

---

BRENDA BREWER: Good day, everyone. Welcome to the IRP-IOT Plenary #119 on 12 December 2023 at 19:00 UTC.

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

SUSAN PAYNE: Thanks, everyone. Again, thanks for joining for those who've been able. Hopefully, we can make some sort of real progress on wrapping up the public comment text on today's call.

Okay, first up, we've got the usual agenda review and updates to Statements of Interest. I'll do SOIs first in case anyone has any updates. I'm not seeing anything at the moment. Obviously, feel free to also put in the chat.

All right, so in terms of the agenda item, we've got a couple of action items carried over. There's a couple of general ones. One was for capturing for future action, which is that when we've got close to final version of the rules, they will be put to the ICDR for them to identify any procedural issues from their perspective. That's just really catching that so that we don't forget that. Then one general one for me to prepare the draft introductory text for the public comment.

---

*Note: The following is the output resulting from transcribing an audio file into a word/text document. Although the transcription is largely accurate, in some cases may be incomplete or inaccurate due to inaudible passages and grammatical corrections. It is posted as an aid to the original audio file, but should not be treated as an authoritative record.*

---

Then on Rule 3, one for Sam and/or Liz, I guess, to consider and revert on the means of tracking lack of capacity to allow for later review of the extent and causes and potential mitigation if needed. Then one, again, for me to sort of clean up the rationale documents. So I don't see Sam on here. Liz, I don't know if there is any update at the moment on that tracking of lack of capacity.

LIZ LE:

I'm sorry, Susan. Sam is an apology. She has a death in the family so she's not able to make it. And my apologies, I have not received an update on this. But I'm following our call. I'll circle back with her when she's back in the office.

SUSAN PAYNE:

That's absolutely fine. Thank you. I'm sorry to hear that for Sam. In any event, this I think was one that we agreed on our last call was not necessarily something that needed to go in the rules. So again, it was more of a sort of making sure that we keep a record of it.

All right. Sorry, I'm really meant to be doing the ... is going to be to review the final version of Rule 3, which was attached and has been circulated around. Then agenda item 4 is to look at all of the final or hopefully final versions of the Rationale documents, but noting in particular that the one for Rule 3, there were some edits that followed on from the amendments to the rule text itself that had been made. And then agenda item five will be the review of the proposed introduction. So we can, I think, circulate back to the top. Well, agenda item two. Apologies, I sort of jumped ahead of myself a bit, Liz, in asking

you about that Rule 3 tracking. But in terms of the other agenda items, just to confirm that I think those have all been dealt with and the various drafts was circulated around. So I think we can get onto the actual substance. Brenda, if you could pull up offline the Word version of the Rule 3, that would be great. Thank you.

Okay. Just a reminder, as you all know, the text is redlined against the existing version of the rules, so the interim Supplementary Procedures. So that's why, in some cases such as this one, we've got quite a lot of redline text, or in this case, it's blue. So, obviously, not all of that are changes from the last version that we were discussing. Because we reached this sort of point in proceedings, I've been highlighting anything that was just a change over what were discussing on the last call. So that basically is down in paragraph three is the first place we need to look.

We discussed—Flip had put in a comment pointing out that we had a time limit of in paragraph three of 14 days but we didn't identify when that ran from. So his suggestion, which I've picked up here in the document, is that it should be 14 days from notification of the initiation of the IRP from the IRP provider to the Standing Panel. And just as a reminder, actually, if we read that whole paragraph, just to be on the safe side, this is about where the Standing Panel doesn't have ... to seat any or all of the panelists necessary to ... Standing Panel must notify the claimant and ICANN in writing as soon as possible and, in any event, within 14 days of notification of the initiation of the IRP from the IRP provider to the Standing Panel.

---

So that's really just again with in mind, keeping the proceedings moving, having this desire to see IRP proceedings wrapped up within six months, which I think is more of a desire certainly than a reality at the moment. But 14 days was felt to be a sort of reasonable time period for the Standing Panel to identify that they don't have capacity. Then if we could scroll down a little further to A, Brenda.

