
ICANN78 | AGM – IRP-IOT Membership Work Session
Monday, October 23, 2023 – 4:30 to 5:30 HAM

DEVAN REED:

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SUSAN PAYNE:

Lovely, thank you very much Devan, that's great, and thanks everyone for joining. We've got a small but mighty team in the room and another small but mighty team online by the look of it, so welcome everyone, we're really pleased you could join, in fact we've got quite a few people online, which is great. There's a weird echo in here but I think it might

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just be the room, anyway, as long as it's not interfering with you all, I will keep going, but if there's a problem hearing on your end, then someone put something in the chat, there's the agenda, perfect.

So we, I think, we unfortunately didn't manage to have our last membership call, we couldn't get the quorum for that, which was the one that was going to be just before we all sort of came to ICANN78, so some of this is what we had been hoping we would finish off before we got here, but in any event, we have a number of documents to review, first up, I'll just quickly go through the usual sort of agenda review and so on, and we'll do the updates to statements of interest and just in the usual way.

So in terms of agenda item three is we have a couple of action items, one was for Sam to circulate some proposed language on lack of capacity, which she's done, and also for me to update the text of rule three to reflect our previous agreement, and then our sort of, there's then a substantive agenda item number four for us to hopefully on this, in this meeting to finalize the proposed text of rule three. Rule three, just as a reminder, is the one on panelist selection, IRP panelist selection.

Then agenda item five, which I think will go across this meeting and the following one is for us to start on our sort of review of the draft public comment text for the rules that we've been working on in this group, so that's rule three, which is panelist selection again, rule five B on translations, rule seven, which is the text on consolidation, intervention and participation as an amicus, and rule four, which is on issues relating to timing and incorporated into that as Bernard previously flagged over

our email list, we have included the considerations on initiation of an IRP into rule four as it seemed, we needed to find a home for that text and it seemed an appropriate place to put it.

Agenda item six, which again I think to the extent that we get onto this would be in our next meeting is to begin the consideration of the cooperative engagement process and item seven is AOB, if there is any on either of these call meetings. So with that I will go back up to the top, I didn't do welcome, I'm not sure, do we need to introduce ourselves to each other, I think not, we all know each other don't we and we don't really have any observers apart from one. So updates to statements of interest, if there are any, just keeping an eye on the, no doesn't look like we have any, excellent, all right then. So yes, I've already mentioned the action items so I think we can go straight over to the rule three proposed text hopefully and we can hopefully, as I say, wrap that text up.

That's perfect, and as previously noted, this is the text of rule three dealing with IRP panel selection that's been revised to reflect the discussions on our last couple of calls and also includes the text that Sam Eisner proposed in subsection three to address the fact that lack of capacity within the standing panel might not be an all or nothing thing, there may be a situation where it's not that there's no panelists available at all but there may not be possible for the standing panel to field three panelists and so Sam proposed some text which I hope everyone has taken the time to look at to try to address that.

And just as a note, the document is redlined against the current rules, there's quite a lot of redline but for convenience the sort of new items

have basically been given highlighting so that we can see them easily and I think since we've had this with us for now quite some time, I don't think that we need to walk through the whole of the text sort of line by line by any means but I will take the opportunity to just flag the amendments, the changes that have been made.

So first up when we get down to A, there's an amendment there just to change the word initiation to initiation. I think previously we were using the term commencement, that's not in any way a defined term and we have got initiation as being something that is used elsewhere so I think that was a change that was flagged on a previous call and I think is non-controversial. We also have into A also the update of the timing to be five days. We had a previously had something I think we had two days in here and the feeling was that that wasn't enough time so that compromise of five days instead has been included in subparagraphs A and subparagraphs B and then if we moved on down to three, I think it's probably worth reading this one because there's a few changes here.

So as you can see the highlighting so we now have paragraph three now states that if the standing panel in its discretion does not have capacity to seat any or all of the panelists necessary to comprise an IRP panel for the dispute, the standing panel must notify the claimant and ICANN in writing as soon as possible. And in any event within 14 days, in the event that the standing panel is not in place when the relevant IRP panel must be convened or is in place but does not have capacity, IRP panelists shall be selected on the following basis and we will go on to that in a minute. So this change is part of that reflection of the fact that it may not be an all or nothing for lack of sort of capacity, lack of availability of panelists. And I think I'm just going to double check.

