
BRENDA BREWER: Good day, everyone. Welcome to the IRP-IOT Plenary #118 on 14 November 2023 at 19:00 UTC.

Today's call is recorded and is governed by the ICANN Expected Standards of Behavior. Please state your name before speaking and have your phones and microphones on mute when not speaking. Attendance is taken from Zoom participation. We do have apologies from David McAuley. And with that, I'll turn the meeting over to Susan Payne. Thank you.

SUSAN PAYNE: Thanks very much, Brenda. Thanks, everyone. It's our IOT call of the 14th of November, as I think Brenda just said. Just noting at the outset that at the moment, we don't have quorum for the call. We do have a couple of people that we are hoping are just delayed and will be joining us shortly. So we are at least going to start. But unless and until we get quorum, we are understanding that we won't be able to make final decisions on anything because we're under numbers.

So first of all, just as usual, we can review the agenda and do updates to Statements of Interest. I'll come back to the SOIs in case we get more joiners.

But in terms of the agenda, we'll have a quick look at the action items. There are a couple of those. We will return to the text of the proposed text of Rule 3. The hope was to finalize that, but obviously that will be subject to whether we get quorum for the call.

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Agenda item four is, again, hoping to finalize but that may not be possible, but we will be looking at the close to final text of the draft public comment text for Rule 5B, Rule 7, Rule 3, and Rule 4.

Our agenda item number five relates to the introductory text with a public comment. However, I confess that I haven't circulated that yet. So that's, unfortunately, not a particularly substantive agenda item.

Agenda item six. Again, just to touch base on the process for finalizing the public comment text and the timing. We did have some at our last meeting in the face-to-face in Hamburg. But we'll just circle back on that.

Then item seven is just noting our next meeting. Unfortunately, our regular kind of two weekly slots, unfortunately, I'll be traveling to the GNSO Council SPS meeting. So looking instead to schedule for 5th of December, as noted there in the agenda, and we'll just confirm that.

Then, as usual, just a slot for AOB. In case if anyone has anything they want to put on the agenda now, I will just pause. Otherwise, we'll go back up to the top of the agenda.

All right. Okay. Then updates to Statements of Interest. Is there anything that anyone needs to flag to the group in terms of their SOI? All right, I'm not seeing any hands or hearing anything at the moment. So that's all good.

All right, then in terms of agenda item two then, the action items. The first one for that was for me, for Rule 3, to circulate, to update the text to reflect the discussions that we had in Hamburg and the sorts of

conclusions we reached on the items on that Rule 3 text which relates to panel. I did circulate that a couple of days ago. So hopefully, I know Flip has had made a few comments. So we can come to that shortly and look at that text.

The second action item was really for all of us, and that was to go through the proposed public comment text on those four rules that we're proposing to put out to Public Comment and to make any kind of proposed final suggestions in the Google Docs. As a reminder, that was regarding the public comment text, the rationales and explanations, as opposed to the text of the rules themselves. Except for Rule 3, we do have finalized text at this point. Again, I know we've had a number of comments certainly from Flip. I'm hoping that everyone has had the opportunity to do that. Those rules have been shared with everyone now for a few weeks. We have looked at them in a previous meeting as well. So, hopefully, that's the case.

Okay. So with that in mind, I think we can go to agenda item three, which is the proposed text of Rule 3. Just as Brenda is pulling that up, Brenda, we have a version which was the one that I shared, and then Flip has added a couple of comments into that. So if we could pull up the Flip version, that would be great.

I will just note that the purposes of this discussion, we still are at the same number. So we have four who counts towards quorum at the moment. We have more than that on the call, but from the way that we determine quorum at the moment, we have four rather than the five that we need. So I think we can review Flip's comments, and indeed, if anyone else has any comments on the suggestions that I had circulated.

And we can also take a look at what Malcolm had previously proposed, but I think we'll have to come back to this on the list as well to make sure that everyone has had an opportunity to be heard.

Okay. I think let's start with where we are. I might need to pull up Malcolm's proposed text in a bit, but just to reiterate what we were talking about before we turned the recording on, we did have some discussion about the proposed amendment to subparagraph two that Malcolm had proposed, but we came to the conclusion in our last meeting that we wouldn't make the amendment as Malcolm had proposed it. So instead, what we discussed and agreed during our last meeting was that Malcolm had been looking to kind of define lack of capacity as incorporating also someone who has a conflict of interest. And so he had made a suggestion that involved an amendment to that effect. But when we discussed this, I don't think people felt comfortable making that kind of a change. And instead, I think we reached the conclusion that it would be more straightforward if we simply referred to the fact of a lack of the panel having capacity, and deleted the references that are the Bylaws references to IRP commitments or the requisite diversity of skill and experience, and just sort of ended the sentence at lack of capacity, noting that the Bylaws do make those references to the type of lack of capacity envisaged.

So that was the proposed amendment that I think was the upshot of our discussion in Hamburg in our second meeting. I'll pause because I see your hand, Kristina. If it's helpful to pull up Malcolm's text, we can also do that. Kristina?

