
BRENDER BREWER:

Good morning, good afternoon, good evening, everyone. This is Brenda speaking. Welcome to the IRP IOT Plenary call on 30 August, 2022 at 18 UTC. Today's call is recorded. Kindly state your name before speaking and have your phones and microphones on mute when not speaking. Attendance is taken from Zoom participation and I do have apologies from Flip Petillion. With that, I will turn our meeting over to Susan Payne. Thank you.

SUSAN PAYNE:

Okay, thanks, Brenda. Thanks, everyone. Thanks for joining. this is our IOT Plenary call. We haven't had a call for a few weeks with holidays and so on, so we'll just hopefully have a bit of a catch-up of where we are and spend some time looking at next steps and a discussion of what we need to work on in order to hopefully wrap up our activity.

First up, as usual, we need to review the agenda and updates to statements of interest, so I'll come back to the SOIs in a minute. We've got review of action items as a gender item two. We'll have an update from David on the work of the standing panel selection group as agenda item four, just spend a little time just introducing the proposed final text of rule 4 that I circulated to the email list and talking through the next steps on that.

That's not intended to be a substantive review of the text or further discussion on the text, but just to make sure that everyone is on the same page with where we are with that. Then for a gender item five

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will be looking at some of our outstanding items to deal with on the IRP supplemental rules.

We obviously have other action items that are allocated to us under the bylaws and so on, relating to other matters, but this is specifically what else do we need to do to wrap up these draft rules. Then finally, agenda item six is on the agenda and is the confirmation that we do actually have a session allocated to us as a closed working session during ICANN75 which is good news.

And so, for those who will be on the ground in Kuala Lumpur, we will have the opportunity to meet in person. Obviously, there will also be remote participation available. Circling back up to statements of interest, I did want to note as circulated earlier today that I have made a brief update to my SOI which is, I was updating my GNSO statement of interest and realized that I ought to also do this one for this group. Just noting that from the AGM meeting, I will be joining the GNSO council as one of the IPC representatives on that group, and consequently also will be standing down as IPC secretary.

I took the opportunity while I was doing it to just reflect some changes in corporate branding that we use within my company, that those are completely non-substantial or non-substantive, but I wanted to just mention that I'd bathed them. Thanks to David and Mike for their messages. Does anyone else have any statements of interest updates that they want to flag to the group? Looking forward to hearing from you.

MIKE RODENBAUGH: Hey, Susan, it's Mike Rodenbaugh, I guess I should have added by now that I'm also a board member of the Brand Registry Group, recently pointed to that, so I'll update my SOI one of these days soon. I'm glad I can make the call today. I've had two flights canceled before 10:00 AM today.

SUSAN PAYNE: Oh, I'm sorry to hear that, Mike. I must say I did think you weren't able to join us, so it's nice to have you with us, but obviously, commiseration for your travel disruptions, and thanks for that update on your SOI. That would be great if you want to make that amendment. All right. Anymore on statements of interest?

Okay. I'm not hearing anymore, so we can move onto agenda item two, which is just the review of action items. I had, as I mentioned, a particular action item to finalize and circulate the rule 4 text essentially for our designation of consensus. We'll come back to that on our agenda item four so we won't spend more time on that now, and so we can therefore move on to item three, which is an update from David on the standing panel work. Over to you, David, if that's okay.

DAVID MCAULEY: Thank you, Susan, let me just check that you can hear me.

SUSAN PAYNE: Yes, very well.

DAVID MCAULEY:

Okay. Thanks. Hi everybody. David McCauley speaking, I'm not going to put my camera on just because I walked in from some exercise in very hot weather. You don't want to see this. Happy to do a brief update, again, of the work that's being done with respect to picking a standing panel. As I mentioned last time, there's a group of seven in the community representative group to pick a standing panel, and that was chosen in accordance with the bylaw 4.3 and also with respect that was chosen by SO and AC members, and the members on it.

From GNSO, there's two, Heather Forrest and Donna Austin. From ALAC, there are two: Greg Shatan and Cheryl Langdon-Orr. From the GAC, there are two, our own Kavouss Arasteh, who's in this group and Edo Makanjuola also from the GAC, and then I was appointed by the ccNSO. Many of you know I participate in the Registry Stakeholder Group on the GNSO side as well, but I was actually appointed to this group by the ccNSO.

So far as I mentioned before, too, we've done a lot of organizational work, administrative work, pulling ourselves together. We hired an expert consultant named Audreys Bernstein to help us in this endeavor. We have made sure that we understand and are working within terms of reference in terms of engagement. These are largely aimed at making sure that those things that need to be kept in confidence are kept in confidence.

We tend to work much like the NomCom does, and so we did that. We've done a lot of work with our consultant, getting to know and to review the qualifications for standing panelists that are expressed in Bylaw 4.3 and how we plan to implement that. We've talked a lot about

that. We are just on the cusp of getting engaged in looking at the matrix of applicants, and there are quite a few, which is a really good thing, and our consultant is helpful in that.

The really good news from my perspective, and I think the perspective of all seven of us is that we are very happy that we will, for as long as we can, continue with anonymized information, we will not know who specifically these candidates are. At some point, we will learn what region they're from and what gender they are, of course, because we are urged under Bylaw 4.3 to keep diversity considerations front and center, and we have every intention of doing that.

We're on the cusp of doing it, we had a meeting last evening, it was maybe challenged a little bit because I had perhaps made an email mistake that hampered our ability to get some information out. Using confidential email, that'll be corrected and we will start move forward. We plan on having closed meetings in Kuala Lumpur, which is good for us to get together.

I've been asked to sit as chair of this group, but that's really administrative, not much decision making to it. We are seven working colleagues together and we take this work seriously. We're making progress. It is my hope and expectation that we will wrap this work up this calendar year and we are on track to do that. It's good work and we're getting to a stage where it's going to become quite intense because obviously there's interviews, background checks, all that kind of stuff. I think things are going really well.

Susan, that's about what I can say for now. We will not have a meeting next week, Monday, September the 5th in the US, it's a holiday. There's only two of us of the seven who are in the US, but staff is as well, and so we thought it best not to have a meeting next Monday. We'll meet on the 12th before those of us who are going to ICANN75 leave for ICANN75, and we will have a meeting there, and for those who can't attend, we'll have remote participation available.