There were a handful of comments in the draft text but I don't think we have anything substantive here. We're joined by Philip, which is good. So I will also perhaps I should at this point also just flag that there is a slight change to the footnote there as well down at the bottom, which is footnote number three. So relates to this same section and is just an amendment that was made to clarify that although the bylaws have this provision about lack of the requisite skill and experience that as a group we felt that this was an exceptional circumstance that there is not a, there's not a general expectation in judicial and arbitral proceedings that the adjudicators necessarily have detailed subject matter expertise and also flagging that bylaws 4.3 (k) for provision which specifically allows for the IRP panel to have access to independent skilled technical experts where they need it. So that was something that again we discussed and agreed that we wanted to beef that footnote up a little. Malcolm.

MALCOLM HUTTY:

Thank you. I just wanted to just be a little careful with this language around this. I'm pretty sure that we do not wish to be opening up a debate as to whether or not the panel has the requisite skill and experience. I think, I assume this is uncontroversial. So, and on that assumption, I noticed that, I know that in paragraph three we refer to the panel in its discretion but in paragraph two we don't when this is introduced. And I wondered if it's really necessary to clarify here that this is a decision for the panel as to whether it has the requisite skill and experience and it's not something that is for the parties to really argue.

SUSAN PAYNE: I strongly endorse that.

DAVID MCAULEY: We've spoken along those lines with a view to, despite some maybe ambiguous language in the bylaws, to say that every effort should be made within the panel's discretion to keep it within the panel, et cetera, et cetera. And they have access to experts. And I think it's in decent shape. So I agree, long way of saying that.

MALCOLM HUTTY: We can't change language in the bylaws fine but nonetheless, if we in paragraph two said if the panel considers that it does not have as opposed to the objective statement, if it does not have.

SUSAN PAYNE: Thanks for that, Malcolm. You're absolutely right and we picked it up in section three and you're right, it doesn't, it didn't get picked up in section two, so.

MALCOLM HUTTY: Section two probably controls as well as it's a more general paragraph.

SUSAN PAYNE: So do we think when the IRP panel is, if we have that language, as you're suggesting then, IRP panel must be convened or is in place but considers it does not have capacity? Does that make, is that...

MALCOLM HUTTY: It's a suggestion.

SUSAN PAYNE: Thank you. I think then keep scrolling down if that's all right, Devan. Thank you. Thank you. And then 4A is again, sorry, 3A rather, sorry. These are again, edits that came from the proposal from Sam to reflect the lack of capacity, maybe not being for the whole three-person panel. Oh, sorry, I just seen your hand, Kristina. Kristina.

KRISTINA ROSETTE: Kristina Rosette for the transcript. Yes, I have a couple questions slash comments about 4A if this would be an appropriate time.

SUSAN PAYNE: I think it would and I'm just double checking. I think it's 3A, I think I made the mistake.

KRISTINA ROSETTE: 3A, apologies.

SUSAN PAYNE: That was my error.

KRISTINA ROSETTE:

And I apologize because I've had to miss the past couple of meetings because of conflicts. But it's, I have two questions about 3A. The first is, was there, has there been any discussion about putting some guardrails around what the standing panel chair can propose? Even if it's language along the lines that must be consistent with, I don't even know if you would want to pick IRP provider administrator processes. But as it stands now, the standing panel chair could say, I'm going to pick my pickleball partners, which obviously is ridiculous, but I think it proves the point.

And I think we should probably have some kind of language in there that at least consistent with the purpose and objective of the IRP. Just some kind of modifier language in there that would at least shut off the possibility for something that we would not anticipate.

And then the second actually goes to the may propose a process language itself. Is the intent that the standing panel chair would propose a process and then that process would then be subject for discussion? And if so, among whom? Or is the idea that the standing panel chair would frankly just pick a process? Because if it's the latter, then I think we should be more clear in articulating that. Thanks.

SUSAN PAYNE:

I don't disagree with anything that Christina just said, except that I'm willing to bet that the underlying ICD our rules cover some of the ethics stuff. So let's not recreate the wheel. If it's who you can because the panels pick a third party all the time. There must be something about conflicts of interest that's covered in that. Did you say ... Flip, sorry.