KRISTINA ROSETTE:

Thanks, Susan. I'm remembering now there was some discussion at the first meeting about Malcolm's proposed amendment about amending capacity to include conflicts. I agree that we don't need to do that. However, I am reluctant at this point to eliminate the due to other IRP commitments or the requisite diversity of skill and experience needed for the particular IRP proceeding, and here's why. I think it's important going forward once the Standing Panel is in place, that there'll be some—maybe we can do it elsewhere. But I think there needs to be some mechanism to track the instances in which the panel does not have capacity because of other IRP commitments, or because it doesn't have the requisite diversity of skill and experience needed. And I think that will be important to have some ability to track it because, A, it provides transparency to the community and dependent of claimants as well as ICANN, and B, I would imagine that at some point, after the Standing Panel in place is actually deciding IRPs that there's some mechanism to go back and say, "Okay, do we need more people? Do we need a broader scope?" at some point, I would imagine someone from the Standing Panel is no longer going to be able to serve, whether they have a conflict, they don't want to do it anymore, or God forbid, something happens to them. So I think having that language in there is helpful. I'm okay, I guess, with taking it out, as long as there's somewhere else that we will be tracking—not necessarily we—but that the instances in which the Standing Panel doesn't have capacity for those specific reasons is tracked and measured. Thanks.

SUSAN PAYNE:

Thanks, Kristina. Sam?

SAMANTHA EISNER:

Thank you. I think Kristina raises some really important points about things that we need to track for the continued success of the IRP Standing Panel, as well as making sure that IRP has continued to meet the need of the ICANN community or others who are ahead of me who might use the IRP. One of the things that we've talked about with the administrator, for example, is making sure that we are tracking things like availability of IRP panelists and making sure that they are able to serve. But I think putting in here around capacity that the limitation of due to other IRP commitments or the requisite diversity of skill or experience needed, I think that this is probably not the right place to put it in. I don't know if it goes into the supplementary procedures or where else we should document this. I'd like to take it as an action item that we think a little bit about where to document this. Because I think Kristina has raised some really important items for review of the success of the Standing Panel and how it meets the needs, but again, I don't think it belongs in that capacity. So if we could take those in action and for us to come back with just some thoughts about where we might go to reflect that, whether it's within the supplementary procedures or someplace else. I'd like to take that off that her point is not [inaudible].

SUSAN PAYNE:

Thanks for that, Sam. Noticing that, I think, as a possible action item. I'll just go to Flip first before we confirm that, just in case he's just about to disagree. Flip?

FLIP PETILLION: No, I do not. Actually, I do agree with Sam. Actually, I want to remind people we discussed that in our meeting in Hamburg. I'm happy to re-discuss but we will lose a lot of time if we reopen issues. And of course, I don't know we don't have quorum. But I don't think this is the place to do this. But I do understand the comments made by Kristina.

SUSAN PAYNE: Thanks, Flip. Noted. I appreciate we did discuss Malcolm's language. Given that I'd had to then make some amendments and circulate text, do you think we need to at least touch on it? But it looks as though we're all in good agreement that we could—again, because we don't have quorum, we can't make a final decision, but certainly for present purposes, those on the call are comfortable with the amendment of it as it now stands. Sam will have an action item to consider this question of capturing and tracking things like panelist availability and other reasons for lack of capacity. Is that an old hand, Flip?

FLIP PETILLION: Yes, it is.

SUSAN PAYNE: Perfect. Okay. And then noting in terms of other amendments made—I will just pause. I will also note I'm not quite sure when Scott joined us, but Scott Austin has now joined us. So I'm pleased to see. Welcome, Scott. We're now at quorum so that's good news.

SCOTT AUSTIN: Thank you. I'm sorry, I was delayed. Unfortunately, I was on another call and couldn't get on with the meeting at two. I want to make sure I was here because I know you needed a quorum.

SUSAN PAYNE: No worries at all. Thank you so much for joining. Kristina?

KRISTINA ROSETTE: Like I said, I'm fine with deleting that language. What I would suggest, though, is I think it would be helpful to have something documented somewhere that the bulk of our discussions about lack of capacity were in the context of this due to other IRP commitments or the requisite diversity language that we're deleting. And that perhaps we could just note that in the rationale for Rule 3 Section 2, that that is what lack of capacity is intended to refer to. I think it's there. It references the Bylaws, but I think to just make it very clear to folks so that there's no misunderstanding would be helpful.

SUSAN PAYNE: Thanks, Kristina. I like that suggestion. That makes sense. Okay. All right, then we can roll down a little. Actually, I don't think we need to actually scroll down at the minute. Just to note, it's highlighted. I don't think there's anything controversial about this. Someone had flagged and I think it may well have been Flip, that there was some lack of uniformity in the reference to the IRP provider's administrator, sometimes referring to the full term, and sometimes referring just to the administrator. So I took an action item to clean that up. I've done that

just basically by defining the first usage so that subsequently we then just refer to the administrator. I don't think that that's particularly controversial, but I just wanted to flag that.