I'm looking forward to that for group cohesion building and other things and making substantive progress, but things are in really good shape from my perspective. Kavouss, who is on this call, is also a member, and that's what I have to say for now.

SUSAN PAYNE:

Thanks so much, David. I have a quick question, but I will just see if anyone else has any questions for you before we go to mine, which is not particularly substantive. Okay. Oh, Kavouss. I see your hand.

KAVOUSS ARASTEH:

Good evening, good morning, good afternoon. I say thank you, David, for the brief you have given, I think the issue and affairs of understanding of the GRC is remained with the GRC. We just inform you, we don't need any judgment or anything from this group. Thank you.

DAVID MCAULEY:

Thank you, Kavouss. Mike, you have a question.

MIKE RODENBAUGH: Yes. Hey David, it's Mike Rodenbaugh. Did you mention what is the timeline on finishing or getting the standing panels completely appointed and off to recommendations for the board?

DAVID MCAULEY: We have a Terms of Reference that would have us conclude the work late this year. I'm confident that the way things are going so far, we are on track to finish it within this calendar year. That's our work, we do not appoint the standing panel, we make recommendations. The ICANN board has to accept them within reason. They can reject them, but not unreasonably.

I forget what the exact words in the Bylaw are. I think we will wrap up our work, and there's a considerable lump of work coming at us in the late September, October timeframe, but I'm still confident that we will be able to finish our work this year and we are all dedicated to doing that. As we get into the candidate analysis, we'll see if we can keep that up, but we have every intention of doing that.

MIKE RODENBAUGH: All right. Thanks. Is there a set number that you're targeting to sit on the panel?

DAVID MCAULEY: The Bylaws say a minimum of seven. We've talked in terms of 7, 9, and 11. Haven't made a decision on that yet.

MIKE RODENBAUGH: Got it. All right. Thank you, David. Appreciate it.

SUSAN PAYNE: Thanks very much. Kavouss, your hand is still up. Is that a new one?

KAVOUSS ARASTEH: Yes, it is not still, it's a new hand. I'm sorry.

SUSAN PAYNE: No worries. I'm with you.

KAVOUSS ARASTEH: No, I'm not worried. I'm relaxed. I think what David said is objective. We don't know whether we achieved that objective or not. Yesterday, we were told by the consultant that we have to interview 20 people minimum. Each interview is two hours. Multiply 20 by 2, it's 40 hours.

It's 40 hours, the number of the time that we have, one hour and a half each meeting, that means a lot of meeting we need. I don't know whether we need two hours for each interview or not. I don't know how we interview. We have nothing at this stage clear, but nevertheless, the timeframe given by David is an objective timeframe. Thank you.

DAVID MCAULEY:

Thank you, Kavouss. I agree with that, Susan, but I do have, and it's a personal view I'm stating now, confidence that we can reach it, but it is as Kavouss says, an objective. There's a big, big bit of work in the late of September, October, early November timeframe. The number of interviews that could be 20, I think that's actually a minimum number, it could even be more than that. There's a considerable amount of work ahead of us, but we're moving forward, and so, I'm feeling pretty good about it. Thank you.

SUSAN PAYNE:

Thanks very much. Certainly, I think we all appreciate the work of you both, David and Kavouss, and indeed Greg Shatan, who is another of our members in this IOT who also is on that group. It's obviously an incredibly important matter for the whole of the ICANN community to have a standing panel in place and a standing panel of the appropriate quality, so we all appreciate that. My question was just regarding your meeting in Kuala Lumpur, David.

My assumption is that because of what you've said around the confidentiality of your work and so on, that that would be a closed session just for your standing panel. Apologies, I can't remember what you're called, your community group, and not open to the wider community to attend, but I wonder if you would mind just confirming.

DAVID MCAULEY:

Yes. Thank you, Susan, and I don't know if I ever stated this, but this is David McAuley speaking for the record. I've seen in the ICANN full schedule that there is a community representative group meeting on

Saturday morning. We're looking at Saturday, September, I think it's 17th. We've been talking in terms of having three slots. There's one on the full schedule, so I'm not sure, I may ask Liz if she knows if that's open to the community, but I expect that most of our working time in Kuala Lumpur is going to be closed because it's much like the NomCom.

Now, having said that, one of the things that we're working on and it's up to me to come up with first draft amongst the seven of us is a blog to the community talking about our progress, and we hope to have that blog in front of us in Kuala Lumpur and to agree to it. Now, that's easy for me to say, no, one's seen it yet, I haven't drafted it yet, but I intend to draft a blog, pass it around the seven of us who will all have a hand in editing, changing, whatever.

And so, it's our hope and expectation by the time we finish in Kuala Lumpur, we will have a blog that we can send to the community. I see Liz is saying in chat, none of the community rep group meetings are open to the public, and that was my expectation, frankly. I think that even though the schedule shows one or at least that's all I could find, I think that we will have as many as three on Saturday, three slots. Thank you. Susan, if you're talking, I can't hear.

SUSAN PAYNE:

Sorry. Yes, I was on mute. Thank you, and I was checking what Bernard had put in the chat, but if I'm correct, Bernard, that's the timing of this IOT's meeting, isn't it, as opposed to David's group. I think that's right.

BERNARD TURCOTTE:

That's why I put ICANN75 IOT meeting.

SUSAN PAYNE:

Yes, thank you. Yes, I know. Thanks for that. It's good that we'll be able to have that session, I think notwithstanding that for those who are remote participants, it may be quite a challenging time. I confess I'm not sure what time that is in my time, in my London time zone, but I have the benefit that I will be in Kuala Lumpur. I think that thanks again very much for that update. It's really appreciated to know that that work is moving on full steam ahead now.

All right. Our next agenda item is to turn to item for the explanation of the proposed final text on rule 4 and the next steps for that draft of the rule. This update really is because it did take me longer than I had hoped it would to find the time to finalize that draft of rule 4. And so, having had a few weeks delayed before I circulated it, I thought it would make sense just to make sure that everyone is on the same page regarding where we've got to with that draft rule 4, and rule 4 being of course the rule regarding timing.

We spent a lot of time on rule 4 over a number of weeks, and we've had close to final text for a number of calls now during our last call. Really, my understanding was that the majority of us were agreed as to the text subject to some amendments more in the nature of drafting amendments or definitions and so on that I did agree that I would make on the call and those are the changes that I have made.