Sorry. Yes, and then the subsequent paragraphs A through E deal with what happens if there is that lack of capacity. We had a bit of discussion about A and whether to keep it or not. What I suggested was that perhaps it was trying to keep some kind of a compromise that allowed the parties a short period of time to try to work out their own procedure where perhaps there's one Standing Panel member available or two Standing Panel members available, but there aren't three. That I think seemed to gather a fair amount of support on our last call. So I went ahead and captured that change. So it now reads that in paragraph A, "If the Standing Panel lacks capacity for seating one or two members of the IRP Panel, the party shall try to agree, within 14 days of the notification from the Standing Panel of lack of capacity referred to that subparagraph three above, to a process for selection of suitably qualified IRP panelists utilizing, as far as possible, if the parties are unable to reach agreement or where the selection of all three members of the IRP Panel is necessary, then paragraphs B through E shall apply." And that again, I think we also needed the time period, and so that's what that highlighted text is flagging. Again, proposing that we give with the caveat obviously that all time periods are something that we are going to review towards the end but that we give 14 days from when

---

the Standing Panel say they haven't got capacity to see a whole IRP Panel.

So I will pause there. Oh, I'm hearing that I'm cutting in and out a little. Apologies I've had a bit of trouble with my Internet connection today. So please bear with me. But if it does keep cutting in and out, I'll try joining on my phone, which may have a slightly better signal. Actually, if you'll bear with me, I will just go and open the door. That might help as well. So I will be back in one moment. Okay, sorry about that.

All right. I'm seeing a comment from David in the chat supporting the 14 days. Yeah, thanks, David. I think that 14 days, certainly the previous one certainly came from Flip. I'm not sure that this one did. But it seems a sort of reasonable time period, enough time to allow the parties to sort of talk to each other and perhaps it'll become obvious if they're going to be able to come to some kind of agreement or not.

All right. Then no other changes, really, in this document apart from a couple of, well, sort of cleanup items. One is in paragraph E. This is just a suggestion, I'm happy to change it back. But I think you can see it right in the middle of the paragraph, we had a time limit of 15 days for each party to—if they're using the sort of the administrator's list mechanism the parties have previously, it said they had 15 days to strike names that they object to. I don't feel very strongly, but it just seemed odd that everywhere else we're giving 14. So it just seemed odd to have 15 days for this particular part of the proceeding, so I swapped it to 14. But again, don't feel too strongly. So if anyone has really strong objections, we can certainly switch that back. Thanks, Kristina. Yeah, I'm seeing a couple of thumbs up and so on.

---

---

Then the final one, really, was just a consistency point, which is in paragraph four. I previously had picked up all the places where it said, arbitrator and swapped them to panelist, and I missed one in paragraph four. So when I was going through and doing my cleanup, I caught that. And that I think is the only other change in this document that was made.

So again, I'll just pause briefly, but hopefully everyone's feeling confident about this one now, sufficient to put it out to Public Comment, at least. All right, I'm not seeing any further comments and a bit more agreement on the 14 days so that's great. All right. In which case, I think we can go on to the Rationale documents.

Brenda, actually, since we're talking about Rule 3, it's not quite in order. But could you pull up the Google Doc for the rationale for Rule 3 first, and we'll do that one now while we're talking about this rule.

BRENDA BREWER: All right, so I'm looking at ... Which one?

SUSAN PAYNE: It's the third one on the list, I think, in the next agenda item.

BRENDA BREWER: All right. One second. Does this look correct?

SUSAN PAYNE: Yes.

BRENDA BREWER: Oh, perfect.

SUSAN PAYNE: Yeah, lovely. Thank you.

BRENDA BREWER: You're welcome.

SUSAN PAYNE: All right. So we're now on our next agenda item of reviewing the sort of final edits on the Rationale documents. This is Rule 3. So it's the same document that we were just looking at. Obviously, I have made the same changes to the actual text of the rules that were just looking at there. But we'd also talked about making a few tweaks to the sort of rationale and explanatory text to capture some of the decisions we made in the last couple of calls. So, the amendments are really relating mostly to the issue of lack of capacity. The first of those is in the introductory text.

