BRENDA BREWER: Good day, everyone. Welcome to IRP-IOT Plenary call number 89 on 29 March, 2022 at 18:00 UTC. Today's call is recorded. Kindly state your name before speaking for the record. Attendance will be taken from Zoom participation. And with that, I will turn this meeting over to Susan Payne. Thank you.

SUSAN PAYNE: Lovely. Thanks very much, Brenda. Thanks, everyone, for joining. This is, as you all know, our IOT plenary call for the 29th of March. Let's get going. We do have a quorum, although we hopefully may pick up another few people along the way.

First up, our first agenda item, as ever, is to review the agenda and do updates to statements of interest. Let's do the statements of interest first in case there are any. Does anyone have any updates they need to flag to group? Okay. Not hearing any so we'll keep going. Obviously, feel free to stick it in the chat if that's easier.

In terms of reviewing the agenda, we'll, I hope, have updates from the two subgroups we've got going—the one on initiation and the one on consolidation. Then agenda item three will be just wanting to circle back and confirm the consensus that we reached on the 30-day fixed additional time option for filing the IRP.

Then agenda item four, we need to continue our discussion on the repose and safety valve language. I circulated fairly late on today. I made an attempt at capturing the various areas of agreement that I

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think we had been coalescing around and tried to reflect that in the language of the rules. So we'll be able to review that during this call. And then confirmation of our next meeting. It's the 12th of April at 18:00 UTC.

So back up to the updates from the subgroups, although I will just check who it is who's joined us on the phone. There's someone with a 354 number who's joined us on the phone. Can you identify yourself? That would be super. Then we'll be able to capture you as attending. Okay. A 703 number ending in 354. Are you able to identify yourself?

KRISTINA ROSETTE: Hello?

SUSAN PAYNE: Oh, hi. Is it Kristina?

KRISTINA ROSETTE: Yeah, it is. Sorry. I'm going to be on the phone for the first hour. I've got dinner duty for the baseball team for tonight so I'm going to be driving.

SUSAN PAYNE: No worries at all, Kristina. Thanks for joining us anyway, even though it's obviously a bit awkward. Perfect. Good. Thanks for that. All right. Then we will kick off with the updates from the subgroups, if any. I don't see Mike Rodenbaugh on here for the initiation group. I don't know if anyone else from the group has any update that they want to give. I

know there's a draft report from that group being worked on. I'm not sure if there's any update. Otherwise, we'll just park that until next time. Okay. I'm not seeing any hands so I think let's park that. And if Mike actually manages to join us in a bit, maybe we can circle back to that.

All right. In terms of the consolidation sub-team, really, the update is somewhat similar to on our previous call, to be honest. We are still working through the proposed redrafted rule seven, which deals with consolidation, intervention, and participation as an amicus and looking to flesh that language out a bit. And also, the main change that has been addressed in this new version of the subgroup is that we are proposing that these applications get considered by the full IRP panel—a three-person panel. So that required some sort of tweaking and consequential change to some of the parts of the rule.

So we've largely discussed, and I think reached some agreement, on the section of rule seven that deals with consolidation. We do still need to review the language on intervention as participation as an amicus. But likely, we will speed up as we do that because I think a number of the points are actually common to all. So we have hopefully already discussed them when we've been discussing consolidation.

Then there are some points that we will be bringing back to the full working group, which we're capturing as we go along and I think mentioned on the last call. So we will be coming back with, effectively, some recommendations and also some areas where we were not able to agree as a group precisely what the best way forward is so we may

well have a suggestion. But there are a couple of items where we're looking for the input of the full plenary in order to finalize the role.

So I think that's it for now. We're hoping we won't need to have too many more subgroup meetings in order to resolve this and bring it back to the plenary. Okay. I'm not hearing or seeing anyone with hands up, which is great.

Let's move on to the substantive work for the call, in particular the agenda item three, which is basically to refer back to the agreement that we have reached in relation to fixed additional time and, I think, just put that one to bed, hopefully.

So with that in mind, I circulated yesterday, essentially, a summary of where I felt that we had got to and reached agreement on the last couple of calls. Just wanted to have that captured in writing and give people an opportunity to consider to ensure that it captures the understanding that we'd all reached. I think it's probably worth just quickly summarizing that for the purposes of this call. So maybe I'll just quickly read through that. And obviously, looking for any reaction, particularly if anyone feels that anything is incorrectly captured or missing.