I've tried to flag in my covering email that I circulated the changes I made, but one of the most substantive ones was to change things like

the reference to seeking leave, because they had been concern that for non-lawyers and indeed for non-native English speakers, that terminology might not be understood.

And so I've changed those references to seeking leave to applying for permission as being something more understandable to the lay and non-native speaker. And so that I think is one of the main changes, but in my email, I did set out as I say, a few other things that I picked up as I was doing a bit of a clean-up. This draft of rule 4 has now been circulated basically in order to confirm that my assessment based on our discussions on our recent calls, including the last one, was that we have a consensus on that draft, and certainly on the principles that that draft reflects.

We don't have full consensus, and just as a reminder, this group is operating because this group arose out of the work stream to accountability work. We are using the same designation, so we can either or I can either make a designation that we have full consensus on something, or that we have consensus, and consensus is obviously where we don't have the complete agreement of everyone.

I do feel that overall we have the sufficient level of agreement within the group. Specifically, we know or I know that Malcolm has regularly expressed his disagreement with the concept of the repose, and so, it's certainly clear that as a group, we don't have full consensus, but I do think that for the text of rule 4, we have at least consensus of this group. That is why the text has now been circulated to ensure that my assessment there is accurate.

And so it's an opportunity for everyone to express disagreement if they don't agree with that text going forward as our recommendation from this group. To be clear, we've talked previously about the expectation that we will end up doing another Public Comment period, and so, obviously, there will be opportunity following a Public Comment period, and when we've received the input from the community, we will have to review that input as well. It is possible that as a result of that input, we might need to make further changes, but this is the status of our level of agreement at the moment.

I also did mention and just reminded you all that in addition to that, when we reach the point where the rules are actually going up to the board for review and adoption, there will, of course, be an opportunity for anyone in this group to put in a minority statement about any part of the rules if they remain opposed to ensure that they that their views on that are seen by the board and are part of the deliverable from this group. I hope that makes sense. I don't want to spend time going into the detail of rule 4 text, as I said, but just wanted to flag that for you all. Malcolm.

MALCOLM HUTTY:

Thank you, Susan. I wish to challenge the notion that there was a consensus here. I think there was a majority. There are numerous other members of this group that have previously expressed that they do not agree with the idea of repose and that they support the view expressed in the majority of Public Comment received opposing repose. I differ from them in that I have shown the stamina to appetent

absolutely innumerable meetings of this group, and consistently reiterate my opposition to this.

Whereas most of them have been battered into submission and no longer participate in this group, because we have insisted on going forward with this and gone round and round the houses on this for so long. And so, numerous members of the group are not present here today, or indeed have not been present for some time. I think that actually we describe as consensus by attrition. It's not real consensus at all. I would strongly recommend that the description be given that this is a majority [00:25:21 - inaudible].

SUSAN PAYNE:

Thanks, Malcolm. There is an opportunity here, that's part of the reason for circulating this text and not simply relying on people turning up to the calls. There is an opportunity for those people who if there are members of our group who are not in agreement --

MALCOLM HUTTY:

Susan, we've been five years on this now, it's not reasonable to expect people to still be engaged enough to continue to register their opposition for this. It's like this has happened, this is years and years of oppositions of this, and you can't expect people to still be plugging away at it in the same way that I am.

SUSAN PAYNE:

Thanks, Malcolm. Well, I hear what you say, but this is a group that people volunteered to participate in and we have been making, as you

know, and as you have been participating very actively, you know that along the way, we've been trying to make compromises, we worked on the concept of the fixed additional time to try to address some of the concerns. We also worked on the concept of the safety valve. And so, we've, as a group, tried to recognizing that nevertheless is that fundamental objection of principle. We have tried to address that.

MALCOLM HUTTY:

You may have tried to address it, but have you got any evidence at all that any of the people that have spoken against this as on principle have actually changed our view?

SUSAN PAYNE:

Malcolm, all I can do is hold the calls and circulate the text and give people the opportunity to participate and give their feedback.

MALCOLM HUTTY:

Essentially, what I'm saying, Susan, that in this case, I don't believe it's fair to implant principle that silences consent, not after five years of work on this.

SUSAN PAYNE:

Okay. Thanks for making that point, Malcolm. Again, we will have a Public Comment period. I can see other hands, so I'll go to the others in the queue first. David.

DAVID MCAULEY:

Thank you, Susan. I've been there alongside Malcolm on the other side of this issue for five years, and I tend to agree, and I feel good that it's coming to closure, and I think it would be incumbent in our group to describe the closure, how we get the closure as accurately as we can.

I raised my hand to challenge one thing that Malcolm is saying that I don't agree with, and that is the idea that people may have been driven away from active participation, only those who are opposed to rule 4 that contains an overall cap on time, et cetera, for the reasons that Malcolm poses it. I actually think some people that support the rule may be inactive because of that, because as Malcolm pointed out, we have been talking about it for a long time.

It raises another point that we've discussed recently, and that is, we can't just assume that people have stopped participating because of rule 4. We are wedded to one meeting time, and I think it would be good for us to rotate our meetings around the clock. What we've done in a couple of ccNSO groups is we just moved the call by eight hours each call.

And so there's three times, and that means there's one painful call for participants in those working groups. It's only fair because I think there are people in our working group that deserve an opportunity to participate during a reasonable time. And so I am very hopeful and I think it's really good news what you and Bernie have told us that we're going to have a chance to get together in Kuala Lumpur.

I think it would be good for us to sit down, sit across the table and say, hey, what can we do on meeting times? What can we do as a group to

draw in those that have become inactive? I think that it would be good to make sure that whatever we come to on this rule is out on list and everybody has a chance to have their say. I just think that part of the problem with people attending et cetera, et cetera, may simply be our schedule. Anyway, that's my say. Thank you very much.

SUSAN PAYNE: Thanks, David. Kurt.

KURT PRITZ: Thanks Susan. Here in the concern, even if people have dropped off, I wonder what Susan's supposed to do. We can only incorporate all the comments we've heard to the best of our ability and then put it out for the group to discuss. I agree with Mike here that let's get into these specifics again about what Malcolm objects to. I had thought we had arrived at a compromise a couple of months ago whenever we discussed this, but I was mistaken.