So you will see—I won't read the whole of the introductory, the first paragraph—but towards the end, the final sentence says, "The IOT has also specifically addressed the possibility envisaged under the Bylaws that the Standing Panel might lack capacity." And now deleting the reference to the requisite diversity of skill and experience needed for a particular IRP proceeding, because we've not called out that Bylaws language in its entirety anymore in the rule. It then goes on to say,

---

“Albeit that this is expected to be a rare occurrence.” I think that edit is just a typo rather than a change in the text.

Then I’ve added a new paragraph that you’ll see below that that goes on to say, “Bylaws Section 4.3(k)(ii) refers to the possibility of not using the Standing Panel because it...” and then in quotes “does not have capacity due to other IRP commitments or the requisite diversity of skill and experience needed for a particular IRP proceeding.” Much of the discussion of the IOT centered on “lack of capacity.” And what is meant by this, specifically, whether the additional language from the Bylaws have “due to other IRP commitments or the requisite diversity of skill and experience needed for a particular IRP proceeding” should be carried across into the Supplementary Procedures and who is entitled to raise lack of capacity, given the understanding that selecting panelists from outside the Standing Panel once appointed is not expected to be the norm. In addition, the IOT briefly considered the importance of—apologies, Brenda, if you could just scroll up a little. Sorry. I lost my place there. Yes. In addition, the IOT briefly considered the importance of tracking Standing Panel lack of capacity for the purposes of future review, and concluded that whilst this should be done, it is not a matter for inclusion in the Supplementary Procedures.

So that’s the item that we were talking about in the action items from our last call. So I will pause there. There are some comparable amendments further down the document, but I will just pause there briefly, first of all, to see if there are any concerns with that text. All right, I’m not seeing any hands. So, Brenda, if we could scroll down then to paragraph two and probably need to go over the page. Yes.



---

So here, again, it was an amendment made to the rationale text. And specifically, towards the end of that explanation, we actually—I think I will read it all. “Rationale. There is an expectation that once the Standing Panel has been appointed that IRP Panelists will be drawn down from the Standing Panel. Nevertheless, Bylaws 4.3(k)(ii) refers to the possibility of needing to select IRP panelists from outside the Standing Panel, either because it is not yet in place or because the Standing Panel does not have capacity, e.g., due to other IRP commitments or the requisite diversity of skill and experience needed for particular IRP proceedings.” This is the new text. “This possibility of lack of capacity in the Standing Panel is therefore reflected but without defining further since this is captured in the Bylaws.” And what we previously said is that the Bylaws language was being reflected in the rule, and that is one of the changes that we have made after extensive debate.

So again, I’ll just pause. I’m not seeing any hands, but noting a few of the approvals from before that. That’s super. All right. Then again, we can go down to paragraph three.

“The Standing Panel, because it does not have capacity.” My Internet is unstable. The proposed amendment is to just stick with “does not have capacity” and therefore delete the reference to due to other IRP commitments or the requisite diversity of skill and experience needed for a particular IRP proceeding. So just delete that additional text that mirrors some of the Bylaws language.

If you scroll down, Brenda, I think that was the only edit I made in that. Yes, that was it. So again, I will just pause. But I think it’s pretty self-

---

explanatory. We are obviously asking the community whether they think that the rule needs to be more explicit than that, or whether they agree with where we've ended up on this in terms of not specifically calling out the extended version of the Bylaws language. All right. Okay, I'm not seeing any hands or hearing anyone.

You can see there that, actually, a couple of paragraphs down, I've picked up that amendment that we had a timing of 15 days, and it's now 14, so I made that change. But the other thing I wanted to just flag, I don't think it's controversial, but a bit further down when we get to the Conflict of Interest section, there was a footnote. If you don't mind scrolling down, Brenda. Yes, keep going. Further down than I thought. Yes.