FLIP PETILLION: Thank you. I would propose that we define the administrator because now I see, now and then I see administrator and then I see the IRP providers administrator. I would simplify the text, define it once and then maybe you can define it. I would simply define it. Define it once and then maybe use the bird administrator.

SUSAN PAYNE: Thanks Flip. I think we can probably do that. I think it'd be helpful to try and reach a kind of agreement on what we do about 3A in terms of, I don't know the answer about whether the ICDR rules would cover this. They don't really expect there to be a standing panel and a standing panel chair. So we don't know if it would be picked up.

FLIP PETILLION: It may well be, Susan, but this is a special text on a special text or along with a special text. So it's, if we can do it here, it's better to do it here.

SUSAN PAYNE: Would it be sort of slightly thinking on the hoof here, but something along the lines of what Kristina suggested. So the standing panel chair may propose a process for completing IRP panel selection consistent with the IRP, the aims of the IRP and with a view to ensuring the selection of duly qualified candidates.

UNKNOWN SPEAKER: I don't know if this helps, but one of the things we are going to do after this is look at conflicts of interest for the standing panel. So that could be addressed in there, maybe.

MALCOLM HUTTY: Oh, thank you. Just gave me a flash of brain wave about previous point about capacity. Because lack of capacity isn't the only reason why they might not be able to seat a full panel. Conflicts, recusal due to conflicts is another. It might actually be better to take out all this stuff about capacity and say that if it's in place, but it's not able to be filled due to other IRP commitments or recusal, and then separately state that one of the reasons that they, the panel may choose to recuse itself is because they feel that they do not have the requisite skill and experience and an alternative reason is because of a conflict of interest. And that way you've really moved this whole notion of capacity well out of the ground of something that will be litigated and into the realm of this is a recusal type issue.

And it would be much more elegant in terms of language as well, because then you wouldn't be carrying around this great phrase from paragraph to paragraph. You'd just be carrying around the word recusal.

SUSAN PAYNE: So you're suggesting, sorry, it's Susan here. So Malcolm, you're suggesting that it's the individual panelist who is recusing themselves because they feel they don't have capacity? I don't think...

MALCOLM HUTTY: Well, is that not what we're talking about? if somebody is, has if we've got ... were you unenvising this as being the entire standing panel would collectively take a decision on this as opposed to an individual panelist saying, no, I'm not, oh, Becky's looking for the floor.

BECKY BURR: I just really think we're really overthinking it. There is a code of ethics for arbitrators. There are several, there must be an international one. They would have to recuse themselves if they had a conflict. And then there would not be capacity within the panel. So I think in the judgment of, if in the judgment of the panel, they don't have the capacity to do it, we'll cover it if we then pick up one of these existing codes of ethics, which I'm just looking at one that says that they have the obligation to uphold the fairness of the process and a bunch of other things. I'm sure that there's one code of ethics arbitration that people who know much more about this have written.

MALCOLM HUTTY: Yes, so if we talk about not, because when we're talking about capacity and skill and experience and everything, we're talking about the criteria by which they might not be able to serve. But what we're actually want to be addressing is the fact of them deciding that they're unable to serve. If the panelists are not, if there isn't the availability of sufficient things, then these are the procedures to follow. The criteria by which they might arrive at there is a separate issue that gets addressed elsewhere. And that could be because they don't feel they are because

it's skill and experience. It could be because of a conflict. It could be because of some other thing that arises in one of those codes. But the process here is what we're setting out. And we don't want to sort of import the criteria for that because that conflicts two different issues, really. Does that sound right to you?

SUSAN PAYNE: So I've got Liz in the queue as well. So I'll turn to Liz first. Liz.

ELIZABETH LE: Thanks, Susan. This is Liz Le with ICANN Work for the Record. I think, just to add to what Becky is saying, I think if we start to go down the path of defining, instead of taking out lack of capacity and start defining in terms of recusal, what it means, we might be narrowing the scope of the language that is contemplated in the bylaws itself for allowing for this provision. And also, we're narrowing the scope of the initial point of this paragraph, which is to say that the standing panel in their discretion would determine whether or not there is a lack of capacity. It could be because there's a conflict of interest. It could be lack of certain skillsets that are needed. But I think if we were to take away the language, the lack of capacity language as Malcolm is proposing, we might end up narrowing the scope too much than what is contemplated in the bylaws. Thanks.

SUSAN PAYNE: Thanks, Liz. And Flip, did you want?