First off, I just tried to set out some background as a reminder of why we're doing this. Essentially, this is intended to address the concerns that the community raised in the public comments, which a number of members of this IOT group also shared, that the time limits for bringing an IRP shouldn't have the effect of dissuading a claimant from pursing other accountability mechanisms, which might have the effect of

resolving or narrowing the matters in dispute, potentially even disposing of the dispute altogether—particularly, for example, the request for reconsideration. We were concerned that the time limits to bring an IRP shouldn't dissuade you from using the request for reconsideration for fear of being put out of time.

During our initial discussions on the topic, we considered the idea of tolling the time limits for bringing an IRP to account for the time spent in the request for reconsideration. But there were some members of this plenary group who raised concerns about the complexity of that and the potentially-lengthy period of time that then might be passing before an IRP was actually commenced.

Therefore, a proposal was put forward by Malcolm, suggesting that perhaps we allow a fixed period of additional time. That arose out of the desire to strike a reasonable balance between allowing time to pursue other accountability mechanisms but also resolving disputes in a prompt and efficient manner and not having undue delay.

So we also considered the question of whether a dispute which is appropriate for an IRP might also fall within the scope of the request for reconsideration process. We did have quite lengthy debate about that. And we did, as a majority—certainly not everyone—but as a majority I think that we concluded that it could, particularly given the Bylaws as they currently exist, post-transition.

In terms of the agreement that we reached, it was to apply where potential claimant to an IRP first brings a request for reconsideration relating to the same sort of dispute. I've used capital D in my summary

to try to reflect the fact that Dispute is a defined term in the Bylaws. So it's to reflect the fact that it's the same issue that's being … It's not a request for reconsideration about an unrelated matter.

And provided, of course, that when the request for reconsideration is brough the claimant is not already out of time to file an IRP. I haven't worked out how those timings work. But I think, based on the timing for a request for reconsideration, I don't think you could be out of time. But just capturing that, just to be clear. You aren't saving yourself by going down this process. You'd have to still be within time to bring an IRP.

So, as I said, the agreement reached is where that request for reconsideration does not wholly serve to resolve the Dispute, and the claimant now intends to commence their IRP, they're then granted a period of 30 days within which it initiate the IRP. This 30-day period of fixed additional time would run from the publication of the approved resolution by the Board on the final disposition of the request for reconsideration. And provided that the IRP is commenced, or provided that a cooperative engagement process is initiated within that 30-day period, then the claimant will not be considered out of time to file their IRP.

Then, we also considered … Briefly, we discussed how this impacts with the cooperative engagement process or CEP. We concluded that we would consider the detail of whether it was appropriate to apply a fixed additional time concept to the cooperative engagement time period when we're looking at the rules for the CEP. So we didn't consider whether to actually apply the concept of a fixed additional time to a cooperative engagement process. But we did discuss that, if indeed,

once we have reviewed and revised the rules on the cooperative engagement, if necessary, we can revisit this if we need to.

And we did not agree to apply the concept of fixed additional time to complaints to the ombuds or to DIDP requests. We concluded that it was most appropriate to use this mechanism for requests for reconsideration and that's where we focused our attention. And as I say, we will undoubtedly consider whether the same concept is appropriate for a cooperative engagement process when we come on to do the rules for the CEP.

So that is my attempt to set out for the group where we've reached agreement on this. Hopefully it captures it. But I'm obviously keen to hear if anyone has any comments. I see David has his hand up. So, David.

DAVID MCAULEY: Thank you, Susan. First, thank you for the summaries. I very much appreciate the way you do that before our meetings. You set the table for us and I know a lot of work goes into it so thank you. The comment I have on this is extremely unlikely to happen in practice. But since it could, I think we ought to be clear about what we say here. It seems to me that somebody who brings an RFR may actually have more than 30, based on the original 120 days they would have.