Previously, where we were capturing some of our notes in footnotes, this footnote got carried across. It talks about the IOT welcoming input on timing. And the proposed time limit for seven days for panelists to confirm that they have no conflict of interest, and so on. We specifically wanted to call this out and get input on this. Is that sufficient time for people to do conflict checks and so on? I'm only deleting it because it's already captured further up the document as part of the rationale text. So I'm not taking this out. But I just wanted to highlight that we don't need it as the footnote anymore in this document, and so I have deleted it. But the text is not missing, it is a little bit further up in the document in the rationale for the relevant provision on conflicts of interest.

So I think with that, again, I'll just quickly pause, but I'm not seeing any hands. I think we can put Rule 3 to bed. Okay. All right. Thanks, Brenda.

---

Then we can go back on to the list. I think the first one probably was 5B in the list in the agenda?

BRENDA BREWER: Yes. You want 5B opened?

SUSAN PAYNE: Yes, please. Yeah.

BRENDA BREWER: All right, one second.

SUSAN PAYNE: No worries. Super. And this should be quite quick, unless anyone has any reservations. We've looked at this text a number of times now and it's sort of been out for review for a good while since just before the Hamburg meeting. I wanted to flag just in Section 8, subsection 3, which is a little bit down in the Rule document. Brenda, if you wouldn't mind scrolling down. Sorry, Brenda, could you scroll down to 8?

BRENDA BREWER: Sorry, I was scrolling on the wrong... There we go.

SUSAN PAYNE: Thank you. In 8.3, you can just see that Flip had proposed what I took as a minor edit, where a reference to, we added in "the" at the beginning of that sentence to refer to the level. Although I was being quite strict

on our last couple of calls about not making substantive errors, I did kind of agree with Flip that that was more of a kind of typo and sort of something that was non-substantive. So as discussed on that, the last call, I did agree. I'd accept that and include that in the document, that I wasn't going to accept the more substantive suggestions because we're so close to going out to Public Comment now. So that's obviously, again, just to highlight that anyone can make those kinds of comments during the Public Comment period. And I'm quite sure that we will have plenty of input from the wider community that we'll also end up reviewing and looking at in the subsequent weeks.

So that was the only thing I wanted to flag just because it was an edit that I made. But other than that, this is as you've previously seen it. And so I will again pause just in case there is anything from anyone, but otherwise, we'll move on. All right, I'm not seeing anything. In which case, Brenda, next one is Rule 7. Lovely, you're ahead of me.

Okay. Again, on this one, there were a few changes that Flip had suggested. As we discussed on our last call, I did push back on the more substantive ones. But the change that I did make, as discussed, was in the Intervention section, which is a little way down the document, Brenda, if you wouldn't mind scrolling. Keep going. Here, yes.

I can't even see where the amendment is. Somewhere in this section, there's a reference to the IRP Panel. Here it is, it's in 22. And then I think there may be a couple subsequently. There you go. I've even managed to miss one of them or maybe all of them. But the change that is supposed to have been made—and I seem to have managed to miss it—was that Flip had pointed out that when we're talking about

---

---

intervention, we only have one IRP Panel, we don't have multiple panels that we have to decide which to consolidate into which. So the agreed change was to delete the references to first, which I do plan to do. I was fairly sure I had actually done that, and I don't know why it's not showing up properly. But I will go back and do that. So I just wanted to flag it that, again, is the only—well, not substantive, but the main change being made here over and above what we had previously, which is just to make the point that we don't have more than one IRP Panel so we don't need to refer to.

Then at the end of the document, I did want to flag that there is a section with some public comments duplicated, which I think was always in our working document. I don't know where. I think they're probably a bit higher up than that, Brenda. Yes, that section at the end. I think that was always in our working document. And it's a brief section that summarizes some of the public comments received. I think that was there for when we were working on this rule, but I'm not sure that we need to have this in here for the Public Comment effort at this point. So I suggested that we delete it, but I'm happy to be disagreed with. Yeah, I'm seeing a few agreements. It seemed to me a bit odd. We don't really do this in relation to other rules and so on. So it seems sort of slightly odd. There are earlier drafts that have this in, so it isn't lost. All right, I'm seeing a lot of agreement to taking that out. All right. Sorry, David. Did you have a hand or did I...?