FLIP PETILLION:

Well, Flip Petillion, I don't know if it's really going to add anything, but it simplifies when you focus first on where is this coming up or at what point in time, is it before the nomination or appointment of the panel members, which makes it easy because we discussed that in the past, we refer to the IBA rules. They have very useful lists, for example, to assess whether there is a conflict of interest or not. So this compared to the situation where you have that kind of problem that occurs following the appointment of a panel. And I thought that that is actually the situation that you try to cover here or not.

SUSAN PAYNE:

Hi, it's Susan. So yes, this is at the point of appointing the, selecting the panelists. I think what I was hearing from Liz and seeing from Christina in the chat is aligning with my thoughts, which is, to be honest, my assumption would be that the lack of capacity in the standing panel is both kind of lack of availability and that lack of availability could be because half of the standing panel have had to recuse themselves. So I feel like lack of availability covers the fact that they've stood down for conflict of interest.

And the other issue or the other circumstance, which is the one in the bylaws, which is this lack of the requisite skill and experience, we having, I feel kind of mulled over this at quite some length, we kind of came to the conclusion that we should leave this to the standing panel themselves to make a decision whether they think they've got, whether that situation applies or not, and that we didn't want to put too much control over them to make their own determination. And then, hence why we had that language about it being in their own discretion.

And sort of, arguably, if we don't want there to be too much discussion and challenge over it, that's the point. This isn't supposed to start a whole tranche of additional dispute. If they can't hear the case, then they can't hear the case, and we find the panelists some other way. I don't know if I've got any, I've got Kristina in the queue, Kristina.

KRISTINA ROSETTE:

Kristina Rosette, if it would be helpful, just in order to kind of close this point off slightly, at least for the time being, I'm happy to try and come up with some possible suggestive modifying language and put it to the list in writing. I won't be on the Wednesday meeting because I believe it's, dark 4:30 at my time. But at least if that would help, I'm happy to do that.

I do just want to clarify though, is it the intention of this language that the standing panel chair would propose a process or select and implement one? Because again, I don't want to get too far down in the weeds here, but I think we need to be very precise about what we're intending to do because if the intent is that it's going to propose ... the standing panel chair is going to propose a process that then kind of leads to the question of, so what then, as opposed to select and adopt? Thanks.

SUSAN PAYNE:

Thanks, Kristina. Thanks for your offer. That would be appreciated. I believe our intent was actually select and implement. I don't think we're intending for the standing panel chair to be proposing something and then there'd be a lot of debate about it. If there's concern about

this we can default back to what we had previously, which was, if there's no capacity, then we immediately fall back on the ICDR process.

But what we were trying to do was avoid that. And if it's a situation where we've got a standing panel already in place to give the standing panel chair the opportunity to govern their own processes a bit more. So that was how we came to this position. But I think perhaps, yes, propose a process, perhaps doesn't truly reflect the intent, which is that, they're meant to be coming, if they want to come up with a process for a selection, then they will do.

And if they don't come up with a process, then we default back to what is basically the ICDR process, which is what we have then set out at sections B through E. I think we can move on from that then, we'll keep an eye out for a suggestion from you, that's appreciated. And then in terms of the rest, just to finish this off, there's not too much else that has been changed here, in not too much highlighting.

Obviously, there's a lot of red line text, but that's not new text. And that red line is in order for the community to be able to see what differences there are over the current language of the rule. So really, I think we're just looking at subsection E, where we have the references to panelists. I think that is a replacement. We had previously had arbitrators, I think was the term that the ICDR use.

And so in picking up the text from the ICDR rules, I'd carried across that terminology, but we, again, as discussed, decided that we should replace that by the use of panelists. And then we then have just a couple of the same change, I think, in both in respect of conflict of interest, where we, in 5A, there's the addition of the language that if a standing

panel member is unable or unwilling to do so, that is to give the necessary declaration about lack of conflict. Within the timeframe, an alternative IRP panelist will be selected following the procedure set out in the rule in question. And I think we have that same language then in 5B, just to cover that off for a situation, if the panelist in question is from outside of the standing panel, they have that same obligation.

