
BRENDA BREWER: Good day, everyone. This is Brenda speaking. Welcome to the IRP IOT Plenary call number 90 on 26 April 2022 at 18:00 UTC. Today's call is recorded. Kindly state your name before speaking. And have your phones and microphones on mute when not speaking. We will take attendance from Zoom participation. We do have apologies from Malcolm and Scott. And I will turn this meeting over to Susan. Thank you.

SUSAN PAYNE: Thanks very much, Brenda, and thanks everyone. Welcome to the IRP IOT Plenary Group call. We don't really have a quorum on this call. We're a little light in numbers. But I think, given that we are already—so I was hoping that a couple of others were planning to join. So I think it's worth us kicking off and seeing how we get on. And I am hopeful that we may get at least another one person, possibly two. So let's do that and we'll see how we get on. If we stay light on numbers, we won't be able to reach any decisions. But I think, given that some of us have been able to join, it seems a shame to cancel the call altogether.

So first up, we, as usual, do the review of the agenda and updates to Statements of Interest. I'll do the SOIs first in case anyone has any updates. I'm not hearing anything. So let's keep going. So on the agenda review, we've got the review of the action items as agenda item two. Agenda item three is the update from the sub-groups.

Then on four, we will review the amended 30-day fixed additional time language of our agreements just to circle back to that since we did make

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some slight changes, following clarification on the last call. And then agenda item five is to continue the discussion on the repose and safety valve language. And confirmation of our next meeting, 10th of May, 2022 at 18:00 UTC. And it's looking like I think we have Mike Rodenbaugh just joining us, which is super.

MIKE RODENBAUGH: Hi, Susan. Sorry I'm late.

SUSAN PAYNE: No problem at all, Mike. Welcome and very pleased to have you here as we were not quite at quorum. I think we just have hit quorum with you with us. So that's I think very positive. All we've done at the moment is just done the quick agenda review. So you haven't missed anything.

MIKE RODENBAUGH: Thanks.

SUSAN PAYNE: Lovely. So if we turn to agenda item two, that is the review of the action items. There were a couple of action items that both sat with Bernard that both were completed. So Bernard was going to move our safety valve language into a Google doc. And that was done and that was circulated to this group on the 30th of March. So everyone's had that for quite some time now.

And then the second action item was Bernard was going to recirculate the public comment responses on the repose specifically for our discussion on agenda item five. And that was done, as well, on the 11th of April. So, again, hopefully, you've had an opportunity to remind yourself of that.

And we have that for when we go into our discussion on agenda item five. And I'm just noting for the record that we have also now been joined by Kavouss, which is great—welcome, Kavouss—and by Leon Sanchez who is one of the Board observers. So, again, welcome, Leon. Thanks for joining us.

So agenda item three is the update from the subgroups. I will briefly turn to Mike to see if there is an update from the initiation subgroup. But it may be then that Liz or one of the other members of that initiation subgroup may also have some comments. So just briefly, Mike, is there anything to report from the initiation subgroup at present?

MIKE RODENBAUGH:

Not really. I think since last time nothing has changed. We are waiting on one of our members to review the draft report that's supposed to go to the broader group. He's not on the call at the moment. I've chased him again today. So hopefully, we'll have his input back and be able to circulate that very soon.

SUSAN PAYNE: Do you think is it something that you're able to give a deadline to him, after which the report would get referred up to this group? Is that possible?

MIKE RODENBAUGH: I suppose. Of course, we're all volunteers here.

SUSAN PAYNE: I know.

MIKE RODENBAUGH: I have chased him. I've noted that he has had it for a month. So, hopefully, he'll turn to it. It's not a very long document. I'll chase him and try to get it done voluntarily quickly.

SUSAN PAYNE: Thank you so much. Maybe let's be kind and perhaps could I encourage if there's not something that you're able to report in for the next call with this group, perhaps for the one after. So that would be the one around about the 24th of May, something like that, off the top of my head.

MIKE RODENBAUGH: We'll try for May 10th for sure.