Then we can now scroll down to 3A. Actually, before we go all the way—sorry, Brenda—let's just start and remind ourselves what 3 says so that when we get in to A, we have that in our minds. So subsection 3 says, "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 a dispute, the Standing Panel must notify the claimant and ICANN in writing as soon as possible." In any event within 14 days, there's a reference there to—we have a general kind of catch-all about timings in terms of the number of days that we will need to review those. But then it goes on, "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." Then we go on to the subsequent subparagraphs.

I've just noticed that's where one of the Flip's comments is. Perhaps we should just pause. Flip, what was your point on the 14 days?

FLIP PETILLION:

Actually, there was a moment missing as from which the days are actually running. We had two documents. We have the Google Document and we had this document. I changed this in the Google Document, I guess. I actually did it as well here. Yeah. Well, my proposal is to add from the day of notification by ICDR of the Standing Panel of a claim.

SUSAN PAYNE: If it's the same in both documents, I think we can stick with the previous document. Is that right, Flip?

FLIP PETILLION: Correct. So from the day of notification by ICDR of the Standing Panel of a claim. I was struggling a bit with the English but I think that the order in which I put this is okay. So notification by ICDR of the Standing Panel of what? Well, of a claim.

SUSAN PAYNE: Okay. I see basically 14 days from the ICDR notifying the Standing Panel that a claim has come in. Is that right?

FLIP PETILLION: Yeah, but it's important to take into account who was notified of the claim? It's not simply because you file a claim, it's actually the day at which the Standing Panel is informed by ICDR.

SUSAN PAYNE: Okay. That seems to make sense to me. If anyone else has thoughts on this, please raise your hands. Otherwise, it certainly does seem as though I managed to, as you say, miss what the timing is from. So we do need something that reflects what we're counting 14 days from. All right. Okay. I'm taking silence as being non-objection.

FLIP PETILLION: Susan, know that we are there, then I think we should read my next comment, which is, I'm sure that has been thought of, but it's a general comment. We will, of course have to at some point in time discuss all this with ICDR to ensure that they implement the new rules. Like this one here, for example, the notification of the Standing Panel by ICDR is an important one because it triggers the 14-day period.

SUSAN PAYNE: Thanks, Flip. My assumption would be that that would certainly be the case. Sam has her hand up. Sam, over to you.

SAMANTHA EISNER: Thanks. I think it's a really good point. And I think one of the things that we should do from the ICANN side is when we have very close to final language, we should also put this over to the ICDR just to do a read-through to make sure that there's nothing in there that's inconsistent with their processes or that they think is a challenge from the outset to do. And then if they do, then we can also identify are there ways that we can work around it or if there's further feedback for this team to see if we need to change it in some way. But I think it's an important step, both to get there to do a check over it to make sure that things are feasible. And then to make sure that there's an accountability from their side to take on the obligations that are set out in the supplementary procedures.

SUSAN PAYNE: Thanks, Sam. I guess that also raises the question for me then. In terms of our public comment, would there normally be an expectation that ICDR would comment on these draft rules or that they could comment on them? Is it something where you would expect to notify ICDR that we have this draft out for public comment?

SAMANTHA EISNER: We notify them that it was out for public comment. I honestly don't know if people who work with us from the ICDR side would be empowered to provide a comment formally in the name of the ICDR into a Public Comment proceeding. But I do know that they could provide us with the understanding that we would provide the information back to the IOT with comments regarding any areas of feasibility, and so we would make sure that that all happens within the same timeframe.

SUSAN PAYNE: Thanks, Sam. Flip?

FLIP PETILLION: Thank you, Susan. If I were ICDR, I would not make comments in public. And I would discuss this with ICANN because it's at the request of ICANN that ICDR steps in as a service provider. So I would communicate this. We can communicate that to ICDR once it is put for public comment, but we should, of course, definitely share it with them at a later stage when the documents become final. But it's wise to share it

with them at the time of the Public Comment period. But at that time, I would expect ICDR to get in touch and share its views but not in public.

SUSAN PAYNE:

Okay. I'm seeing a thumbs up there from Sam. So that sounds good. And then I'll also just take the opportunity to note that Mike Rodenbaugh also now joined us. So that's super. Mike had indicated that he would, unfortunately, be a little bit late. So we're now well within quorum, so that's excellent.

Noting Mike's comment there in the chat that it would be good if the incoming members of the Standing Panel also had a chance to review and comment. There's a thumbs up from Sam on that one, I think, as well. I'm not sure whether that, again, would be something that they would formally comment on as part of public comment exercise, although any of them I think could comment in their personal capacity, just like anyone else. But we certainly will, once there is a Standing Panel, we'll want to engage with them. I think that was always the expectation, if I understood our task correctly, to work with that Standing Panel on these rules as well. Okay. I think I'm not seeing any more hands for the moment. I think we can scroll down then.

So as a reminder, this is the process then for the situations where there's either no Standing Panel yet or a Standing Panel but they lack the capacity for appointment. This paragraph A is one where we spent some time on in the last meeting, and we had been reviewing the text that Sam had proposed regarding how we dealt with lack of capacity for less than the full panel potentially, and so on. That had been proposed,

in paragraph A, the idea that we'd incorporated into the draft rule as a result of some of the discussions we had on previous calls, was this idea that perhaps once there is a Standing Panel in place, maybe the Standing Panel chair should have an opportunity to propose how the IRP Panel gets appointed in a situation where there isn't sufficient capacity to fill all the seats.