My big point is, even if people have dropped off, what are we to do? Are we to say, well, we can't move forward on anything anymore? No, of course, we can. We can just put out the language and see if anybody objects and why. maybe we need to get into the specifics, like Mike suggests.

SUSAN PAYNE: Thanks very much for all of that input. I'm noting in the chat, Liz is supporting the suggestion of allowing people time to formally express

their position by the 8th of September. I'm sorry. I see Kavouss' hand as well now. Kavouss.

KAVOUSS ARASTEH:

Yes. Well, I could agree with David that we can shift the hours by eight and so on and so forth, but after four years or five years, I don't think that we need to do that. Those people because of the time zone difference have missed to participate, they have ample time during the Public Comment to comment on that.

I don't think at this last stage we changed the hours and so on and so forth. We should be very careful to do that. That is something, Susan, if you allow me to speak, I don't think that we need to talk about consensus or non-consensus before Public Comment. All of this will happen after that. I don't believe that, I'm sorry, Malcolm, I apologize to you, I don't believe that we could say consensus by attrition and so on and so forth.

We do whatever we did for other actions we have taken, ICG, Workstream 1, accountability, Workstream 2, Subsequent Rounds and so on and so forth, and not starting a new term or adjective for consensus, it's already very ambiguous world and so on and so forth.

I think at the end of the day, when we want to put it as a final output of this group or outcome, whatever you want to say, that we should mention on average how many people we attend, then we could say consensus with following details X out of Y, they have objection on item Z and so on and so forth. We mentioned which area we have not

consensus, but not to put entire work in some doubt and some disability, and we should be very careful.

I will just put in this now, I don't want to take your time at this stage, but we should be very careful to avoid to put the whole thing on some disability or instability saying that there was no consensus, there may be one or two item out of all that there was not that. If you go to the rule 4, there are many sub items, most of them I think there are consensus or full consensus, one or two items there may not be. For instance, oh, I'm not in agreement in four years and I continue to disagree with the four years. Thank you.

SUSAN PAYNE:

Thank you, Kavouss. Unless anyone else wants to raise anything on this, I think this is the path that we are on, there is an opportunity for all of the group to express their disagreement, both those who've been attending the calls and those who haven't. I'm not asking people to start drafting enormously long statements. I know in a number of cases, people may well be able to refer back to something they previously said. Just something that indicates their level of agreement with this text going forward for the Public Comment period, otherwise, we are stuck, unable to make any progress.

I'm sorry that people have dropped off this group. Like David, I don't believe that it's all people who are opposed to the concept of the repose. In fact, there were a number of participants were appeared to be extremely frustrated that there was any discussion on the topic that seemed to be, feel so strongly that there needed to be a repose. We

could well have lost them because they were frustrated that we were spending time talking about this.

I know a number of our participants have expressed frustration about how long we've been talking about this and trying to find a path forward that meets the agreement of as many of us as possible.

I think this is where we've reached, and as I say, there's an opportunity for all of the group to express their objection. Again, I've suggested the 8th of September, if anyone says to me that that timing on email, I think, if anyone has real problems with that timing and wants to drop an email to that effect and ask for that to be extended, I won't disagree with that.

I was just trying to give us a deadline that came in before we had our face-to-face meeting in ICANN75. I don't want to be unduly burdensome on people, particularly if in the run up to an ICANN meeting and if someone feels that they need more time to consider this, particularly if they haven't been participating. David.

DAVID MCAULEY:

Thank you, Susan. Apologies if I missed this, but with respect to making a statement by September 8th, are you going to put an invitation on the list to do that? How will those who are not here.

SUSAN PAYNE:

Well, I have put an invitation on the list.

DAVID MCAULEY: Then I missed it.

SUSAN PAYNE: It probably makes sense for me to send an update with a reminder.

DAVID MCAULEY: Okay. Thanks.

SUSAN PAYNE: Just to be sure that everyone has the opportunity to see it. I will make a note to that effect. All right. I think if there are no other hands on this, then we should move on to our next agenda item, which is regarding some of the review and discussion, sorry, agenda item five, a review and discussion of next steps on some of our outstanding items relating to these IRP supplementary rules. Sorry, I've said in the agenda it was interim, but actually it's obviously the supplementary rules that we're talking about here.

As I said, when we ran through the agenda, we obviously have other items as well that are on our plate that we need to deal with, and so I'm not ignoring those, but our priority, at least initially is obviously to wrap up the work on these supplemental rules and be able to get them out to Public Comment.

That's what I was my attention on. I think I'd like to use the rest of the time on our call to run through some of those items and the plans for taking them forward. Oh, thanks for bringing that up, Brenda, and I will just pause. I see, Kavouss, your hand.

KAVOUSS ARASTEH:

Yes, I read your paper regarding the next step and what you have to do. I think something that at least my experience, we should not create the rules just to creating the rules. We should create the rules if there is something ambiguous, unclear, or require some sort of clarification, whether you call them interpretation or not, I don't know, but we should not start something arbitrary rules for something you may not happen at all. We should leave something to the next step.

I think that when IRP panel is established would not be the end of the business, they might face some difficulties and so on and so forth. If they cannot, or they would not be in a position to resolve that, maybe then we have to see what we do. What question that I have, maybe you, Susan or David, two people working on this long time, tell me, after the end of this current activities, does the IOT remain as a standing for any future or any potential need to discuss anything which may come from the IRP panel or we close everything and we leave everything in hand of the panel, whether they have any problem or not to solve their problems?

I don't want to say that they will remain as a standing or not, but just, I want to know what is the idea of that, because this is something quite difficult. We cannot envisage all difficulties at this stage and we have to see what will happen. There might be areas that we don't know how to draft that because we don't know the nature of the problem. That's an idea.

I don't know, whether you or David or anyone else could reply to that, whether after this period, our work will be totally finished and the group will be disbanded or the group will be standing in either position until the time that something has happened, and then group will call back into the discussions or into the existence. Thank you.

SUSAN PAYNE:

Thank you, Kavouss. I think you like to ask me the very difficult questions. I am looking at the bylaws because I wanted to remind myself and I'm not absolutely certain what the status is. Certainly, once the standing panel is appointed, it says in bylaw 4.3N, it talks about the IOT being established to work on the rules, and then it says that this group, the IOT group and the standing panel, once it is established in consultation will develop clear rules for the IRP.