Let me give an example. ICANN takes an action on day one. Someone files and RFR on day two. And two and a half months later, the RFR is finished—let's say 75 days total. So they would have not 30 days to file. They'd have 45 days to file, if my arithmetic is correct. So they would

have at least 30 days. For instance, if the RFR took up to day 119 to resolve, then they would have 30 days—that kind of thing. So I just think it might be a point of clarification. Thanks.

SUSAN PAYNE: Thanks, David. Yes. It's a good point that you raise. I think, on our last call, that perhaps wasn't the proposal as Malcolm was presenting it. I think—and I'm sort of putting words into Malcolm's mouth—but I think was envisaging that if you're bringing a request for reconsideration, effectively, the timing is just 30. Almost, your clock stops altogether. So if the RFR runs short, you'd still have 30 days. And if the RFR ran long, you still have 30 days. But I think this is a point worth us discussing and conforming that we're on the same page on this, just to be sure that we all are in agreement. Liz?

LIZ LE: Thanks, Susan. This is Liz Le with ICANN Legal. Just a point of clarification. Is the proposal that a potential claimant would get the fixed additional 30 days, regardless of whether or not the reconsideration process takes 135 days to finish, or if it takes 30 days to finish, or if it takes 90 or 135 days? The proposal is if a potential claimant files a reconsideration request, they would automatically get the 30 days of fixed additional time?

SUSAN PAYNE: Thanks, Liz. Yes. That was my understanding of the proposal—certainly, as discussed and clarified on our last call and as I felt was being

presented and presumed agreed to. But I think the fact that these questions are being asked perhaps suggests that we do need to be sure that that is what we're agreeing to. Malcolm?

MALCOLM HUTTY: Yes, that's kind of what fixed means. It's the same amount of time regardless of how long the process that was [inaudible] concurrently means.

The only thing that varies—it doesn't really vary, but the only thing that is important. The other thing that's important to note in that is that if there is fixed additional time, it would run concurrently with any remaining time that might allow from the normal basic 120 days, if there were any leftover at the end of that period, not consecutively. So if at the end of the RFR, you actually still had 10 days left of your 120 days on the day the RFR completes, you would have 30 days to file your IRP, you wouldn't have 40.

SUSAN PAYNE: Thanks, Malcolm. And just to be absolutely clear, as well. So your RFR ran for 80 days, and so you have 40 days left of your 120 when the RFR is completed, you'd still have 30.

MALCOLM HUTTY: You can't actually assume how many days the person would have left without knowing not only the length of the RFR but also when it was filed. But basically, you don't lose—if your 120 days hasn't run out, then you don't lose that 120 days. You could still have that instead. But it

runs concurrently with a fixed additional time. So the fixed additional time doesn't add on to the end of your 120 days. It adds on to the end when the RFR finishes.

SUSAN PAYNE: Okay, yeah. All right.

MALCOLM HUTTY: So it might be that a really quick RFR that was filed really early and that actually completed in record time, you go, never mind the fixed additional time, I've still got another 60 days left on my 120 days. So I've got 60 days left to run. Great. Lucky you. You don't shorten the 120 days because of this procedure.

But it's unlikely that that will ever be the case, because the RFR tends to take much longer than that. But if there is some time left of your regular 120 days, you don't get to add this fixed additional time onto the end of it. This is a fixed time that after the RFR, if you're out of time, you nonetheless have 30 days. That's it under all circumstances, no ifs, buts or maybes about how long it took, when it was filed or the rest of it. it's 30 days. And that's it, and then you're out of time.

SUSAN PAYNE: Thanks, Malcolm. Okay. Apologies, then I may have confused things by slightly misunderstanding last week. so I'm not sure I've absolutely captured that in the summary.

MALCOLM HUTTY: I think that makes sense in [the way you tried to] explain it.

SUSAN PAYNE: It certainly does make sense to me.

MALCOLM HUTTY: And it makes it simple as well.

SUSAN PAYNE: Yes. But I think perhaps given that we're having this conversation, and I may be the only one who was a bit confused. But I want to make sure that we're all on the same page. So I'll just pause and see whether anyone disagrees with that explanation as you've now presented it, Malcolm. And I can see Liz's hand. I'm not sure if that's a new one, Liz, but I will turn to you.