But I would say we did also have then some concerns about that perhaps we think on to the other extreme whereby we were then having the chair of the Standing Panel kind of imposing their own opinion on how the parties ought to be selecting their panelists in a situation where the Standing Panel didn't have sufficient availability to serve itself. And overall, I think after a bit of back and forward, we had reached the conclusion in our last meeting that perhaps we should just revert back to what we'd had prior to this having been proposed and just go back to something that largely mirrors the sort of concepts of what's in the ICDR rules in terms of just circling back to the idea of each party picking their own panelist from elsewhere and having some time limits and having some process whereby the ICDR administrator could take over and propose appointments, if necessary.

The option that we did talk about in our last meeting was that we would just delete A and I would just make the necessary amendments, if there were any needed, to make B through E work to stand on their own. But as you'll see, when I started to actually do that, it occurred to me that perhaps we were then removing the control from the parties a little bit more than we needed to. So I've suggested a sort of compromise, if you like, but it's very much a suggestion. If there's not strong support for it,

we can just delete that whole paragraph A and revert to B through E, and just stick with that.

So what it occurred to me as a possible compromise is that if the Standing Panel is lacking capacity for one or two members, then there's an opportunity for the parties, so ICANN and the claimant, to try to agree a process for selection of the suitably qualified IRP panelists, utilizing insofar as possible the available Standing Panel members. So for example, if there's capacity for two members of the Standing Panel, but we don't have enough for a three person panel, well, the two parties might agree that they will select the two that exist, and then those two Standing Panel members will find a third panelist or something like that. If there's only one available, then the parties might discuss it and think that they would both seek a panelist from outside of the Standing Panel, and then the third panelist would be the one from the Standing Panel, something like that. But that it would be subject to agreement. And if ICANN and the claimant can't agree on that, then we still have that fallback of we just go outside of the Standing Panel process, and they select effectively what the current process is.

I'm really just sort of floating that to see if that seems like a workable option. And I proposed it I think because I was bearing in mind that David reminds us the importance of the point of the Standing Panel is, that there's supposed to be an expectation that we use them. And so just because maybe we can't service a full three-person IRP Panel from the Standing Panel, does that mean we don't use any of them? And let's at least build in a possibility for the parties to agree to a way to use them.

That was extremely long-winded. I don't know if there's any comments in the chat. Well, I could see one comment in the chat from Mike, which is the scenario should never happen because ICANN should be creating a Standing Panel with enough quantity and capacity to handle a reasonably expected workload.

Mike, I agree. It's specified in the Bylaws that there could be this situation of lack of capacity, and we're trying to craft rules to cover eventualities. And so I'd very much like to think it doesn't need to happen very often, but we could have panelist with conflict of interest and three IRPs going at the same time, and just this situation could arise.

I'm going to pause and see if there are any other comments, any strong views one way or the other. Does that kind of compromise where we allow the parties to see if they can work out a process? Does that seem workable, or would the preference be to just revert back to B through E? Liz?

LIZ LE:

I understand the proposed language and the intent behind it, and I think that seems to work. The one concern that I have is that it seems a little bit vague with respect to the timing, and is there a way that we can tighten the timing on that so that we are still meeting the purpose of the IRP in terms of trying to accomplish the IRP within a certain period of time.

SUSAN PAYNE:

Yeah. I'm sure that is. I'm talking off the top of my head here, but I'm wanting to say perhaps we have that same 14 days that Flip was reacting to you earlier, that might be an option. There is, I think, in it's currently 3C, we do have a timing of if one party hasn't selected a panelist within 30 days, then the other can ask the provider to make a selection. I mean, that obviously presupposes that the parties have reached agreement before then. Maybe 14 days is workable. And then we have effectively another two weeks before you get to the point where either of the parties can be asking the administrator to sort of intervene. Scott?

SCOTT AUSTIN:

Thanks, Susan. I'm looking at the highlighted, what is A, where there's strikethrough. A section that remains after that strikethrough, just a small point, but it looks like there's "to" missing. Lacks capacity, the party should try to agree to a process to agree. "To" should be inserted after agree on that line. Six lines down. Yeah, right there. But I guess the bigger question is, for the context for this, we have defined capacity someplace else?

SUSAN PAYNE:

Thanks, Scott. Thanks for the suggestion, the "to". We can certainly add that in. In terms of capacity, possibly it was the discussion we were having before you joined.

SCOTT AUSTIN: Yeah. I got on at the point where capacity was under discussion, but maybe there was a second time. So I thought maybe it would have been defined someplace else. But I saw a reference to diversity, I saw reference to some other aspect of it.

SUSAN PAYNE: Yeah. We have these concepts that come from the Bylaws about this idea of the situation where you might have to go outside of the Standing Panel being if the Standing Panel doesn't have capacity due to other IRP commitments or due to a lack of the requisite skill and experience. I think that is the terminology used in the Bylaws.