Obviously, it seems the expectation of the bylaws was that the standing panel would have been in place whilst these rules were being developed. I think once we have a set of final rules, I'm not, if I'm honest, not absolutely sure what happens, although it certainly says in the bylaws that the standing panel may recommend amendments to the rules of procedure in the future. I see David's hand and Liz's, so I will turn to both of those to see whether they have any further insight on this. Thanks. David.

DAVID MCAULEY:

Thanks, Susan. Thanks for the question, Kavouss. I chaired this group for a couple years and thought about this question, and I looked at the bylaws and I recall, I don't remember specifics, but I recall coming away

thinking that this is not clear. It dawned on, or it seemed to me that one thing that this group, the IOT, I agree with everything Susan said, by the way, once there's a standing panel, they can participate in the creation of rules of procedure.

Then with respect to these other things, and there's a lot of other things to do, including rules for appeals, et cetera. Anyway, it occurred to me that what might be best is for this group, the IOT, when it concludes what it sees as its agenda of work, to do a reports to the board saying, we believe that we have concluded our agenda of the work and we make the following recommendations.

One of the recommendations could be that the IOT be kept as a standing asset in case a need like that is ever called for again, it would have to be open to getting new members, over time, I think would only be fair. That was the way I tended to resolve this after looking at the bylaws and thinking about it, so that's what I came away with and that's all I can offer. It's not very definitive, but that's the best I can offer. Thank you.

SUSAN PAYNE:

Thanks, David. Liz.

LIZ LE:

Thanks, Susan. Thanks, David. Yes, I just wanted to follow up on what David said. I think there is still a lot of work for this group to do once the supplementary procedures are done in its entirety. That's not necessarily just as the standing panel has been established because part

of the rules that the bylaws speak to is for the standing panel to also take a look at the supplementary procedures and provide their opinions as to the procedures themselves.

In addition to the supplementary procedures, this group is charged with developing the rules for the cooperative engagement process, which it still needs to do. Then although part of the supplementary procedures is group still has to develop the rules around appeals itself also. There is the bylaw provision provides that the group comes up with certain training materials for the standing panel. I think that there still remains to be work, that work remains to be done once the supplementary procedures itself have been completed for this group.

SUSAN PAYNE:

Thanks, Liz. Yes, that's certainly true that once we finish these rules, we certainly are not done with our tasks. Let's come back to the next items on these supplementary procedures. This is something of a reminder, but also hopefully an opportunity for us to discuss as a group, some of the next steps on some of these items. Brenda, if we can go to slide two.

There are a couple of items where when we first put together the sub teams, I had four different tranches of work for which people were asked to volunteer for sub teams. Rather than trying to have four different sub teams working all at once, we went forward initially with the initiation sub team and the consolidation sub team.

There are two other topics which it had been proposed to, to work on as small teams to look at the issue or look at the rule, identify whether

any particular issues are there that do need to be addressed in line with those comments that Kavouss made about us not needing to change things just for change sake, but whether there are things which are unclear or a bit inconsistent or where greater clarity really is necessary in order for participants in the IRP procedure to know what they are required to do.

One of those items was dealing with some of the issues around the selection of arbitrators, and then we'll come on in a minute to the other one. As I said, I had a call out for volunteers for these two other sub teams, and so my suggestion is that it's time for us to start spinning those sub teams back up. We do have work being finished off in the initiation and consolidation sub teams, but we shortly should be in a position where there's an opportunity for these new sub teams to start work. Kavouss.

KAVOUSS ARASTEH:

Yes, just on your question, the only question that you have raised, yes, there are items that they may need to consider. Some of them, for instance, it is mentioned with reference to the bylaw non-binding should be, or should constitute, or should not constitute the precedence. That is some issue that we have to-- or another issue is that regarding the standing panel ability to educate the state of the ICANN action, or just to recommend.

There are several points, I think if we could put in a more constructive-- not constructive, a more visible manner that what are those questions? Then we decide that which one we have to tackle. Some of them, yes,

whether this non-binding should constitute a precedence. I have some view, I don't express it now, later on. There are some points in the paper or in the document or the text that you have published, or you have put on the email of the colleagues. There is something to be done. Thank you.

SUSAN PAYNE:

Thank you. Thank you. I think we will come onto those particular questions that you identified in a few minutes. I'm afraid we've lost Malcolm, but I hope do has still sufficient of us. Indeed, we are not likely to be reaching any kind of actual decisions on this particular call. I think we are safe to keep going. We certainly have quorum still.

First up, as I said, we had a sub team on some issues relating to selection of arbitrators. These three sub paragraphs, A, B, and C that are identified on the slide and that I circulated are ones which we had previously picked up. I think in a number of cases, these are things that were raised by ICANN Legal when they shared some of their feedback on the rules from working from early use of the rules in IRP proceedings and it reflects some of the experiences, both of ICANN Legal and other participants in the IRP process.

I think as we've previously talked about, there's a question about whether the rule 3, as it currently stands is completely clear particularly as to when one would fall back to the ICTR rules on how to appoint arbitrators and where that would come into play. There was also a question about whether there should be some specificity added on the nationality of arbitrators, and indeed a question about whether one-on-

one arbitrators may be of the same nationality or same nationalities as ICANN the claimant.

In terms of considerations on this, these will be topics that obviously the sub team will need to consider, sorry. Then the third one, sorry, was about whether we should be specifying the date on which an IRP panel is in place to give some clarity. I think in terms of some of the considerations that the sub team will probably need to be thinking about, and these were things that just occurred to me as I was pulling this together.

Our IRP rules are supplemental rules to the ICDR rules. We do default back to the ICDR process when necessary, but it might help to review and clarify exactly when our rules should be defaulting back and when they shouldn't. For example, one example that occurred to me was, what happens if there's two panelists appointed from the standing panel by the parties, and they're supposed to agree on the third panelists, but what happens if they don't for some reason? Do we actually want to fall back to the ICDR rules on that? Or is this something that we really think is better placed with perhaps being deferred to the full standing panel to make the third appointment or to the leader of the standing panel to make the appointment, something like that?

What happens if a party does not want to select a panelist that might be another situation where it is worth looking at, as I say, our rules and what the ICDR rules say and making sure that there's not a gap there. I see a couple of hands, I'll come to you in a moment. I'll just quickly wrap up.