LIZ LE: Thanks, Susan. It is the new hand. So I just want to make sure I understand the proposal because I think we've had different variations of it in our discussion for the last couple meetings. If I understand correctly, the proposal, 30 days, that 30 days is fixed. It's not going to change. I understand what fixed means.

But at one point in time we talked about it would be adding 30 days only if the requestor's time remaining to file the IRP was less than 30 days. So it's the greater of whatever was remaining. So maybe it's two sides of a coin. But what you're saying is if a person files a request for

reconsideration, and provides the notice that that person intends to file an IRP, if the issues in the reconsideration request doesn't resolve itself, at the moment of filing the reconsideration request, there's an automatic 30 days added on to that person's time to file an IRP? And then at the end, if that 30 days that's added is the greater of the time period to file an IRP versus the amount remaining of the 120, then you would go with 30. So you would never get more than 30. Is that right?

MALCOLM HUTTY: The fixed additional time is not added to the 120 at all. Yeah, the fixed additional time is just simply that if at the end of the RFR, you're out of time, but you are not out of time when you file the RFR, then you've got 30 days from when the RFI completes to file. That's an alternative time rule.

But if at the time when the RFR completes, you're not out of time and you've got more than 30 days left, you're not out of time. So, great. If you've got 40 days left at the end of the RFR according to the ordinary 120-day rule without having considered a fixed additional time, then you've still got 40 days. And if you've only got 10 days left, then you've got 30 days.

SUSAN PAYNE: Thanks, Malcolm. So effectively, it's what you were expressing initially, Liz, the longer of however much time is left on your 120 days, or 30 days, whichever is the longer.

LIZ LE: Thanks. Okay. So that's what you're adding. From Org's standpoint, a person still has the advantage of the time that the RFR ran. So if the request for reconsideration ran and a time process was 100 days, then it's 100 days plus an additional 30 days. So that means that the participant has actually 130 days to file an IRP, which is more than what would be allowed under the current proposed timing rules of 120 days.

SUSAN PAYNE: Absolutely, Liz. Yeah.

MALCOLM HUTTY: You could represent it that way, if you wish. I wouldn't say it that way. But the way the rules work have been explained. How you choose to represent them is up to you.

LIZ LE: Well, thank you, Malcolm, I'm just doing simple mathematics. So I just want to make sure I understand the mathematics. And that sounds—Susan, it sounds like you're affirming that calculation is accurate the way that we're understanding it.

SUSAN PAYNE: Yes, with the additional comments that there's a reason for this. This is why we're having this discussion, because to go back to the explanation of the background, we're perceiving otherwise that there's a significant chance that if someone brings a request for reconsideration, then by the time it's finished, they would be out of time. And so we don't want

them to be out of time. And we feel that it's appropriate to give them a reasonable but not unduly long period of time in which to allow themselves to get themselves together to then file their IRP given that they had been hoping that the request for reconsideration would dispose of their disputes.

So we're not trying to unduly extend the time limit. But yes, we are trying to come up with a process which seems simpler than tolling the time limit because it's a fixed time period that we're proposing that allows for access to the accountability mechanism without putting you out of time for bringing an IRP.

Okay, I'm not seeing any other hands. Sorry for us sort of ending up laboring this. And I think that may be my misunderstanding for which I apologize. But I think we've all we're all back on the same page now. I'm hoping that's the case by the sort of silence and the lack of further hands. So I think we have agreement. We perhaps—given that I have caused this confusion, perhaps we should put this on the agenda for a final kind of like second reading to make sure on our next call. But I think we now are at agreement on this, I hope.

All right. Then, in which case, perhaps we can move on to our next agenda item, which is the, to come back to the discussion on the repose and safety valve language. Oh, sorry, I've just seen your hand. David.

DAVID MCAULEY: Thanks, Susan. I just want to suggest that when we put this on the agenda, we ask people, if they know they're not going to be at the next

meeting, to say where they stand on this on list just so we can maybe wrap this one up. Thank you.

SUSAN PAYNE: Thanks, yeah, good idea. And we can definitely do that as well. All right, so we then can now continue with the discussion on the repose and safety valve language. And apologies for being quite late with circulating a sort of new draft. Much of what I circulated isn't new text. Some of it was text that had actually been circulated on email. Some of it was more of a discussion that we'd had and sort of principles that we agreed on on some of our recent previous calls.