SCOTT AUSTIN: That's what I was looking for.

SUSAN PAYNE: We have gone around in circles on this, to be perfectly honest. At times we've been including references to those Bylaws identifications of what lack of capacity means. And the previous version of this draft did have that language in there. In our last meeting, we kind of concluded that it would be better to remove it. So that what is lack of capacity is definitely in the Bylaws. At the moment we have previously reached an agreement that we would remove those references to the lack of requisite skill and experience and the capacity due to other IRP commitments from this rule, although, again, it might have been shortly before or just as you were joining. I was going to amend the kind of rationale language and the explanatory text to flag this. And so I think it

might be one we may revisit this after the Public Comment exercise, I suspect. But I think that's where we are at the minute.

SCOTT AUSTIN:

Actually, we have Mike Rodenbaugh and we have Flip here on the call, and they are both very experienced in the trenches folks with IRP processes. So, I just wondered if they had any thoughts whether without a definition, it makes it open to subjective analysis or characterization, or on the other side, if there should be a definitive, some kind of a standard that meets their capacity, the concept of capacity that people would have to apply to or to meet. Apologies that I have not had the chance to consider this at length, but I just wondered if they've given it that kind of thought. And if the decision has been, well, we don't need a definition or maybe there should be but we just haven't arrived at it yet.

SUSAN PAYNE:

If either Michael or Flip wants to input on this, they're certainly welcome to. But again, I would say given the multiple conversations we have had on this, I feel we're going back and forward on it. We've included the references to what the Bylaws defines it as, and then we've taken them out on more than one occasion. So my inclination would be that we stick with where we've currently ended up. We flagged this in the Public Comment explanatory text, and we see whether we receive comment from the community, which I hope will include practitioners on whether there are strong feelings one way or the other in terms of whether we include a specific definition or not. That would be my

preference. I just feel like we keep having the same conversation. I think it depends on who's in the room for the meeting, whether there's a feeling we should include a definition or take it out again. So I don't know. Flip, did you put your hand up?

FLIP PETILLION:

I did, but you said what I wanted to say in part. I remember the discussion we had in Hamburg. Remember the discussion on the four or five piece? But yeah, I agree. Let's not have that here.

SUSAN PAYNE:

Apologies. Scott, it's not that it's a wrong question. I think depending on who is on the call on a particular day, there are views on both sides about whether we should or shouldn't define it. So I think, at this point, we'll note it in the Public Comment explanatory text. And we'll look for any further kind of input that the wider community wants to give us on this.

Okay. All right. In terms of this document, I think that those are the only other changes that I highlighted as changes over the previous version of the text as a result of our discussion in Hamburg. So I will pause and just see if anyone has anything else they want to flag on this one. But otherwise, I think we can put this text to bed for the present purposes and allow it to go forward for the Public Comment. So again, I'll just pause briefly.

Okay. All right. Thanks, everyone. I'll need to do a bit of cleaning up, obviously. But I think we're good on Rule 3 now. As I say, I'll tidy it up,

incorporate the changes into the version of the text for the Public Comment, and we should be good.

Okay. All right. In which case, I think we now move on to our next agenda item. I have lost what number we are on, but I think our next task is to review the public comment text itself. Thank you, Andrea.

Actually, sorry, before we do that, I just noted in the chat, actually, there was a follow-up question from Mike about the Standing Panel, I think, which comes back to the discussion we're having about sort of discussing the rules with the Standing Panel and getting their input on the draft rules at a suitable time. So just noting, I'm not sure if either Sam or Liz are able to give us any updates on the status of the Standing Panel. I know we're anticipating the appointment soon, I hope, but I wonder if there's any timing. You can update us on that.

SAMANTHA EISNER:

We don't have timing again, but it is much sooner rather than later. Part of that question in terms of timing is to whether or not we're able to move it sooner. But you will see that and timeframe for the Board to act and to seek the Standing Panel, but we do have work to do with that identified panelists before we announce them middle of January the latest. So hopefully, you'll see something by then or will afford action by then, if not earlier.

SUSAN PAYNE:

Okay. Thanks for that, Sam. So shortly, we hope then, yes. All right. Okay. That's agenda item three. If we move on to agenda item four,

reviewing the public comment text. So this is not so much the text that's in the draft proposed rules itself, but more the explanatory language and rationale language for the various rules.

So the first one on the list is 5B, which is the rule on translation. I'm hoping that we can have that one pulled up. Oh, that's 7. Okay, thank you. Thanks, Andrea.

I'm going to briefly just look at a version outside of the Zoom Room as well, just to see if I can find—I know Flip gave us some suggestions. I think that the first comment from Flip there, which refers to not understanding several of the changes in the Rationale section, that refers to a bit of you had had with some edits inserted. We're not quite sure what happened there. But they've been removed again now. So yeah, Kristina had a ghost in her computer. So I think, Flip, those changes that you're referring to there have actually been deleted again. So hopefully, we're okay with that now. Yeah. Thank you.