SUSAN PAYNE:

Brilliant. Thanks so much. And then the other subgroup is the one on consolidation. And I can give a quick update on that one. And, again, I will also ask anyone else. David is in that group, in particular, if there's anything he wants to add to please do so. But just to let you all know where we've got to with that group, that's the group that's looking at Rule 7, which is the one on consolidation, intervention, and participation as an Amicus.

And the subteam now has been through the whole of that Rule 7 in its latest iteration. We do have a few areas where we need to make some updates to the draft language as a result of our discussions, which we're hoping—I think that's sitting in on my plate. So the hope is that we'll be able to review that on our next call or in advance of our next call, which is happening on the 17th of May.

And obviously, subject to how long that review takes, we may be in a position to report back to that group shortly thereafter. There are some issues where we feel comfortable as a group on the part that we're proposing to this plenary team. And there are some areas where, as a group, we felt the subteam was too small to be making certain decisions. And so, there are some issues where we felt we did need to bring the issue back to this wider full plenary for a proper discussion and decision, obviously noting that anything that comes from the subgroups is for consideration by this full plenary and adoption.

But just to reiterate that those are issues where we felt that it wasn't appropriate for the subteam to be making a recommendation—that we felt it was something the full group really needed to have input on. So,

as I say, we are hopeful that we'll be able to wrap that consolidation sub-team up fairly shortly. And I see a hand from Kavouss.

KAVOUSS ARASTEH:

Yes. Good time to all of you. You know that I'm always concerned about the time. Do we have the time yet? What is your objective that we finish this very long-standing case? Two months, three months, four months? We should have a timeline. People call them work plan. What is the work plan? Because this discussion will not be ended. We finish something today, tomorrow people bring new thing. We finish that, they come bring a new thing. So when it will be finished? What is our objective? Do you have an objective timeline, please? Thank you.

SARAH PAYNE:

Thanks, Kavouss. I don't believe we do have a formal timeline. I know you've mentioned this before. And it's a point that's well taken. So perhaps Bernard and I will work offline and come up with a suggestion for a timeline that we can circulate to this group. Certainly, one of the key things that we were trying to resolve was the language on the safety valve and the timing for bringing an IRP. That was one of the biggest difficult topics if you like and the one that has required quite an extensive amount of work.

And so in the past, we've said we wanted to have a good sense of where we got to with that before trying to set a timeline for wrapping up the rest of the work. But we are on the homeward straight now, I do believe. So thanks. Bernard and I will pick this up offline and come back with a proposal. David.

DAVID MCAULEY: Thank you, Susan. I was going to speak on a different topic. And so if Flip's hand is up for this comment and this discussion, I should take a back seat.

SUSAN PAYNE: Thanks. Flip, is it to discuss timeline, or is it for something else?

FLIP PETILLION: It's related, Susan.

SUSAN PAYNE: Then over to you.

FLIP PETILLION: It's related. Actually, I was also curious about how long are we going to have these discussions? And this is really a question and I don't know the answer. And you may have discussed that because I have been missing some meetings lately. What is the value of you saying that we have an agreement on certain topics? What is our authority to say that we have an agreement?

SUSAN PAYNE: I'm not sure I quite understand the question. I think this group is tasked with coming up with the rules. And so we all have been given authority to carry out this exercise and finalize the rules for this process. If you're

asking to what extent we need to run this past the community, I think we have had some discussion on that back some time ago now. And we felt that quite likely we would feel that we needed to have a draft final set of rules that we put out to the community.

There have been two public comment periods so far. One was on the full set of the rules, but which was some substantial time ago. And the second one was just on the timing issue. But nevertheless, since these rules that we've been working on and the conclusions that we've been reaching on these rules are quite different in some respects, I think that we probably ought to put this out as proposed draft rules for a final comment from the community but very much welcome the views of others if they disagree with that. But I think in order to have the appropriate buy-in from the community, I think that would be wise.
David.

DAVID MCAULEY:

Thank you, Susan. So in light of what was just said, I may add a comment here on the timing thing and then go to what I was going to speak about before. But on the timing issue that Kavouss raised and that Flip also spoke to, I can understand the frustration. It does seem to take a long time and get somewhat extenuated.