But I'd said that to try and help us bring this home, that I would try and pull the language together so that we could all see what we had been discussing and kind of reaching agreement on.

So with that in mind, I think, Brenda, if you could pull up the rule for the latest draft table, I'm hoping that we can just sort of run through it and confirm that we have some agreement here, or at least check and explain the amendments that I've made and therefore give people an opportunity to review between now and hopefully give feedback on e-mail. But subsequently, we can come back to this on our next call.

So when working effectively off the right hand side of the document, reflecting some of the discussion. And in relation to clause A, these amendments are those that as I talked about just now, I had circulated by email, the amended language to reflect the concept of being materially affected by the action, being challenged in the dispute and

just a replacement for that language of material effect that we all felt was clunky and sort of uncomfortable.

So I won't sort of read through the whole thing unless people would like me to, but just to flag that what had been circulated on email and we talked about on our last call was changing that reference so that we're talking about the two different time limits that the claimant has, the first one being for disputes, challenging Board or staff action they have 120 days after the claimant becomes aware or reasonably should have become aware of being materially affected by the action being challenged in the dispute.

And then because the IRP can also be brought in relation to inaction, for disputes challenging Board or staff inaction, then it's 120 days after the date on which the claimant became aware of or reasonably should have become aware of being materially affected by the failure to act being challenged in the dispute. So essentially it's the same sort of effective language, but just depending on whether it's an action or inaction that's being challenged.

And then if we could scroll down, Brenda. And then the second time limit is the repose time which is set out in B and there's no amendment been made to that, although this is something that we haven't yet agreed on the term of this repose, but clause B is a reference to the sort of outright time period of what's currently 12 months from the date of the action or inaction that's being challenged.

And as I said, that's still to be agreed, that 12 months, or that time period, whether that should be 12 or something longer. We talked

about 24 or 36 months a number of times. And then in paragraph C, this is some new text, rather a new amendment, but not a new concept.

The language that I had circulated by email regarding who should hear the request for leave to bring an IRP out of time, we talked about that. And the rule had been drafted as though this request is made to the IRP panel.

And as we discussed over a couple of calls, the panel isn't in place and indeed doesn't get put in place until you have an IRP underway. And so we talked instead about having some alternative mechanism, or rather alternative place for the application for leave to be made, given that it can't be made to the IRP panel. So there's some new language inserted further down. But that's the reason for that slight amendment to the beginning of paragraph C.

And then moving down, I have also deleted subparagraph one which references the claimant satisfying the standing requirements set forth in the bylaws as being something that they should have to prove by clear and convincing evidence.

This was something we discussed and concluded on our 11th January call. But whilst it was appropriate to remind people potential claimants that they do have a standing requirement, that standing requirement does apply to all IRPs and it wasn't really appropriate for the potential claimant in these circumstances to be expected to prove this by clear and convincing evidence at this stage.

So as we discussed, I deleted that but have picked it up again a bit further down in terms of asking the claimant to just reflect in their application for leave an explanation of how these have standing.

Okay, and then in subparagraph two, which obviously would now become one, we have the two different sort of—In these subsequent two paragraphs, we have the two different circumstances where the claimant might be seeking leave to bring their claim out of time.

The first is that there have been extraordinary circumstances not caused by the claimant that prevented the claimant from becoming aware of the action or inaction being challenged in the dispute within the timeframe set out early on in this rule.

And then this is where I made an amendment again, which is something that we discussed on the 11th of January. And it may be that this does need some thought by this group now that when you have an opportunity to review this language to see if it's what was anticipated and intended.

But we talked about the circumstances where under the bylaws, you have to have been materially affected by the dispute in order to be eligible to be a claimant. And I had questions whether that circumstance where you're unable to bring your IRP because you're not yet eligible to be a claimant was captured in the subparagraph below this one.

But as we discussed on the 11th of January call, Liz had expressed that this was intended to have been captured in this subparagraph. And so I had suggested that I would suggest some language about how we might capture that to make sure that it's understood.

So that's what is attempted here. But as I say, it may well be that people have some views on this when they've had time to think about it.