Then, otherwise, I'm just scrolling down on outside of the Zoom Room for the moment to see if I can find the next comment. Okay. The first one I come to you again is from Flip. This is in paragraph six. Okay. It probably isn't showing in the Zoom screen. It's just highlighted towards the end of the actual rule text. Flip had suggested that we currently have a reference to, in that paragraph six, how an emergency panelist might be selected to make a decision on translation services if there's a need for an urgent consideration. Flip's comment says that we also alternatively might refer here to the latest Rule 3 section about IRP Panel appointments.

I'm not so sure. Well, twofold. First, as I said previously, I'm a little bit reluctant to open up text unless we've got an error or something. But in this case, I think they are two slightly different things. We've been talking about the appointment of the three-person panel. Generally speaking, the request for translation services is meant to be dealt with by a three-person panel. But this is seeking to address that, again, I think, unusual situation where we might need a kind of emergency panelist. I think emergency panelists are dealt with not specifically in our supplementary procedures. I think that there is a rule under ICDR that deals with emergency panelist requirements. So, at a minimum, if we think that we don't want a reference, or at least the future, if we feel that we don't want to be referring to the ICDR process, then it might be one where we need to circle back and see whether we need to craft our own procedure for the appointment of an emergency panelist for urgent matters. But I don't think that the process we've just been talking about in Rule 3 is really applicable for that particular situation, Flip. I don't know if that is making sense.

FLIP PETILLION:

All things considered. Susan, all things considered. I overlooked the fact that this was actually regarding emergency. So I agree with you.

SUSAN PAYNE:

Lovely. Then that is super. Thank you. Then I will keep scrolling down and see if there's any other comments that we've had in the document before we ... Okay. As I say, we've largely got the text of the rules finalized, and I'm not really trying to open them up. Flip has inserted in

eight, subparagraph three, I think that's fine. Certainly not refusing to make amendments where there's a kind of error or web missing or something. So that makes sense to me. So I will add that one. Flip?

FLIP PETILLION: Thank you, Susan. I just wanted to show that I really read.

SUSAN PAYNE: It's very appreciated. It's very appreciated.

FLIP PETILLION: Frankly, it's my daily job to review text.

SUSAN PAYNE: Yeah. Well, for all of us, I think, but it's also a lot easier to see someone else's missing word than it is to find your own, unfortunately. So it's appreciated.

All right. Again, I'm just quickly scrolling down in the document that I've got open on my laptop. I think that's the last of the edits in 5B. So I will pause briefly just in case there is anything from anyone else. And if not, then we can move on to the next document. Perfect. All right. I'm not seeing anyone. Then I think we're good. I think 7 was the next one. We can go on to Rule 7.

Okay. I'm sorry. I'm just trying to start at the beginning of the document and see if we have any amendments. Okay. So I think the first one is just here, if you pause, Andrea. Again, thanks, Flip, for the really thorough

review. There's a proposal in Rule 7, I think it's paragraph one. As people can see, to delete the reference to involved when talking about—basically reference to determining the panel appointed to the involved IRP which commenced first.

I think this is one, if you don't mind, I'm a bit reluctant to delete this. I am not sure that much turns on it. It's not necessarily a phrase that I would have chosen. But I'm fairly confident that that language came from someone else in the group who felt that the previous text had been insufficiently clear from their perspective. So given that I'm a bit reluctant to delete it at this point, but as we all know, this is going out to public comment and it will also go through a drafting kind of improvements and clean-up anyway. But in terms of principle and trying to make sure that the principle is clear, I think perhaps the word helps even if it's not my preferred choice of word. Flip?

FLIP PETILLION:

I think, Susan, that actually "involved" here means active or commenced, which is further in the sense. Initiated, pending.

SUSAN PAYNE:

Apologies, apologies. I've got an unstable Internet connection. So I'm sure everyone else heard you, but I'm afraid I didn't.

FLIP PETILLION:

Okay. So I was thinking—

SUSAN PAYNE: Tentative words that are much better.

FLIP PETILLION: Yes. Well, I tried to understand what involvement in this context. I think I understand it that it means active, pending, initiated. All, actually, in addition to the word commenced that is further in the sense. But this is really linguistic. But I'm not a native, so I'm very curious to know your views.

SUSAN PAYNE: I think it was to do with the reference to the first IRP, which is what we were talking about. I had led some confusion about whether were talking about the first ever IRP or the first one involved in the dispute. So that is why we ended up with that language. As I say, I don't think it's perfect terminology. But given that it arose out of quite a difficult lack of misunderstanding, let's put it that way, about what we were trying to say. I'd rather keep it for now and just recognizing that it undoubtedly can be improved when the rules are finally cleared up.

Okay. Again, I'm going to scroll down and see what other ... oh gosh, okay. All right. There's a couple, I think some tidying up that you've suggested in terms of capitals, and so on, that doesn't look problematic at all. But I will keep going. So we do have a more substantive one, I think, when we get to—

FLIP PETILLION: Yeah. I'm not sure if I expressed my comment clearly here. What I want to avoid is the following. I want to avoid a rush to IRPs. So that the first

initiating an IRP and being successful in having a Standing Panel installed, being able to call all others in that IRP. And that's why I use the words pull and put. So, when you request for a consolidation then that is always a put, it is an offer to participate in another IRP. It can never be a request to have others who have initiated a different IRP to be forced to join you in your IRP. That's what I wanted to say.