On the other hand, I think there's reason for that. And that is the work that we do, the rules that we're trying to put together, are extraordinarily complex in my view and important in my view because these are the rules of the road for the top accountability mechanism in the ICANN community, which following the transition has been vested

with the ability to give decisions that are both precedential and binding. It's very important work and it's hard work.

Having said that, if we wish to maybe consider ways to speed it up, then maybe we should as a group consider having a dedicated meeting for that purpose of just discussing that. Should we change how we meet, when we meet? Should we have more steps to try and encourage some of the folks who are attending lesser meetings to step up their attendance rates or something? Maybe we could have a dedicated meeting. But I think the underlying reason for some of the time spent is I find this extremely complicated and difficult.

And there's all kinds of considerations that play into it. But if we did have such a meeting, the one back drop I would add is we should trust in the wisdom of those folks yet unknown who will eventually be the IRP standing panel and not try and make the perfect the enemy of the good. Let's try and write rules that they can apply with fairness to all parties, etc. But let's trust their judgment to implement the rules in a fair way.

Anyway, that said, I really put my hand up initially, Susan, to talk about the consolidation summary that you meant. And as you started, Kristina also joined this call. And she's been instrumental in those discussions as well. I thought your summary was excellent and that's exactly where we are. I just wanted to say that because we have a number of issues that we plan to bring back to the full group for insights, we've tried to decide or tentatively decide what we can.

But for those things that we wish to bring back, maybe in the subgroup we should consider doling out those topics amongst those of us who

wish to take them up so that we can present them to the group, not just you having to have that burden but amongst the number of us who would participate in that in a crisp manner and moderate that discussion when it happens so that you don't have to share that whole burden. And that's the end of my comment. Thank you.

SARAH PAYNE:

Thanks, David. That's a really helpful suggestion. I really like that. I like anything that allows you to hear some different voices apart from mine. So thank you very much. I think this has been useful. And I've taken notes of all of those suggestions.

So we are now on agenda item number four, which is to review the amended 30-day fixed additional time, the summary of our agreement, if you like. We have reviewed this. The usual working practice is to have effectively two opportunities for a reading of what's been agreed. Whilst we have had two readings, in fact, on our last call, it became clear that there had been a bit of a misunderstanding, which perhaps I'm putting my hand up to certainly having misunderstood part of the proposal as we'd reached agreement on it.

And so there was some amendment needed to reflect the fact that the proposal and indeed the understanding of the group was that we were allowing the longer of the fixed additional time of 30 days or whatever time is left on the IRP. And so we just have an opportunity now just to review the amended text that reflects that. And Brenda, could you pull up the attachment to the email that I circulated earlier today, which captures that agreement? Thank you.

Previously, this was in an email but I thought for formality sake, it might be easier if we had it just in a Word document. So this is just as, again, a reminder that we have seen this before. We have discussed this and reached agreement. And we have reviewed the summary of the agreement. But it has been slightly amended to reflect this fact that, as I mentioned, the fixed additional time, is it applies where having brought a request for reconsideration, the potential claimant is now out of time.

Also, since this is supposed to be a formal reading of what we've agreed on, I will go through this very quickly. So just in terms of the background, this is intended to address concerns raised in the community comments and shared by members in this IOT that some of the time limits for bringing the IRP shouldn't have the effect of dissuading a claimant from pursuing other accountability mechanisms which might serve to narrow or resolve the matters in dispute such as the request for reconsideration for fear that by doing so, people would put themselves out of time to bring an IRP.

So during our initial discussions on this topic, we considered tolling the time limit to bring an IRP to account for the time spent in the request for reconsideration. But some members of the IOT then expressed some concerns about the complexity of that approach and the potentially lengthy period of time before an IRP might be brought.

And so then, the proposal was made that we should allow a period of fixed additional time. And that arose out of the desire to strike a reasonable balance. And so the IOT 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. And the majority of this group did feel that there was overlap and that it could.