Other issues would include things like the question about nationality is certainly a good one, but if we have a standing panel, once we have a standing panel in place, which has minimum of seven people, could be seven, there might be a few more, but we have a fixed set of panelists from which we can draw down the IRP panelists.

How would nationality restrictions work in that scenario? Finally, do we need any time limits for the selection process? The interim rules don't have any. I have heard that there have been some issues where panel appointment has been rather extended, and I think that may be one of the issues that led to that question C about whether there is to be specificity on when the IRP panel is in place, because I think there may have been situations where there were perhaps one or two panelists appointed, but we didn't have three, and so on, and is that a circumstance where you have to refer to an emergency arbitrator because you don't have the three person panel or not?

Those are all issues that I think have been flagged, and hopefully it's not a huge exercise for a small group of people who are willing to work through some of those questions, work through what the bylaws say, what the ICDR rules say and what the current rules say, and just identify if there are any gaps which do need to be filled. Sorry, I was spending a lot of time talking. Liz.

LIZ LE:

Thanks, Susan. Clearly, we're referring to rules that need to be in place in the event that the standing panel is not in place. I think with respect to the standing panel itself, the bylaws have specific rules in terms of

how the third panelist is chosen. That is, each party chooses their panelists, and then the panelists will choose the third-party panelists itself in the bylaws.

One of the things I wanted to throw out there for the group to consider is if the anticipation is that the group is working, the CRG is working on a timeframe of being able to have a group of standing panelists nominated by the end of the year.

Is there a need to start this work right now for the subgroup, or does it make sense for the subgroup to be the work to wait a little bit, to see where if the standing panel is in place, and in which case I think the rules and what the composition of a panel might look like is no longer needed because there's a standing panel?

SUSAN PAYNE:

Thanks, Liz. I would be interested in people's thoughts on that, and whether we wait, although I do believe there's still a rule that talks about what happens if the standing panel doesn't have capacity, I think you still have a default process and so on.

It'll be interesting to see whether others in this group feel that we should be leaving that work on arbitrators until we have the standing panel in place, noting, of course, that the CRG may have or is working towards having their slate panelists by the end of the year, but then that slate would still need to be appointed by the board, and presumably there is then still some period of time for them to get up to speed.

It may impact some of this, I guess, so. I see David's hand, but first off, I will come back to Kavouss because he has had his hand up for longer. Kavouss.

KAVOUSS ARASTEH:

Yes, my question is that do we need to answer to all these questions or something which have full support from bylaws that you have to do something? I think some of the question before us could be settled by the panel, full scale panel or full member of panel. I don't think that we have tackled all the question that this panel may face.

The only thing that we should see whether we have full support from the boiler, giving the task to us to do something otherwise in simple things, Susan, we should not create work for ourselves. We are sufficient and we know how much difficult is to have this four years, three years, I don't know how many years, was very, I would say painful period for us.

We need just to see what is absolutely necessary to tackle, but not some sort of the checklist or some sort of the list or shopping list, and then tackling list most of these things to the panel themselves, whether panel would be able to do that or not, or whether as it is recommended, not recommended, explained or stated by David McAuley, our recommendation, we could say that maybe panel ask for the reactivating the IOT or so on and so forth.

I think we don't need to reply to all of these. Many questions that you have raised, there are not black and white, there are so many things between the two. If you want to tackle a question, for instance, the

nationality, you mentioned the nationality are [01:00:58 - inaudible] the same nationality of the claim, and those are drawbacks and the advantages and so on and so forth. We have to see which direction we take. There is no absolute yes and no between these. Thank you.

SUSAN PAYNE: Thanks, Kavouss. David.

DAVID MCAULEY: Thank you, Susan. Hi, everyone again. David McAuley speaking, for the record. I tend to agree with much of what Liz said and what Kavouss said. I actually think Kavouss is onto an interesting thing.

I think some of these more minor administrative things probably be worked out by the panel once they're in place, but with respect to what you're asking, there is an agenda of work left for us to do, and there is some of it which will be better handled by subgroups. It might be a good exercise when we're together at ICANN75 to have a list, okay, here's what we have to do, and the second part of the list is we think these particular bits of that will best be handled by a subgroup so that we could put them in priority order as to what we think makes sense.

I personally think us working on the final supplemental rules is top of agenda, and I actually would hope that maybe we could finish it just before there is a standing panel in place, but whether that happens or not, who can tell. I think, maybe let's put together a list, what needs to be done, what's best handled by the subgroup process, and we can then put priority on them. Maybe those things that are less important will

fall to the bottom and maybe they'll be taken care of by the panel once it's in place, but that's what I would suggest. Thank you.

SUSAN PAYNE:

Sorry, I'm muted. Sorry, what I was saying was thanks, and thanks to Kavouss and Liz as well. I'll certainly take on board the feedback that you've made. I think you one of the ways I was hoping that we could sort of triage some of this work was basically rather than have this whole group be arguing some of these questions, the idea was to have a small group of people just volunteered to say that they would take on the task of looking at, say, this question of arbitrators and making a recommendation on we do need to do this, we don't need to do this, this can be left to the standing panel, that kind of thing.

That was my thinking, and as I said, I think I identified things that had been listed out as issues for consideration. The fact that they're identified as issues for consideration doesn't mean they need to get taken forward. It's simply that, and the one regarding nationality is probably a really good example. It's actually probably quite difficult to do anything meaningful on nationality, particularly when you don't know what standing panelists you have to work with, so, not opposed to that.

I do feel that there are items in the rules that do need a review and potentially do need some revision, and whilst we are much, much closer to having a standing panel in place than we were, if we don't take these things forward until the standing panel is in place, I would think at a

minimum another six months. It may be that then just means that the rules aren't finalized in time. Kavouss.

KAVOUSS ARASTEH:

Yes, Susan, I suggest for your concentration and consideration of other distinguished colleagues out there, a small group or little group that you establish will prepare a list of what are the issue before us, then in the second step, they proposed that which one in their view could be settled or addressed by the panel and which one by us, and bring it back to the prelim, and we will review that and finalize that maybe agree or shift from group one to group two or vice versa, and then start the second step.

The first step is to prepare a list with the two sub part, part that in the view of this small group could be settled or addressed by the panel, and secondly, settled by or addressed by us, and then bring it to the prelim and you will review that and finalize that and then start the next step. Thank you.