SUSAN PAYNE:

Thanks, Flip. Again, I think I'm going to push back on this a little bit. Not that I necessarily disagree with you. But again, we've sort of had extensive discussions about what the rule text should be. And we're at the point where we're really trying to just take that rule text, which we've already gone through and agreed for the purposes of taking out to Public Comment. So this exercise is really much more about the public comment text, so the rationale text, and so on. So I do really appreciate your input. I don't want to suggest otherwise. But I think if we're ever to get to Public Comment, we have to have a point at which the rule text, unless there's a real error, we have to consider that to be final for the present purposes, but it really is only for the present purposes. I would encourage you to make that comment as part of the Public Comment exercise. I think it's a very valid one. But I'm concerned if we keep reopening the text that we've closed, we'll never finish, ever.

FLIP PETILLION:

Okay, Susan.

SUSAN PAYNE:

Thank you. All right. Again, I'm just going outside of the document to see if I can see anything else. Okay. I can see some typos that Kristina has helpfully picked up for me. And that's, again, very appreciated. I'll just keep scrolling down until I can see if there's anything more substantive in here. I have not come across anything so far.

Okay. All right, I think the next place is probably 18. Just to flag, I think in this case, Flip has pointed out that we don't need to talk about first IRP Panels when we get to 18 because it's an intervention. Because at that point, we don't have a first IRP Panel.

FLIP PETILLION:

It simplifies the text.

SUSAN PAYNE:

That's correct. Yeah, I think that's an error correction. So I'm probably okay from that perspective. It's not a kind of substantive change to the text. Okay. Again, I'll just keep scrolling down and see if we have any others. I think that that's all that there is in this document. So I think aside from that, we're probably good maybe. Yeah, if you wouldn't mind. Perfect. Okay. Thanks, everyone. We're making good progress. I think we should hopefully be able to get through the rest of the public comment text of these four sections. So let's push on. Yeah. I think Rule 3 is the next one. Thank you. Thank you, Andrea. You're being very efficient. So yeah, let's have a quick look.

I can see in paragraph one Flip has picked up that, I think, where I've been editing. I've made a typo. So that deletion looks fine. Thank you,

Flip. Obviously, we have in paragraph two the actual text itself. Paragraph two has changed a tiny bit. I obviously haven't made the amendment that we've just been talking about when we were looking at Rule 3 in this document yet regarding the lack of capacity. Or indeed, maybe I have. I don't know how I managed to do that. Yes. That's why Flip has made that edit for me, and that's very appreciated. That's what we were just discussing, as discussed in the rationale text. It obviously hadn't been done yet. But we have just discussed including something in that rationale text about capacity and what is envisaged under the Bylaws and when it talks about lack of capacity. So that amendment does need to be changed, just need to be made, and so I will definitely do that. I think I've got a few typos and some that Flip has picked up, and that looks absolutely fine.

In terms of paragraph three, again, we have in 3A, again, the text that we've just been talking about that we need to pick up the changes, again, that were just talking about when we were looking at the Rule 3 document. So I haven't obviously done that yet. But, but that will be done in order to finish this text off. But otherwise, again, a Google Doc version of this and just sort of scrolling through. I can see Flip's picked up some missing commas and the like for me. But other than that, I can't see anything more substantive. But it's possible I'm missing something. I think only what we've been discussing already in terms of the timing, the 14 days, and so on. So this one's not quite finalized because it does need to just be revised to reflect the discussion we've been having just previously. But otherwise, again, I'll just quickly pause in case there's any input on the actual kind of rationale text insofar as it

exists at the moment. And if not, we can go on to the final document which is the Rule 4 one.

Then as a starting point, I will just flag. I know when we were in Hamburg, there wasn't huge support for some of the numbering, the manner in which we're expressing the numbering here with some of these sort of Roman numerals, and so on. Apologies, I had not gone through and made changes to that. But those are not substantive. There would just be to use the more regular A, B, and C, and so on, that we more usually see. So I will make a note to fix the numbering on that and just noting that I haven't done it yet. Other than that, I am going to again just scroll down I think and see where we have our first comment.

Okay. I think I might be a little bit reluctant to make changes to the text unless they're kind of typo changes, even if this does seem quite minor. Particularly because I think in this Section 4A, where this 4A is really not draft text for a rule. It's very much the agreed text of our kind of agreed heads of agreement, if you like. It's not meant to be the rule text. And so I think given the extensive discussion and back and forwards on some of this, I'm a bit reluctant to make the changes in and 5, Roman numeral two (II). Not that I necessarily disagree with them, but I feel like we kind of fixed on the text. And so I'd rather just keep it as is, if you don't mind, Flip. Particularly noting that there'll be some drafting that needs to be done for that.

FLIP PETILLION:

No problem, Susan.