In terms of the agreement therefore that we have reached in this group, it applies where a potential claimant to an IRP first brings the request for reconsideration relating to this same dispute, provided that that at the time the request for reconsideration is brought that the claimant is not already out of time to file an IRP.

And where the request for reconsideration does not serve to wholly resolve the dispute, and the claimant now intends to commence an IRP, or a CEP, cooperative engagement process as a precursor to an IRP, then they'll have the following time to do so.

So sub-bullet one, if the claimant is not out of time to file the IRP, as at the time of the publication of the approved resolution by the board on the final disposition of the request for reconsideration, or the publication of the summary dismissal by the BAMC where appropriate, and the remaining time to file the IRP is greater than or equal to 30 days, then the claimant will have that remaining time to file their IRP.

Sub-bullet two, if the claimant is out of time to file an IRP or they have less than 30 days left at the time of the publication of the approved resolution by the board on the final disposition of the request for reconsideration, or the publication of a summary dismissal by the BAMC where appropriate, then the claimant will be granted 30 days of fixed additional time or FAT to file their IRP from the time of the publication of the approved resolution by the board or the time of the publication of the summary dismissal by the BAMC.

And then sub-bullet three, provided that the IRP is commenced or the cooperative engagement process is initiated within that 30-day fixed additional time period, then the claimant will not be considered to be out of time to file their IRP. And that's the point of this long discussion that we've been having.

Just a couple of other points to note. And that is, firstly, that whether we also apply this concept of the fixed additional time where a claimant has initiated a cooperative engagement process is something that we agreed we would discuss when we review and revise the CEP rules.

And if that discussion and revision on the CEP rules suggests to us that we then need to make any further changes to this particular part of the rule, we can revisit this if we feel we need to. And we did not agree to apply the process of the fixed additional time to complaints to the ombuds or to DIDP requests.

So just, again, to flag what has changed, firstly, the main change is just that this now captures the fact that if 30 days or more is still left to run on the time for filing the IRP under the normal rules, then there's no need for extra time, and the claimant just has their normal time period to bring their IRP. But if the claimant is now out of time to bring the IRP or has less than 30 days left, then we are giving them 30 days.

The other change that I flagged in my email when I circulated this is one that wasn't captured in our previous summary of the agreement but I think is the intent or was the intent. And that is that as I was looking at request for reconsideration processes when I was just about to circulate this, I realized that it appears that where a request for reconsideration is

summarily dismissed by the BAMC, that's the Board Accountability Mechanisms Committee, then that RFR doesn't get sent to the board and there isn't a board resolution.

I believe, and I'm hoping that Liz will correct me if I'm wrong, but my understanding is that the summary dismissal by the BAMC is the end of the process. And so we had a theoretical gap there where there could be a situation where a claimant has had their request for reconsideration summarily dismissed.

Now, in practice, I think that generally speaking a summary dismissal of that nature would happen pretty quickly. And so the very strong likelihood is that the claimant in that circumstance would not be out of time and so would not need to take advantage of this fixed additional time.

But it struck me as at least a potential gap and that we should either specifically refer to summary dismissal assuming that my understanding is that we are intending this to apply to cases where someone has brought a request for reconsideration and albeit unsuccessfully.

But I also felt that if it's actually not the intent of this group to capture all circumstances, including ones where there's been a summary dismissal, then that's something we needed to positively have agreed on rather than have it happen by default because we are making an assumption that there will always be a board resolution.

So that is where we've got to. And Mike Rodenbaugh, I think or at least I hope that answers your question that you posed in your email just

shortly before the call started. So I'm just going to pause now and see if anyone has any comments on any of that or concerns. David.

DAVID MCAULEY:

Thank you, Susan, and thanks for writing this up. I just wanted to speak up to say I support this and I want to say why. As we've discussed it, I listened keenly, Liz, to your comments about unnecessarily stretching the time in which an IRP can be filed. And I'm well aware of the concerns. And I too don't want to unduly stretch things out.

