, in the hope of achieving satisfaction in a cheaper and more timely fashion? And only file if the RFR does not deliver them satisfaction?

12:42:57 From Mike Rodenbaugh to Everyone:

Only about 99% of the time

12:43:03 From Scott Austin to Everyone:

But isn't the basis of the RFR the same publicly confirmed action/inaction as provides the basis for the IRP.

12:43:40 From Mike Rodenbaugh to Everyone:

Most of the time. Sometimes there are new grounds introduced in IRP.

12:44:32 From Malcolm Hutty to Everyone:

Often (although as Sam says, the IRP scope potentially includes some bases for challenge that are not open to be heard in an RFR - although again, nothing stops someone filing an RFR that is doomed to failure being out of scope, and I suspect they sometimes do)

12:46:02 From Sam Eisner to Everyone:

From the ICANN side we agree that there are likely ways to use the availability of tolling to help make sure that if an RFR and and IRP could come from the same act, that there is a path to meaningful challenge

12:46:16 From Mike Rodenbaugh to Everyone:

Yay :)

12:46:53 From Mike Rodenbaugh to Everyone:

That is an important principle

12:47:18 From Malcolm Hutty to Everyone:

Also, by adopting an unduly tight deadline for an IRP, we do create an artificial/semi-fictitious change of basis. i.e. you are unhappy about X, but out of time to challenge it. So you bring an RFR against X. It is denied. You then bring an IRP saying the RFR was wrong to refuse to uphold your complaint about X. Thus the IRP is formally about the RFR, although the substance is really about X

12:47:44 From David McAuley (Verisign) to Everyone:

I agree, Sam , and think Malcolm's original proposal on this is a solid basis for doing it - to me the only question from that proposal was the amount of days available to file IRP post RfR decision

12:47:54 From Scott Austin to Everyone:

Agree re additional grounds, RFR and IRP may not be all the same, but still based on the initial decision, action/inaction. Mike are you suggesting should be a new time frame run from the "new grounds" submitted in the IRP based on RFR results?

12:49:17 From Mike Rodenbaugh to Everyone:

@David - no. I just want to ensure that grounds for an RFR are not timed out from IRP, during the RFR process or for at least 30 days after RFR is decided

12:49:19 From becky to Everyone:

Why not just say you have x days (30?) to file IRP OR CEP after RFR. I know that they may theoretically serve different purposes, but this just seems simple. And 30 days after CEP concludes.

12:49:33 From Mike Rodenbaugh to Everyone:

Agree!!

12:49:43 From David McAuley (Verisign) to Everyone:

That is what I meant to say, becky

12:49:51 From Mike Rodenbaugh to Everyone:

And in practice that is what ICANN always has agreed with in the past

12:50:07 From Mike Rodenbaugh to Everyone:

In 'my' practice

12:50:17 From Kurt Pritz to Everyone:

Is that not the gist of Malcom's suggestion?

12:50:38 From Susan Payne to Everyone:

@Becky - I think that's Malcolm's FAT proposal. some members last time asked to see this visually to better understand the proposal Malcolm had made

12:50:42 From Malcolm Hutty to Everyone:

That was exactly what I intended Becky

12:51:15 From Malcolm Hutty to Everyone:

I don't really understand this charts, but if it's helping someone, fine.

12:58:13 From Mike Rodenbaugh to Everyone:

I won't ask what happens if the CEP lasts eight years :)

12:59:16 From Mike Rodenbaugh to Everyone:

Again, CEP must toll filing of IRP, as has always been the practice as far as I know. Are we talking about anything different than that?

12:59:32 From David McAuley (Verisign) to Everyone:

here I agree with Mike

13:01:06 From David McAuley (Verisign) to Everyone:

I can agree with what Malcolm just said if the FAT is reasonable

13:03:00 From Susan Payne to Everyone:

@Mike - yes that's a possibility. It's for us to decide. Even if not addressed within these IRP rules we're tasked to also redo CEP rules, which are completely out of date

13:06:50 From David McAuley (Verisign) to Everyone:

acronym soup - CEP-RfR-IRP

13:10:27 From Sam Eisner to Everyone:

Need to step AFK for a minute - be right back

13:12:54 From Scott Austin to Everyone:

To David's comment, for what its worth, CEP is not found in the ICANN database of Acronyms but IRP is. How often has CEP been used?

13:13:48 From Susan Payne to Everyone:

on these scenarios 2 and 3, of course 469 days is a long time for a CEP - by no means unprecedented, but I think the intent under the new Bylaws is for CEP to be concluded more promptly

13:15:29 From David McAuley (Verisign) to Everyone:

Maybe CEP rules can address the max term period for CEP to run with insights from practitioners in forming a reasonable rule

13:16:55 From David McAuley (Verisign) to Everyone:

Thank you, Bernie

13:18:58 From Mike Rodenbaugh to Everyone:

@ Scott - CEP is always a precursor to IRP, as otherwise Bylaws permit ICANN to recover IRP ATTORNEYS' FEES if they win the IRP

13:26:17 From David McAuley (Verisign) to Everyone:

Thanks Susan, Bernie, Brenda and all

13:26:24 From Bernard Turcotte to Everyone:

bye all