SUSAN PAYNE:

Thanks, Kavouss. Again, I'm taking note of all of this feedback and we'll take it on board and hopefully we can find a good way forward. That, I think is a very helpful suggestion, and perhaps combines some of what I was thinking about with helping to address some of the other comments that we've had on this call that perhaps this isn't a question of a number of different subgroups all working away, but some kind of a group that we can have to triage these outstanding or potentially

outstanding issues and identify the best way forward for dealing with them.

With that, I think I will keep going just because I think it's helpful to flag the kinds of issues that I think are still outstanding for consideration, not necessarily to be addressed by this group.

Hopefully we can just run through that quite quickly, and then I can take this away and come up with a fuller suggestion forward. If we could jump forward to the next page, Brenda. Actually, that's just identifying who had previously said they were interested in working on this topic.

Yes, this is helpful, this is the next one. Next topic is the situation where there's a non-response from ICANN. This is something that is expressed in the bylaws that the rules of the, sorry, bylaws 4.3N4F state that the rules of procedure are intended to ensure fundamental fairness and due process, and that they shall at a minimum address the following elements.

Then there's a number of elements that this group is expected to address in the rules, and one of those is F, the procedure if ICANN elect not to respond to an IRP. This is something that we are expected to cover in our rules and I don't believe it is currently covered. I think it is something that needs to be addressed, albeit that I don't think as someone is saying, I'm not sure who it is, David, it's hard to imagine.

I would agree with that. I think it must be an extremely unusual circumstance where there was an IRP brought and ICANN decided that they would not put a response in. I think we will need to address this in the rules because the bylaws tell us to.

Mike, you're asking a question in the chat, you say, if so they're defaulting and they lose what is the issue here? I'm not sure that that is correct, Mike, but that is perhaps the issue that we should be discussing in the context of what it says in the bylaws.

Because it does say in the bylaws at 4.310, that each IRP panel shall make its decision based solely on the documentation, supporting materials, and arguments submitted by the parties, and in its decision shall specifically designate the prevailing party on each item of a claim. I don't understand this as envisaging a judgment in default type scenario.

I think it is envisaging a scenario where the panel have to decide the case based on what they have before them, and if they only have before them what comes from the claimant, then they have to assess the claim based on that material and reach a decision based on that rather than just being a simple judgment in default irrespective of the merits. I would certainly appreciate hearing from others if that assumption on my part is not how you all view what the bylaws say. Kavouss.

KAVOUSS ARASTEH:

Yes, Susan, I think you intend, or it is intended that you create another little group to deal with that. I just want to mention for that potential little group, I am dealing, or I have been dealing with the non-response for decades.

There are two sides of the non-response. The first side of the non-response means disagreement. The second side of the non-response, which is called sometimes passive agreement. That means no reply,

means they agree what has happened. There might be other interpretation, but whatever, at least during these decades, there is only these two sides, there is no other way, and you have to address them separately unless they say that the ICANN board does not care about the panel and so on and so forth, which is not the case.

I don't think that that is the scenario, but two scenario that I mentioned, I have been faced elsewhere, the disagreement one side and passive agreement, other side of the non-response. Thank you.

SUSAN PAYNE:

Thanks for that, Kavouss. David,

DAVID MCAULEY:

Thanks. I just wanted to say, because you asked us to weigh in, I'll say what I said in chat. I could easily see ICANN not responding to a claim that regards the delegation or redelegation of a ccTLD because I think that's just out of scope, if I recall correctly. There wouldn't mean any need to respond to it, and the panel would have to dismiss the case.

There is something to this, but it's hard to imagine it not happening. I think ICANN even in that case would respond and say, hey, read bylaw, such and such that panel, you don't have any jurisdiction here. I just wanted to explain what I was saying in chat, probably did it better in chat than I did here. Thanks, Susan.

SUSAN PAYNE:

Thanks, David. Yes, and I'm certainly trying to keep an eye on the chat, but I'm not necessarily completely keeping up with it. Yes, Mike is commenting that he still thinks ICANN would respond. As I say, I think we all think it seems astonishingly unlikely that there would be an IRP that ICANN would make a decision not to respond to.

As I say, we are tasked in the bylaws with covering the procedure for if that scenario arises. I think we have to have something. As I said, I don't think that it needs to be particularly substantial, but I think we have to have something that reviews the procedures and identifies if there is anything that needs to be particularly addressed in order to make the IRP process work in that extremely unlikely scenario. Liz.

LIZ LE:

Hi. Yes, I think I just want to echo what was been said here. I cannot imagine a time when ICANN would not respond to an IRP filing, even if it was a filing for a ccTLD delegation, re-delegation, and it deemed to be out scope of IRP, in which case ICANN would respond to simply point out that it is out of scope of the IRP process itself.

I understand there are needs to have a procedure on it, but I wonder if there is a way that we can streamline the development that this procedure so that we are effective in it in terms of use of our time, because again, just, I don't ever see a situation that ICANN will not respond. Thank you.

SUSAN PAYNE: Thanks, Liz. Beyond delegating this to a small group who are willing to just come up with a few suggestions, do you have any other suggestions on how to streamline? I'll leave you to ponder on that while I just turn back to Kavouss. Sorry, Kavouss, I'm not hearing you at the moment.

KAVOUSS ARASTEH: Yes, I'm hearing you. I'm waiting for you to give me the floor.

SUSAN PAYNE: Sorry.

KAVOUSS ARASTEH: Can I talk?

SUSAN PAYNE: Yes, I was being unclear. Yes, please.

KAVOUSS ARASTEH: Let me just give my views. I don't believe that the ccTLD is anything relation with that with the panel. this is very sensitive and very crucial issues, and there was at least one top cases, they went to the court, took to courts and so on and so forth, and for several reasons they decided something which is a very sensitive decision. I don't think that we should leave any doubt that ccTLD with something to be discussed or to be decided, or to be referred to the panel. It's outside the scope of the panel. Thank you.

SUSAN PAYNE:

Yes. thanks, Kavouss. Understood, and I think, David, when he was using that as an example, that was his point, I think that it is outside of the scope. Perhaps that would be an example where I can wouldn't respond because it would be outside scope, but even in that scenario, none of us can envisage that ICANN wouldn't respond to make that very point that it was out of scope.