But I'm also aware that as I see it this is really a 30-day potential extension. And we did talk in terms of 60 days at one time, which I would not support. But in order to incentivize people to seek resolution of disputes at a level lower than IRP, I think it's a fair accommodation. And so I'm going to say that I support this. And also, Susan, with what you just said about tidying up the summary dismissal business. So thank you.

SUSAN PAYNE:

Thank you, David. Kavouss.

KAVOUSS ARASTEH:

I think I'm talking of the bullet saying that if the claimant is out of time. What does it mean out of time? This is not English, out of time. What does it mean out of time?

SUSAN PAYNE: Kavouss, I think it is English.

KAVOUSS ARASTEH: No, no, no, it is not. It is English for you. It is not for me. I'm sorry. I also have the right to say that this is not for me. It's good. Thank you very much. We will talk English. But I don't understand that if the claimant is out of time. What does it mean out of time? Could you put it differently, please?

SUSAN PAYNE: Yes.

KAVOUSS ARASTEH: Thank you.

SUSAN PAYNE: So Becky has suggested in the chat that we could use the term not within the time limits.

KAVOUSS ARASTEH: Yes, that is correct. That is legal, not within the time limit, not within the deadline but not is out of time. And please kindly do not argue with me that is English or not English. No, I have learned that it is not in conformity with the time limit, not within the time limit and so and so but not out of time. So I'm sorry. Thank you very much. Thanks, Becky, and thank you very much for accepting that. Thank you.

SUSAN PAYNE:

Thank you. I should add this isn't the language of the rules to be clear. But I take your point that we should tighten up the language and so we can do that. And I'm thankful to Becky for her suggestion, which I think works. I can see that we've also got a couple of other suggestions in the chat.

But we'll suggest an alternative that is not in any way changing the nature or is not making a change of substance but is just making a change of terminology. So thanks for that. I'm just going to pause briefly and see if anyone else has any objections to or rather any comments. Liz.

LIZ LE:

Thanks, Susan. I just wanted to address your questions on summary dismissal. And I'll just make a notation about the language relating to the board's termination on a reconsideration request. So to answer your question about summary dismissal, yes, if there's a summary dismissal, that is the end of the reconsideration process for that, the request that has been summarily dismissed.

And then I think with respect to where there is discussion about the publication of an approved resolution by the board or the final disposition of a request for reconsideration, there isn't an approved resolution—actually, I'm sorry. I take that back. That's right. There is an approved resolution that's taken by the board. And that gets published as well as the decision itself gets published on the reconsideration page.

So I hope that clears up the question on the process itself for the reconsideration. And also, I do want to make a note that while this reflects the general agreement that have been reached with the group, we, Org, has previously noted our concerns with respect to the proposal. And we didn't agree with these provisions per se. But we respect that it reflects the agreement of the majority of the group. Thanks.

SUSAN PAYNE:

Thank you, Liz. And Kavouss, if you will forgive me, I just want to make sure I understand what Liz was saying. Liz, am I correct to understand you saying that yes, you agree with me that where it's a summary dismissal, then there isn't a decision from the board? But that where there has been a positive decision on the request for reconsideration, then that goes to the board. And there is then in those circumstances a board resolution that does get published. Is that correct?

LIZ LE:

Right, that's correct. The summary dismissal is issued by the Board Accountability Mechanisms Committee and that that action will be published on the reconsideration page itself as well as a notification email will be sent to the requestor. If there is a board determination on the reconsideration request, then it will be in a board resolution.

SUSAN PAYNE:

Perfect. Thank you very much. And Kavouss, apologies for the delay.

KAVOUSS ARASTEH: No problem. The same bullet, I'm sorry, if I put my glasses to see the English, the first thing is the bullet starts "if," and then the tagline the fourth line says "will." It is not correct. You start "if," then the fourth line should be "would be granted." It is not a structure of the conditional sentence. If this is the case, it would be. It's not it will be. It would be granted.

And then I don't understand fixed additional time. Additional time is additional time. What is fixed additional time? That mean a strict additional time? Definitive additional time? What is fixed additional time? So fixed is not correct here or you may do something else. But if at the beginning if you start with "if," the fourth line should be "would be granted."