And again, that's something we discussed. It's just closing the loop. We'd previously given a time limit for panelists to make a declaration and didn't specifically spell out what happens if not. And so that's to close off that loop as well. And so with that, and subject to a little bit of tweaking as we've just been discussing today, we're close to final form on rule three, but we certainly are at an end to the review of it unless there's anything anyone else wants to flag before we put that rule to bed for now. I'm not seeing any hands.

I think then we can move on. And I think in terms of the next item for us to do is to then move on to discussing the actual draft public comment text. And it probably makes sense for us to actually do rule three again. I know we haven't quite got final text on rule three, but there is a document and it's one of the ones that's been with people for the longest length of time.

So this is now the version Devan with, that's called rule three with rationale. And I think it makes sense if we can to start on that one because it's very, very fresh for us all. And again, I think everyone has had this text circulated to them. I'd like to think people have had time to review it. And so I don't want to spend time going through everything line by line unless there's a feeling that it's necessary. So I'm just sort

of looking around the room to see whether there's a feeling that it is, but if not, we can just, I will talk about what we're, the sort of how we've chosen to put this together and then kind of canter through to have an overview of the thing. And we can pause if there are areas where people want to pause and look at the language in particular.

But I won't, unless I hear from you otherwise, I won't go through this whole document sort of word by word. And this is just a reminder as we've been looking at the rule text already on this one anyway, but we're here, this exercise now is really just to, for us to review and feel comfortable with the proposed language that's the more, the sort of explanatory language and rationale. And this, Bernadette and I were discussing, what would we be putting out for public comment? And obviously essentially what we're putting out for public comment is obviously the draft of the rules. But it felt as though, you can't put them out just in isolation without some kind of explanation of what we've been doing and some of the issues we've been discussing, or at least some of the reasoning behind how we've ended up, where we've ended up.

And so that's what this is intended to do. It's relatively light touch. And obviously I'm very open to hearing from people in the group if you feel it's too light touch. But that is the intent is to give just a kind of overview of why we've made a change, why we think something, there's a particular edit, why, in some cases where something has been particularly thorny for us, a sort of reflection of the fact that perhaps, we're not all on the same page on this particular clause or whatever. I wouldn't say that's necessarily the case in this rule three, we're pretty

much, I think on the same page, but that's the intent. And Kristina, I see your hand.

KRISTINA ROSETTE:

Kristina Rosette for the transcript. Yes, Susan, I found this proposed text with rationale to be extraordinarily well done and very helpful. I think it will really, I hope, be useful to the community in having a better understanding of what issues we still have, where we're looking for specific for comment and avoid what has often happened in the past and other public comment periods where the assumptions are made about the rationale or meaning, et cetera. I hope it will make the comments that we receive more useful both to the rest of the community and to us. And I want to thank you for all of your work and the staff work on this. I thought it was really, frankly. I think everybody should do this for public comment quite honestly going forward. Thanks.

SUSAN PAYNE:

Thank you. I'm quite touched. I will say Bernard did a ton of work on this and joint effort by us, but he definitely broke the back on this because it was it was a task, wasn't it? We went back and forwards a little bit, but thank you. So, Flip.

FLIP PETILLION:

Thank you, Susan. Actually, I wanted to make a similar comment, but I couldn't find the same words and the beautiful way that Kristina has put it.

SUSAN PAYNE: Thank you. So, yes. All right, then. And we'll just, again, I within a very high-level way, just quickly sort of scamper through the document unless no one unless no one feels we need to. If everyone feels they're very happy with this, this text and the explanation in there, we maybe don't even need to do that. I don't know. What do you think?

UNKNOWN SPEAKER: We can tell people that we'll pick comments on Wednesday if people came up with comments later.

SUSAN PAYNE: Yeah, that's certainly I'm happy with that. If you are, I certainly don't want to cut off the opportunity for people to propose edits or and certainly if there's an area of amendment that we're that we're making where you think this isn't... it's not sufficiently detailed enough. I would welcome hearing that. I think maybe rule three isn't the one where we may have that discussion and maybe one of the other rules such as rule four maybe is. But then if we if everyone's happy, I think we can pull up rule five be then on translation and just take a quick look at that one as well. Does that seem okay.?

Thank you. Thanks, Devan. Let me find this one. So this one. I would say this was hard, just for me, certainly, because we did this, this was the first rule that we looked at so it was kind of coming back to something with quite a lot of time having passed again it wasn't the most difficult of the areas to reflect on although I did sort of have to on

rereading this and reflecting on it. We did make quite a few changes and I do recall that we had some fairly detailed discussions about what was appropriate in terms of translation services and so on.