DAVID MCAULEY:

I did, Susan. I just wanted to say that I think it's important that we delete that snippet from our working document. It makes sense in the

---

working document. Those are things obviously we wanted to recall. But now I think if we put it in, it would be a bit of favoritism towards those comments as opposed to others that are not represented there. And these are all matter of public record. People, if they want to see them, can go back and look at them. So that's all I wanted to say. You are cutting out a little bit more more recently. Thank you.

SUSAN PAYNE:

I'm cutting out a lot there because I was talking on mute. But thanks for that. In which case, what I can try and do is join on my phone. So while Brenda is pulling up Rule 4, I will just connect on my phone. Perhaps that will help. It seemed to help a little earlier. So please just bear with me and I'll go on mute while I sort that out. But I'll just be a moment. Sorry. Hopefully I'm back now and this sounds a bit better.

UNIDENTIFIED MALE:

It does, indeed.

SUSAN PAYNE:

Okay. Super. All right then, I need to just try and remember to mute and unmute myself in the right place. Okay. Then carrying on then on Rule 4, nothing major or substantive made to this, but I just did want to show you that the various sort of Roman numerals that we were struggling with a little. I've switched it now to a more regular sort of numbers and A, B, and Cs, and so on, that we're more used to seeing. I don't believe that there were any other changes that I made to that Rationale document. So again, unless anyone has any comments on that Rule 4

---

document, that was all I wanted to just show that that has been done as we discussed. We can move on to the introduction text, I think.

So I'll just pause before we shift. Okay. I'm not seeing any hands so I think we can put that one to bed as well then now, Brenda. Thank you. We can go on to the introduction text.

Okay. Super. I think it's probably worth us doing a quick read through, it's not too long. Thanks to David who caught a few edits, and it looks that Kristina also, as we go through. I'm sure if there's anything more substantive, we'll come to it as we go through. Let's just do a quick walkthrough since we've had this text for about a week or so. So everyone hopefully had time to look at it, but to be on the safe side.

"Introduction to the Third IOT Public Consultation of January 2024. Thank you for taking the time to comment on the Independent Review Process (IRP) Implementation Oversight Team's (IOT) latest proposed updates to the IRP Supplementary Procedures. Background. The IRP is a key accountability mechanism." Oh, Liz?

LIZ LE:

So just a quick question, and for uniformity sake, I think further down in the document we talked about this being a proposed update to the interim procedures. Are we doing proposed updates to the interim procedure or are we going to propose updates to the actual formal Supplementary Procedures?

---

SUSAN PAYNE: Intended to be an update to the formal Supplementary Procedures? Yes. I think where I was referring to the interim, it was intended to reflect that we've worked off the interim rules. And so the redlines are to the interim version, because they're the interim version but they've been running now for a good few years. So I think that was the intention. But it may be if there were places where I've improperly referred to the interim, we can hopefully pick that up. But that was the intent unless there's disagreement to that.

LIZ LE: I mean, from the Org point, that makes sense. That is the update which hopefully will, at some point, become the final set of updated Supplementary Procedures. I just wanted to make sure that I was aligned with the group's understanding of the public comment purpose, and then we'll just carry it through to make sure there's uniformity as we read through the document. Thanks.

SUSAN PAYNE: Lovely. Yeah, that's certainly the intent, which is not to say that I haven't made some errors. But that's the intent. Thank you.

All right. So, "Background. The IRP is a key accountability mechanism under ICANN's Bylaws (Article 4.3) which provides for third party review of Board or staff actions or inactions which are alleged to exceed ICANN's mission or otherwise be inconsistent with its Articles or Bylaws. The procedural rules for the IRP are set out in Supplementary Procedures for Internet Corporation for Assigned Names and Numbers (ICANN) Independent Review Process (IRP) Supplementary Procedures,



---

which supplement the International Arbitration Rules of the IRP provider, the International Center for Dispute Resolution (ICDR).”