And I will just keep going in the absence of seeing any hands. I appreciate that most people are seeing this for the first time. So I'm not really necessarily expecting to be able to get substantive feedback, but obviously very welcome to receive any.

But the alternative extraordinary circumstance in what was subparagraph three, and which would be renumbered, is that extraordinary circumstances not caused by the claimant prevented the claimant from being able to file a written statement of dispute within the time period in question.

And as we discussed, I haven't amended this one, as we discussed, this subparagraph was intended to capture the sorts of situations that Kavouss was expressing the sort of earthquake, fire, war, act of God, that kind of circumstance that was sort of physically preventing the claimant from being able to file their written statement of dispute in time rather than being prevented because they were not yet eligible.

And then this new language that I've added to the of paragraph C is to capture that concept of having standing. So rather than us now expecting the clear and convincing evidence of the standing for the claimant, it's just something to reflect that we would expect in the application for leave to file a late written statement of dispute, the claimant should give an explanation of how they satisfy the standing requirements, really just to ensure that they appreciate that they have to at least flag that they have standing.

And then if we scroll down a little further to paragraph I think D, Brenda, please. Thanks. Actually, if you keep going, that would probably be helpful because I think D goes over the page. Perfect. Oh, that's it. That'll do. Lovely, thank you.

All right, and then D deals with the requirement for the claimant who's seeking to get leave to file late. This requirement that they should include their proposed statement of dispute so that the panelist considering this application knows what is the claim in question. That is not changed. But there is an amendment in Subparagraph i to pick up the “being materially affected by” language that we used earlier on in this rule.

And then I did include some new text at the end to again reflect a principle that we discussed and agreed on our 11 January call where we discussed that nothing was intended here to disadvantage a claimant who thought they were in time and therefore commence their IRP as they thought appropriately and their timeliness was then challenged and challenged successfully by ICANN.

We didn’t feel that they should then be prevented from seeking leave in those circumstances as a result of what we’ve drafted into this rule because that wasn’t really the intention. This rule is intended to capture the claimant who knows they’re out of time and is therefore asking to file late. But we didn’t feel that it was appropriate to put someone…to disadvantage someone who believed they were in time but was proved to be wrong.

And so I included this additional sentence into Paragraph D to state that nothing in this Rule 4.D is intended to preclude a claimant who has initiated an IRP in the belief that their claim is within time but where that timeliness is successfully challenged from then seeking leave to pursue that IRP out of time in response.

Again, this is a concept that we talked about on the 11 January call but we hadn't captured in the draft. And so that's what I'm seeking to do here now. And again, since this is new language but not a new concept, when people have had an opportunity to review it there may well be some thoughts on how it's drafted or some suggestions on how better to reflect this concept.

Thanks, Brenda. So if we could scroll down again. Perfect. All right, and then I think if we can keep going we can do I think hopefully most of E. Yes.

So E is a new section of this rule and is seeking to address, again, the point that we've discussed but is new language that we should…we discussed the concept of having these applications heard by a single panelist. And I know that we're not necessarily all in agreement on this, but I think perhaps it's helpful to have some language in order that we can flesh out whether there are concerns about this idea of using a single panelist.

And so the suggestion, and I will read this one out, is that any request for leave to file a written statement of dispute under 4.C shall be directed to the IRP provider who will appoint a single panelist to consider and make a determination on the request.

And then Subparagraph i, where the standing panel is in place, ICANN and the claimant shall endeavor to agree on a single panelist. Where they are unable to do so either party may request that the IRP provider appoints a single panelist from the standing panel using the procedure set out in ICDR Rule 13(6).

And then Subparagraph ii here, in the event that no standing panel is in place ICANN and the claimant shall endeavor to agree on a single panelist. Where they are unable to do so either party may request that the IRP provider appoints a single panelist using the procedure set out in ICDR Rule 13(6).

So just as an explanation, [inaudible] for present purposes the process is very similar whether or not there's a standing panel in place. The main difference would be the pool of panelists from which the ICDR provider would be pulling the suggested panelists from. If there's a standing panel in place, then we have a fixed number of names that the ICDR provider will be proposing in that ICDR rule under that ICDR rule process. And if we don't have a standing panel, the ICDR has that 13(6) process that we've talked about for suggesting names and getting the parties to rank them in order of preference and to pick a single provider based on that process.