The introductory text gives a bit of a kind of overview generally and then when we get to some of the actual provisions we get into a bit more detail but so perhaps it is, I think maybe for my benefit is probably worth just looking at this one a little bit just because it is so new, or rather so old we haven't looked at this for a long time.

So really, this was something where we've made. We wanted to reflect the fact that claimants who are wanting translation services ought to make an application to that effect. We've introduced the idea that there should be an actual designated form, which obviously doesn't exist at the moment but to clarify that. There is form to be used in order to make that that request for translation services.

And we also clarified that that you could make that request at the time that you're submitting your statement of dispute. We also allowed for it to be made later but I think, obviously, the, the later you are into the proceedings and the more that you've been participating in a language. That's perhaps not your first probably -- I think probably the harder you'd find it to get through to get over the hurdle of persuading that you need translation services but we're certainly not ruling that out.

In section five, we also encouraged added that encouragement for claimants to approach ICANN and request a stipulation for ICANN translation services with the thinking that there could be situations where we're really the parties are both in agreement that this is

appropriate. And so, we don't need to be troubling the panel with this if there's an agreement on both sides.

We then also introduced a sort of provision for handling of urgent requests for translation services on the assumption that there could be situations where really, someone who is really outside of their language skill set maybe can't wait until they've got to a certain point in the proceedings before there's a determination on this. And we included in section eight, we talked about how do we sort of some give some additional guidance really on what is being taken into consideration in determining whether the claimant needs translation services or not. And so that was a sort of beefing up of what is in the current rule to try and give a bit of additional assistance.

And I think particularly of note was that we did expand somewhat the actual trend, the actual languages in question. That's something that is down in the rationale to that section eight itself. The current rules talk about limiting translation services to basically to and from English and the five other official languages of the UN. And as you'll probably recall from some time ago, we did talk about that at some length because we, on the one hand, didn't want to completely open up all cases to arguments that someone needs translation services into an obscure language.

And so we tried to come up with a kind of compromise that allowed for where there was a kind of sufficient proficiency in a in a UN language, then that would be the default, but that there, we wouldn't outright exclude the possibility of someone seeking assistance in a different language to one of the UN languages.

And then we also sort of expanded on and tried to beef up the how the translations are handled, who is responsible for the costs of them and so on and clarifying that obviously nothing is stopping a claimant from making their own arrangements. But for themselves, they are paying the costs for that. And we also, as you may recall, we felt that we gave a sort of allowance for the panel to be potentially extending deadlines to specifically allow for translations to be made so that we weren't so that there was reasonable time to actually put translation services into effect.

And yes, as I say, I must say, coming back to this after such a long time, it required a bit of recollecting of what it was that we'd all discussed and agreed, but I don't think that as a group, we had any particularly strong disagreements on this rule. And I think we came to a pretty clear agreement on it. And so there's nothing there's no particular sort of conflict or disagreement reflected in the explanatory text.

So, again, I will just, I think, pause and see if anyone has any particular comments, if there's any of any of the text, the rationale text that you want to that you want to turn to. Then we can do so. Otherwise, we can go on to the next one.

Am I seeing any hands? No, no hands. So, again, we can, as with rule three, I think we can, we can come back to -- we can we can circle back to this on our in our next meeting, see if anyone has any particular comments on the text or any concerns.

But otherwise, I'm going to go out of number order here slightly, and maybe we can move on to rule seven. Thanks, Devan. I'm going to try and she's -- Devan's ahead of me. Yes, rule seven. So again, this has the

benefit that we've been looking at this or finalizing this rule on consolidation intervention and participation as amicus quite recently. So, it's sort of nicely front of mind for us, mostly. And I think hopefully not too controversial.

But this one in the introduction here, again, I'll just I'll sort of give the kind of overview to start with. We in this overview text, we have referenced back to some of the, the public comment input, particularly about whether these applications for these various types of participation should be, in fact, made by the IRP panel and not the procedures officer and sort of reflects that we came to the conclusion. And also the feedback within the group from past cases that the procedures officer role wasn't very well understood.

So that we have made that change away from the procedures officer. And then also that third parties directly involved in the underlying action, which is the subject of the IRP should be able to petition to join intervene or participate as an amicus.