SUSAN PAYNE: Thank you. And then if we come on to 4B, that's the rule about the time to file. All that is largely a sort of rule text. But obviously, all of this is subject to subsequent sort of clean-up. I'm not seeing too many comments in this. In fact, I think we can keep scrolling down. Now we're into 4C which is the section on—I think it might be this safety valve language. I'm losing track. But again, I think I can see a handful of commas, and so on.

This is fixed additional time. That's what I think this relates to, isn't it? Again, I think given that this isn't text, this isn't final drafting, this is very much kind of heads of agreement. I don't think that much turns on the change from is to would be, but I kind of prefer to just keep what we'd all agreed on. Flip, again, if you don't mind. It's not final text for the rule. So I don't think it matters greatly as long as it's understandable.

FLIP PETILLION: No problem.

SUSAN PAYNE: Then finally, we've got the safety valve language in 4B. Okay. ICDR suggestion to change that to IRP provider. I think—

FLIP PETILLION: It's the other way around, Susan.

SUSAN PAYNE: Oh, you're suggesting to change IRP provider to ICDR.

FLIP PETILLION: It's simply more coherent. We only have one provider, and that's ICDR.

SUSAN PAYNE: I'm trying to remember. We've only just been talking about it in Rule 3. I'm going to go back and look at what we tend to do in Rule 3. But I think we use—yeah, I think in Rule 3, we used IRP provider, where we're talking about the administrator. I know there is only one.

FLIP PETILLION: We never use that word. We never use IRP provider.

SUSAN PAYNE: That's what I mean. I think we have got it elsewhere in other rules. I will double-check. If we use both, maybe we do need to have consistency, but we definitely have got IRP provider in Rule 3 because I was just double-checking that. So if that's okay, I'll double-check across the rules that we're putting out, and we'll have one or the other. But I think we do use IRP provider in other places. So I'll standardize if that's okay.

Again, I think the handful of other sort of commas, and so on, which Flip has kindly picked up, and that's again very appreciated. But we are, with that, again, at the end of the text of the public comment text for that Rule 4. So I again just will pause briefly and see if anyone has anything else they want to flag in terms of the public comment text before we can close that off. I'm hoping not.

Super. All right. Then I'm noting the time. I'm quite enthusiastic about wrapping up as close to the bottom of the hour as we can since I had completely forgotten that I suggested we have a two-hour call. In terms of agenda item five, I think, for those of you who were on at the start of the call, I did flag that that is sitting with me. I do need to draft or rather to sort of work on the draft text for the introductory text for the Public Comment, and circulate that around. So I haven't done that yet. I apologize.

So really just flagging that, again, as we talked about in Hamburg, we have these rules with the rationale text. But obviously, we need sort of something at the top of this that just introduces the text a bit more and explains what this is, and what the purpose of the public comment is, and so on. So keep an eye out for that. That will come around as soon as possible.

Then to move on to agenda item six, the process for finalizing and the timing. Again, we had quite a much longer discussion this than I had expected that were going to when were in Hamburg. We did end up having quite a bit of discussion about could we get this out for Public Comment before Christmas? Should we do so if we could, and so on? I think where we ended up was that we probably couldn't get it out. Notwithstanding that we're only mid November, I think we had quite a lot of discussion about whether it was made sense to put something out very shortly before Christmas. It looks like we're rushing something out, perhaps trying to foreshorten the opportunity to comment because we put it out just before a holiday and that kind of thing. We don't want to have to do that. So we're targeting doing something, getting something out to Public Comment early in the new year. That means that we have

a short window, really, just before everyone disappears off for holidays, if you celebrate.

So we have another meeting scheduled, as I mentioned, on the 5th of December. We pretty much got our public comment text for the rules themselves finalized. So we really now need to focus on a bit of clean-up, as we've been talking about mainly from Rule 3, and then getting that introductory text circulated and hopefully finalized. If we can endeavor to do that before the Christmas break, then we should be well on track to have something go out for a sort of mid to late January Public Comment. There's a bit of a lead time after it, something leaves us where it has to go off and be reviewed, and so on, before it actually gets published. But that's the kind of timing that I think we're looking at, and I think that's very doable.

So that is the plan. Obviously, the sooner we're agreed on text then the sooner it can go out. But that's the aim. We'll try and finalize the text before Christmas and we can go out to Public Comment in January. Bernard is just suggesting to me that maybe we look at if we have a call on the 5th and we maybe also tentatively have a call scheduled for the 12th of December as well, if we need it, potentially for the 19th, if we need it too. But I know the nearer we get to the Christmas holiday period, the harder it will be to get a quorum for the meeting. But I think that's sensible, certainly for us, to think about having the 5th and to tentatively have a call on the 12th, if we need it, so that way we can get things finalized.

Okay. I think that's hopefully a good kind of work plan. I went one minute past the bottom of the hour, but I think that's not too terrible.

So I think we can wrap the call up unless anyone has anything they want to bring up before we close out. All right. Brilliant.

Thank you so much. And thank you, all of you, especially those who haven't maybe been planning on joining the call, like Scott, and have made the time to do so. So I really appreciate it. I'm so pleased we've managed to get a quorum. Because we're so close and it would be a shame to lose that momentum. So thanks, everyone, and will speak to you all soon.

[END OF TRANSCRIPTION]