SUSAN PAYNE: Thanks, Kavouss.

KAVOUSS ARASTEH: This is a condition, a structure of the conditional.

SUSAN PAYNE: Thanks, Kavouss. I will ask Bernard. Could you make a note of that so that we can make that change? In terms of the use of the term fixed or fixed additional time, that is the terminology we've been using for some months. I think it is understood by the group what we're trying to say is that there is a single period of time. It is 30 days. It's no shorter, no longer.

And as I say, I think it's the understanding of the group that that is what we mean by that. But again, I would say this is just capturing our agreement in principle as a group. This isn't the language of the rule, that this agreement in principle needs to be captured in an amendment to the rule. And I can take on-board your point that we perhaps don't need to use the term fixed.

KAVOUSS ARASTEH:

Excuse me. Do you believe that I don't have the right to say something that is not consistent with the rule? I don't know what you mean by rule. This is something that I don't understand, fixed additional time. You said the only additional time is strict additional time, definitive additional time. But fixed I don't understand the fixed. And I don't understand when you say the rule. We are dealing with the amendment and we have the full right to propose something. I have difficulty with the fixed. I'll leave it to you to fix the fixed. Thank you.

SARAH PAYNE:

Thanks, Kavouss. Yes, we'll review the language. But, again, I would like to point out that the term fixed has been used in our discussions now for many months. But thank you for raising this. And I'll look at it.

I

'm going to see if there is anyone else who has anything they would like to raise. Otherwise, I think we can view this as having had a good review of this language. It will also, with the tweaks as proposed, the minor amendments, be recirculated on our emailing list. But I think we have agreement here now in principle. Kavouss.

KAVOUSS ARASTEH: Another point is the bullet is starting that “whether to also apply” and then second line that “when we review.” Who is “we?” In the legal text we don't refer to “I, you, we, they.” If you put it in the passive voice and then you cannot say “review and revise.” You may review and not revise. So it must be said “review and revise if necessary.” This is a standard legal language. First of all, you replace “we” by something else. There is no personal adjective in any legal text.

And then, when we say “review,” “review and revise, if necessary, the CEP.” You cannot review and revise. You review and may not revise. So we have to put both, “review and revise, if necessary, the CEP.” And then at the beginning we replace second line, “we,” by something else. Put it in the passive voice rather than starting with “we” because I don't know who is “we.” In fact, we don't know who is “we.”

SUSAN PAYNE: Yes. Thank you.

KAVOUSS ARASTEH: “We” is this team? “We” is who? It's just not proper saying “we.” This personal adjective never used, or personal pronoun never used in any legal text. I'm sorry. I take that one. If it is for three months, I don't mind. If it is for one year, I don't mind. This is what I am saying. Never, we say “review and revise.” We “review and revise, if necessary.” Thank you.

SUSAN PAYNE: Thanks, Kavouss. Again, just to reiterate, this isn't the legal text of the IRP rule. But your point is well taken. Bernard just made a note of it. And we will revise the text to reflect your comments. Thank you. We have lost Mike Rodenbaugh. I'm just noting that for the recording. I think are still at quorum. So I will pause once again just to see if there is any more comments that anyone wishes to raise on this. Otherwise, we can move on to our next agenda item. I'm not seeing any hands. So this is good.

We can then move onto agenda item number five, which is to continue the discussion on the repose and safety valve language. So the repose and safety valve language. Brenda, are you able to pull up the Google doc just so that people have that before them?

BRENDA BREWER: Sure. Give me just a moment, please.

SUSAN PAYNE: Thank you.

BRENDA BREWER: You're welcome.

SUSAN PAYNE: While Brenda is doing that, I will just remind the group of this text. We have a draft text on the repose and the safety valve language to cover unexpected circumstances for want of a better term. And this was

updated to reflect our discussions. The most recent updates were made on the 29th of March. So they were circulated on the mailing list. And we did look at that text at least at briefly during our last call.

At that time, as you will have noted from the action items, Bernard put the draft language into a Google doc so that it could be more readily reviewed by the team and anyone in this group could propose edits or insert comments if they had reservations about the draft language.