And so, as I say, that's the suggestion. We talked about this as being perhaps something that would serve for now and that this issue in particular might be one that is very well suited to the standing panel itself once it is in place. Under the bylaws the standing panel themselves can propose changes to the rules, and we felt that once the standing panel is in place this may be a very suitable area of the rules for them to

discuss and perhaps consider an alternative mechanism. But for the present purposes in order to have some mechanism in place until the standing panel might be in a position to do that, this is my suggestion.

But again, this is a concept we've talked about. I wouldn't say necessarily we were wholeheartedly in agreement, but there was some support for this concept. And I thought it would be helpful to have some suggested language that we can then discuss around.

And then finally, I think we're getting close to the end of the amendments now. The new Paragraph F is some language that was proposed by Malcolm in his email on 9 February. And again, we've had that circulated by email for some time, and we did also talk about it on our last call. But I'll read this out as well.

When considering whether an applicant should be permitted to file an IRP claim out of time, the panelist shall have regard to the purposes of the IRP and any jurisprudence of IRP panels relevant to the interpretation of this clause in the light of the purposes.

As you'll recall, this is language that Malcolm had proposed that was…to try to give some guidance to panelists in hearing these requests and to try to deliver some consistency of decision-making on these late applications for leave to bring an IRP.

Okay, and then if we could scroll down again, Brenda. I think we might be at the end of the amendments, but I'm not sure.

The next few paragraphs have been renumbered, but I think not amended. That's correct. So we have a…it has now become Paragraph

G. That's giving, for the avoidance of doubt, ICANN having a right to respond to the request for leave.

And then newly renumbered Paragraph H now is the outright time limit of basically under no circumstances may a claimant seek to file a statement of dispute more than four years after the date of the action or inaction being challenged in the dispute. And again, this is one that we have considered certainly on our last call. I think none of this group felt that that four-year period was unreasonable, and there was I think a degree of comfort in this group about having an outer time limit.

And then finally, in what is now Paragraph I, again this text hasn't been amended but it's a reference to in order for the IRP to deemed to have been timely filed, all fees must have been be paid to the ICDR. And the reason that this is…that there's a highlighting on this text is just because this does have some interplay between this and the work that the initiation subgroup are doing. And so we may need to revisit this language depending on what the outcome of that initiation subgroup work is.

So I think that is the end of this Rule 4. And I hope this at least from that quick cantor through that this all makes sense. But let's start first if anyone has any questions on any of it. And if it doesn't make sense or you aren't clear how I've come to the suggestion that I've come to, then perhaps let's start with that. So I'll just pause and see if anyone has any questions. Okay, I'm not seeing any.

And then alternatively, again, I know this was only recently circulated, but if there is any immediate feedback on it, again, very happy to

discuss any of this now. Particularly some of that new language which was seeking to reflect concepts that we discussed. David?

DAVID MCAULEY: Thank you, Susan. My reaction to it is I need more time, as you said, to ruminate on all this stuff. But let me just mention one thing, and I mentioned it before. I think it's in our interests as a group to keep a running tab of suggestions we may have at the end of this process for tweaking the bylaws on the IRP. You know, for addressing gaps and things like that.

And what prompted me to say that is this bit about if an IRP standing panel is in place, ICANN and the claimant will try and choose a panelist to determine this question. And if they can't, it would go to the ICDR. The ICDR being involved in this seems very clunky to me. I mean, it's probably the best we can do right now, but I think the bylaws, it would be good to update the bylaws to say there will be something that we call a chief panelist too. Panelists will rotate amongst the seven or nine, or however many it is, on a rotating basis. A duty panelist who will decide questions like this, questions of petitions for extraordinary leave, all that kind of stuff.

And the bylaw provision that says the standing panelists can suggest new rules actually says they can suggest new rules in consultation with us, and so we will have a continuing role in that. So I guess what I'm doing is just sort of saying that again. I think it's in our interests to keep a tab on things like this because if there was an automatic procedure

where you would know which panelist decides this, it would just save a lot of grief.

Anyway, thanks. Thanks for doing all this too.