And so, again, we also had taken that one on board, something that is in to some extent is in the current rules, but we certainly reflected a slight change, which is that in the case of intervention we concluded that you want to be able to intervene or participate as an amicus. You didn't necessarily have to be one or the other. So that if you were eligible to be a claimant and therefore eligible to intervene, that didn't mean you were cut off from being an amicus if you wanted to be. We also looked at. Yes, I think, again, this came from public comment, apparently the multiple claimants not being limited by the page limits.

I think we came to an agreement on that one very easily. Everyone could see that was quite a challenging requirement for multiple claimants to expect them to somehow try and agree on the documentation or to have fewer pages because they were having to share their pages with someone else. I don't think that was terribly controversial at all, but that did come out of the previous public comment. And that's where there's a challenge to a consensus policy that the supporting organization responsible for that policy should be in a position to defend their work. That was how it was expressed in the public comment. And again, that's something that that is reflected and actually I think was again probably was picked up already and reflected in the previous version of the current version of the rules.

But we had some tweaking about that some work that we had to do in reflection to reflect whether they could join both as a party or as an amicus and also we had some discussion about whether if you were joining as the supporting organization, whether there was that discussion that we had about the fact that they don't actually qualify as a claimant, don't meet the definition of a claimant under the bylaws. And so we've introduced that alternative concept of the someone who might be an intervening party where you joining as a party to the proceedings, but you're not a claimant.

I will pause there. I just I don't see any hands, but yes, and then I will. I'm noting the time. I think let's scroll down briefly so that general introductory language is largely reflecting there for the some of the public comment input on this rule in particular that we had.

In terms of the different sections, there's then some fairly detailed rationale text as we scroll through the individual rule numbers. And I think, again have sought to just sort of reflect that things like the one of the things that we certainly pick up quite early on in the rules is about not joining sort of non-binding and binding cases together and if you have a consolidation that it shouldn't change the nature of the existing IRP from binding to non-binding or vice versa. And an explanation of our decision again about moving to the three-person panel and so on.

Again, I think rather than, I think we could maybe just scroll down Devan sort of slowly and I will just see if anyone sort of puts their hand up or wants to flag anything but again otherwise I think I will probably stop talking rather than kind of trying to paraphrase all of the discussions we had. Flip.

FLIP PETILLION:

Have you had it or do you think to add some language, qualifying the rationale sections. In the case there is a conflict between the rationale and the text of the rules. It would be good to avoid to well it would be good to avoid that actually the one would all of a sudden supersede the rules. Or to avoid that we need to do that. I would give it another read and I'm happy to participate in that if that's necessary to. It's just a suggestion but I how it works in practice.

SUSAN PAYNE:

Thanks for that, Flip. I like your thinking. I obviously I don't think there's a conflict, but no you're absolutely right maybe we need in some kind of, we'll probably have some kind of overarching introduction. And

maybe we need something in there that just not least to explain what it is that we have here. Because obviously these rationales are not staying in the rules, these are just to try and explain to the, to the community what we've done and why. But we should probably make sure to include that kind of the, the rule text is what prevails and we haven't necessarily identified every single amendment that we've made in the rationale because some of them are obvious on their face as well so we should probably make that point too. So thank you for that. Yes, David.

DAVID MCAULEY:

Thank you, Susan. I just wanted to clarify that we, if possible, I'd like to reserve a comment until Wednesday and I think I've worked myself into a little bit of a state of confusion over the complicating factor of these non-binding IRPs. And so, if the question is, if you have any concerns about this raise your hand now then that's what I'm saying is I'd like to think it through before and not raise it now because I'm, it might just be me I just need to work my way through this again. And this, I'm talking about intervention not consolidation not amicus.

FLIP PETILLION:

Thank you.

SUSAN PAYNE:

No worries, David. But yes, thank you. I'm scribbling a note from Flip's suggestion because I think that that is a really good one, it is possible that the rationale -- the least is not as detailed perhaps as the rule is or is a bit sort of light touch and poor brush. We're at time, and knowing

how annoying it is when other people have let their sessions run over I not going to do that. So we'll be coming back together on Wednesday at something like 10:30 I want to say. So hopefully, see everyone then. Thank you.

DEVAN REED:

Thank you so much, please end the recording.

[END OF TRANSCRIPTION]