BRENDA BREWER: I'm sorry. Susan, is this the correct document?

SUSAN PAYNE: I think it is. Yes. Thank you, Brenda. And the column that is—we have two columns which is to reflect an earlier version and the more recent version of the text for this rule. And the working language if you like is in the right-hand column. So as I said, this Google doc link has been circulated. It was sent around to the group on the 30th of March.

So we all collectively have now had this draft language for more than a month. We obviously had had earlier iterations but the latest version as amended, all of the proposed amendments. And in preparing for this call, I did go into the Google doc to just double check that we hadn't had any new proposed edits or any new comments added in by any of the group and that was the case.

And so I am working on the assumption here for this call that all of the IOT members are comfortable with where this language has ended up for this draft Rule 4, and that subject to the redline language being

tidied up and the redlines being removed, and subject to the amendments that we will need to make to reflect the agreement about fixed additional time that we were just talking about, that we're comfortable with the language that we have for this Rule 4 now.

Therefore, one of the outstanding points that we do have on this Rule 4, it relates to what the out-of-time time limit should be in Clause B, which is, if you wouldn't mind, Brenda, scrolling down to the next page. Oh, sorry not that far. Its' right at the top. That's it. Thank you so much.

So Clause B is effectively the repose language. It states that a statement of dispute may not be filed more than. And then we have the length of time is to be determined by this group. It is currently 12 months from the date of such action or inaction being challenged in the dispute. And so that time period is one that we do need to come to a conclusion on.

We have talked about it on a number of occasions in the past. I think it's reasonable to say that collectively there appeared to be strong agreement amongst the members of this group that 12 months probably was too short a period. And other potential time limits that we talked about have been either 24 or 36 months.

And so a task for us to do in bringing this Rule 4 to its conclusion is for us to agree what that time period should be, indeed, whether we should be retaining the 12 months or, as I said, I think generally when we've been discussing this previously, there seemed to be quite a lot of support for having a longer time period than that but what that time period should be. And as I've said, discussions have included either 24 months or 36 months.

Just coming back to I think the reason we have those two alternative time periods in mind comes from the public comment input that we received. And that is why Bernard circulated us his other action item, the public comments input from the second public comment on the timing rule.

And I do hope that you've all had a chance to remind yourself of that public comment input. But if I can just summarize it, I would say that during the second public comment, there were a number of commentors who, as we know, said that they didn't support your repose time period at all. But then, some of the commentors went on to say that if there were to be a repose that they then made suggestions as to the time period.

So the IPC didn't come to a firm conclusion but suggested either 24 or 36 months. The Registries Stakeholder Group made two suggestions. The first was that it should be 36 months if we were excluding the time spent in a cooperative engagement process or the request for reconsideration, or the Registries Stakeholder Group suggested that perhaps a shorter time of 24 months if we were excluding or-tolling the time spent in a more extensive set of accountability mechanisms. Verisign also put it in a comment and, again, proposed either 24 or 36 months.

I did also look back to the first public comment input, which was on a wider set of issues. But there were some comments on the repose so that we had comments from the BC during the first public comment who proposed that they felt that three years, which I think would be 36 months, was more appropriate. The International Trademark

Association proposed 24 months. And an individual called Carl Auerbach also proposed a minimum of 24 months.

So I would say to the extent that we've had input on this, groups have been suggesting similar time periods, either 24 months or 36 or sometimes both. And really, it's for us I think to reach a conclusion on which we think is the most appropriate.

And then this is the topic on which we were talking earlier about is it appropriate for us to have another public comment period. And I think this is one of the reasons why I think it probably is because on the last public comment process, there was no repose, and there was a great deal of support from the community for there not being a repose.

And not everyone made suggestions as to what the length of a repose should be because they were supportive of the draft rule that said there wouldn't be one. And therefore, if we are to have a proposed final version of these rules, which includes a repose, I do think that it's appropriate that it is at least seen by the community and they are given an opportunity to comment. That, sorry, was a very, very long-winded explanation.