SUSAN PAYNE: Thanks, David. I'll ask…certainly in the consolidation team we've started keeping a kind of running tab, but to the extent we don't have one already in this group, Bernard—and I think perhaps we do—but would it be possible to also start keeping a running tab on these kinds of things? I think that would be really helpful.

But actually I have a question for you, David, or perhaps even it's for all of us. I'm not sure that we can in these rules require that the standing panel have a chief standing panelist or a chair of the standing panel. I think it seems quite reasonable that there might be one, but I don't think in these rules we can do that.

But it does seem to me that we probably can in these rules develop the concept of a sort of duty panelist. It's not that dissimilar to the concept of a procedures officer that does exist under the current interim rules and that we have been…and largely exists under the current interim rules or just for these applications for consolidation, intervention, and joinder.

But I think if we feel that there are various places where there might be scope for having some kind of a duty panelist who becomes the single panel to hear anything that requires a single panelist, I think we could probably build that into the rules without necessarily needing to change

the bylaws. Perhaps. I may have misunderstood you though, or you maybe have your hand up to respond to that. So I'll come back to you, David.

DAVID MCAULEY: Thank you, Susan. No, I see on the chief panelist I would agree with you. I don't think we have the power to do that. To me, that's one of the gaps that at the end of this process if we do have some things we want to mention to the ICANN Board, we might say we think there are gaps and it might be advisable to amend the bylaws to provide for something like this. That's really all I'm suggesting.

There are a couple other areas amongst the bylaws. I did this one. I went through a process of thinking about what's in here that we should suggest changes to. And I don't have it in front of me, but there are things like that.

But I agree with you. We don't have the power to appoint someone a chief panelist. At least I don't think so. Thanks.

SUSAN PAYNE: No, indeed. I think I agree with you, and I think that definitely is one to capture. But I was wondering whether we actually would have the power to build into the rules the notion of a duty panelist that's like a rotating post. And it feels to me like we should be able to, but I'm not absolutely certain. So I am looking for reaction to that, really. And it may be something that we need to ruminate on and come back.

Okay, I think let's ponder and consider that one further. Okay, all right, and again, I think as David said, it definitely warrants people having more time to think about this and to review the language. So I'm not seeing any other hands at the moment, but if there are any or if anyone does have any immediate reaction or comments, then please speak up. Otherwise, it may be that we may have got as far as we can go for this particular call.

Okay, I think as I mentioned when I was running through this rule, one of the other things that we still have parked in undecided is how long should the time period be for the repose. In the interim rules it's 12 months. I believe there was quite a lot of feedback suggesting that 24 months or 36 months was more appropriate.

I don't know we can really launch into that discussion again now given that I didn't tee this up in the agenda and that it would probably warrant going back to looking at the public comment input that we had on this. But I think perhaps that is something that we could…it feels to me that in order to properly wrap up this timing rule we do need to circle back to that even if as a result of our further discussion we decide that we simply have to put it out when we put this rule out to public comment. But I think we need to have that discussion, and so I will flag that for also a topic for us to I think try to come back to on next week's call. Not next week. On our next call.

And maybe if I could ask, Bernard, I know you've circulated it many times before, but it probably would be helpful for the group to have that public comment input relating to the timing of the repose time

period recirculated again so that people can refresh their memories on why it is a matter for discussion, if that's okay.

Okay, all right, then. I think we are wrapping up a little early this time, but I don't want to waste people's time when really people need time to review this and we can come back to this language.

As I've said before, if people have thoughts that they want to share by email, that would certainly be very helpful to try and move the discussion on. Perhaps that's the other thing that could usefully be done is to have this language put into a Google doc that people could type their own comments or suggested edits into. At this point, that would probably be quite useful as well. Which I think, again, is probably a task I'm going to ask Bernard for assistance with.

So if you're able to provide input either by email or preferably by editing in the Google doc between now and the next call, that would be really helpful. But we will then come back to this language and hopefully be in the position to substantively discuss and ideally agree on the next call.

Okay, all right, so just again to confirm, our next meeting is on 12 April in the 18:00 UTC time slot. And with that, we can stop the recording please, Brenda, and I'll let people get back to their day.

[END OF TRANSCRIPTION]