Okay. All right. There's a lot of comment in the chat. I will take the time to pick up on what's been said in there to the extent that I haven't caught up on it while we've been talking. We have 10 more minutes, so I do just want to quickly get through the rest of the deck.

Brenda, if we can go onto the next item. Also, when we talked about this previously, we identified a handful of issues that raised some questions that we felt before we thought about whether they were dealt within a subgroup or not, they needed a bit more discussion within this group. One of those was on appeals. There is at the moment article 14 which deals with appeal, I've actually reproduced it on the slide just for convenience. It's really brief, and so, I think there is a question for this group.

I think probably it seems appropriate to me. I think when we've previously had some discussion, others agreed that it seems as though that it would be beneficial potentially for there to be more work or more granularity on the rules dealing with how you bring an appeal.

The question I think for us to consider and perhaps even agree as part of the subgroup process that we were talking about earlier that Kavouss

was mentioning, the triaging exercise is. do we need to deal with that now?

Does it make sense to amend article 14, which will take us some more time when we're working on these supplemental rules or is it better to leave this to a follow-up process where we can put some granularity onto the rules for appeals at a later date, because appeals will be a less common procedure, whereas obviously we do really want to clarify and complete our rules on the standard IRP process, or indeed do we feel that this is adequate and we could leave this as something that the standing panel could work on in due course?

Based on some of the discussion we've had today, possibly even leaning towards that latter that this might be something where we at least do not need to finish it for the purposes of these rules. We could consider something as either this group will add it to our list of future work once we finish these supplemental rules and, or work with the standing panel when we have them.

I think this is certainly one that we agreed we would have some discussion in this group before we took it forward. Sorry, I've got a couple of hands already, so Kavouss first and then Mike. I'll turn to Kavouss.

KAVOUSS ARASTEH:

Yes, thank you, Susan. I think article 14 and appeal is an issue, however, I don't think that it has a priority to be addressed, and I don't think that we need to spend time on that. At least from my point of view, it's more in line within the scope of the panel itself. Thank you.

SUSAN PAYNE: Thanks, Kavouss. Yes, Dave-- sorry, Mike.

MIKE RODENBAUGH: I just strongly, strongly disagree with both of you. I think this is very important work that this group has been waiting way too long to get into, frankly. I think the standard that's in the rule now, in the supplemental rule, I don't know how it got there, but I don't even think it comports with the bylaws as written, and I just feel like this is definitely an issue that we need to take up.

SUSAN PAYNE: Thanks, Mike. I'm not sure I'm understanding you. Is your comment regarding the appeal of a decision based on a clear error of judgment or application of an incorrect legal standard? Is that the point you are flagging?

MIKE RODENBAUGH: Yes, that is.

SUSAN PAYNE: Okay. That is not something that I had looked at. Obviously, I don't know how that got into the rules. I don't know if it's in the bylaws, for example. I haven't checked that, so I can't comment on whether that was something that was determined during the previous work of this IOT before I was a member of it.

That's something to note if there's a disagreement as to whether the standard of when you can bring an appeal is matching what the bylaws envisage, that perhaps is something that we should look at in a more timely manner than perhaps I was believing the rules needed to be addressed. Sorry. David.

DAVID MCAULEY:

Thanks. Oops. Thanks Susan. David McAuley speaking for the record. Don't have a comment on the standard for appeal, but I do have a comment on the relative waiting or importance of it. I personally think that the most important order of business for us is to finish the supplemental rules, but I do think that following that, the rules on appeal are pretty important, and that we would want to get into it pretty quickly. Thank you.

SUSAN PAYNE:

Thanks, David. Mike, is that a new hand or an old one?

MIKE RODENBAUGH:

Sorry, it's old. I'll take it down.

SUSAN PAYNE:

Okay. Thank you. All right, noting what you say and noting also Kristina is agreeing with David, I think that's regarding the importance of getting onto the appeal rules and relatively short order after we finish these supplemental ones. All right. I think that's as far as we can take that one for the moment and I will just, we have five minutes left, so I will

just very briefly go onto the next slide, which is our final one, and then we will wrap up.

This final one is a couple of other topics which had been raised previously as matters for further consideration, but that they needed consideration before to determine whether there was an issue firstly, or even whether it was appropriately something that we would take on.

I've captured them so that we don't forget them, but we probably don't have time to start any kind of substantive discussion on these numbers one and two here now. There's certainly the question-- one of the questions.

First one, non-binding IRPs and precedent. One of the questions was, is it even within our remit to be considering whether non-binding IRPs constitute precedent or not? I'm not sure of the answer to that, and I did wonder whether that's something I can possibly ask Liz and Sam to look at for us at least initially, and give us their input on that question for when we need to address it. David, I see your hand.

DAVID MCAULEY:

Well, thanks, Susan. David McAuley speaking for the record. I think I put these two items on the list and this actually, this non-binding IRP precedent, I find very important, but I'm also the guy that said is it within our remit? May not be if you read the bylaws, but that brings me back to my earlier comment.

We may want to make recommendations to the board once we finish our work. Non-binding IRPs are those where someone asked ICANN to

do a non-binding IRP, and those decisions are not enforceable that they might somehow ever create precedent, I would find bewildering. I find it important, and if nothing more, I hope we do a recommendation on this, so that's why I put it there. Thanks.

SUSAN PAYNE:

Okay. Thanks, David. Certainly, I think it's right that these are both items where we need to determine whether there's anything it is even possible for us to do, but as you say, even if it's not something we capture in the rules, we might want to make some suggestion to the board on them. I think for now, we probably can park these and these are not the highest priorities to be taking forward, certainly in this review of the supplementary procedures. I think that's as far as we can get for now.

As I said, I've heard a lot of really helpful feedback during this call, and I will also, as I said, go through the chat to just pick up other suggestions that I maybe haven't kept or didn't have the opportunity to see during the course of the call and make a further suggestion on next steps in how we take some of these forward.

That will be a task for me, and then I will also make some suggestions to circulate a proposed agenda and so on and discussion for our next meeting, which is whilst we are at ICANN75. Thanks, everyone, for all of your engagement and input on this, I think it's been really helpful for me and for us to have this discussion. Apologies, I think we are just right at the bottom of the hour, almost running out of time, so I will quickly

thank you all, and we can stop the recording, Brenda, and wrap up the call.

[END OF TRANSCRIPTION]