But I'm really keen to get views from this group of we need to I think come to a conclusion on what we think an appropriate time period is. And so if there are members of this group who believe that we should keep 12 months and that the work we have done on the safety valve is, in part, addressing some of the concerns that requiring a longer time period would have needed, then please, I think it would be helpful to hear that. But equally if there are views on whether 24 months or 36

months is most appropriate, I think this is our opportunity to discuss this and, hopefully, to try to reach some kind of meeting of the minds on this. David.

DAVID MCAULEY:

Thanks, Susan. I'll go ahead because I think it's important, as you say. In light of what we're doing on CEP and requests for reconsideration, I think 24 months makes sense. And I think in my view, it is a reasonable balance between affording people time to get to know what's happened, how it impacts them, etc. and the need for certainty, predictability, etc. that the community and ICANN and the people that work in the ICANN community should have.

And so given that the decisions are binding and precedential, I think that it's a fair number. And with the safety valve, I think the case is even stronger. So I'm going to go ahead and put my hand up and say in light of what we're doing on RFR, etc., I think 24 is the right number. Thank you. Excuse me.

SARAH PAYNE:

Thanks, David. No problem. And I'm, again, looking for input from our members if anyone feels strongly. Really, are you persuaded by David's suggestion, which certainly seems reasonable? David's comment about finding a reasonable balance and in terms of allowing time for people to find out about a decision and about its impact on them against the need for the IRP process not to be dragged out unduly and for certainty for the community over whether decisions are going to be challenged.

And as I said, I think we have one of the reasons we've built the safety valve in is to try to give a little more comfort to the community, that if there are extraordinary circumstances, they can seek leave to be filing their IRP late. So at the moment, I think I'm hearing from David and not hearing objections that perhaps 24 months seems reasonable.

Perhaps, again, I'm just going to pause and see if anyone else wants to speak on this. And if not, I think I'm going to take silence as at least tacit approval for present purposes for something which could then be reflected in a more formal updated rule for all of us to sign off on. I am not hearing any objections to that.

So I think at least for present purposes, and this is certainly not a decision that the group has yet. But it sounds as though the proposal is that we should consider 24 months. And I will circulate to the mailing list on that basis. And we can pick up this on the next call in order to have had the opportunity for this group to all have thought about this and agreed.

Well, in which case I think we have covered I think what I was hoping to do on this call. So I will just pause in case there's anything anyone else wants to flag in relation to this Rule 4 generally because this is an opportunity to make any comments or raise any objections. David.

DAVID MCAULEY:

Thank you, Susan. And my question is about what now happens to the draft? We have the two-columned draft. And the reason I ask is I've read it a couple times. But when I was rereading it again today, something occurred to me that hadn't before. And so will I have time to

go in and make a comment or raise a question? It's not about the time period but--

SUSAN PAYNE: I think that's fine, David. I think what happens now to that draft, it's now appropriate for it to be turned into a clean copy losing the two columns. And that's just being able to focus on the text as we have it. And so if you were to go in and note something as a comment, I can capture that into the clean draft. And so people will then have an opportunity to see that.

DAVID MCAULEY: I'll do that this afternoon.

SUSAN PAYNE: Super. Thank you.

DAVID MCAULEY: Thank you.

SUSAN PAYNE: Everyone, then, I'm not hearing from anyone else. And so we will circulate that clean copy, which may then have David's new comment but essentially, a clean copy with and including that proposal for the 24 months as the response time period in B for the approval of this group. And hopefully, then, we can be close to having finalized this text.

So with that, I think we've reached the end of our agenda. So I am going to be giving you a little bit of time back today. Our next meeting is going to be on the 10th of May—I think I mentioned that when I was going through the agenda—in the 18:00 UTC slot.

And so I hope you'll all be able to make that. And I look forward to seeing you there. Look out for the clean version of this Rule 4, which will be circulated around, also together with, as promised, the revised fixed additional time text to reflect those drafting comments that Kavouss has made. Thanks very much, everyone. Thanks for all of your input. And yes, we can stop the recording and wrap up the call. Thank you.

[END OF TRANSCRIPTION]