Yeah, I welcome to thoughts on that and whether we need in that immediate first paragraph a reference also to the interim rules. We do come on to them. I’ll leave that for people to sort of ponder on. We do later identify that there are interim rules in place, I think. So next paragraph. David has suggested an edit which I think is absolutely fine to me. Sorry, I didn’t pick up Kristina’s edit of removing the capital S in the previous paragraph as well, which again looks absolutely fine.

So shortly following the amendment of ICANN’s Bylaws as a result of the IANA transition and work of the CCWG-accountability, the IRP-IOT was convened. I wasn’t sure of the exact date, but David is suggesting we delete that. And I think that may make sense to just say the IOT was convened to review and revise the IRP Supplementary Procedures. I think this is a new amendment, which I’m guessing based on the coloring is from—well, I thought it was from Kristina but actually it looks as though it’s from Liz. So as proposed to be edited, it would say to review and revise the IRP Supplementary Procedures, which should be the primary rules for IRPs once it is established. I’m not sure that that’s quite correct.

The language Liz proposed to delete was referenced to the purpose of the IRP Supplementary Procedures being amended was in particular to accommodate the implementation of the IRP Standing Panel. So it was a reference to it being a primary source for panelists. Liz, I see your hand so I’ll turn to you.

LIZ LE: Thanks, Susan. It's Liz Le with ICANN Org for the record. The suggested deletion of the reference to the Standing Panel here is because under the Bylaws, the rules will be the primary rules in place for IRP refer to those of whether or not there's a Standing Panel in place, it's what governs IRP. The suggestion is to streamline the introduction and take away the IRP Standing Panel. I'm not sure how relevant it is to the discussion of the rule itself. So that's where this comes from.

SUSAN PAYNE: Okay. Thanks, Liz. I'm seeing some support for that from David as well in the chat. I don't feel strongly. I'm happy to delete that. I think then we might need to also finish that sentence as just which should become the primary rules for IRPs, and we just delete once it is established as well. Which Anonymous Shrew looks like they're doing, I'm not sure who that is. But I think that's correct. I think that final few words also need to come out. Okay. All right. Thanks for that. And then we can move on.

Next paragraph. "Between 2016 and 2019, the first iteration of the IRP-IOT worked to develop draft IRP Supplementary Procedures and help do public consultations." Then first bullet, "First Public Consultation in November 2016 on a set of draft updated IRP Supplementary Procedures. Following review of this public comment input revisions were made to the draft IRP Supplementary Procedures. And one specific issue was identified as likely to benefit from further community input." Then second bullet. "Second Public Consultation in August 2018 on issues related to the time for submission of an IRP. The public comment

---

input on this issue was not reviewed and acted upon by the first iteration of the IRP-IOT but has been reviewed by the reconvened IRP-IOT.”

So I will pause there. I can see some highlighting on that text but I’m not sure what that’s highlighting. I’m just going to go to an offline version. Oh, it’s mine. It’s my highlighting when I was bashing this out and trying to get it circulated in time. I hadn’t actually included the links. But my suggestion is that we include the links to the relevant consultation so that people can go back to that full information if they want to. All right. I’m not seeing any hands so I’ll move on to the next paragraph. Oh, sorry, Malcolm Huty. Malcolm, you’re here. Hello.

MALCOLM HUTTY:

Sorry. I’m afraid I’m not very well so I’m not really able to participate fully. Perhaps I could follow up after the meeting with some comments. But broadly, I think it’s not really enough to just link to the submissions. We should summarize what we received. Thank you.

SUSAN PAYNE:

When you say we should summarize, Malcolm, are you suggesting we should summarize the public comment input from both consultations, which does seem like a fairly large task. And perhaps there is already a summary that’s been produced, I’m not sure. Okay. I see a few hands. Kristina?

---

KRISTINA ROSETTE:

While I can certainly understand that there are circumstances in which having a summary of the public comment provided in connection with the comments will be useful, I am going to oppose Malcolm's suggestion that we create one for two reasons. First is time. And second, in the event that there is not already a summary, my concern would be that in summarizing some groups' or individuals' public comment, we may inadvertently exclude something or summarize it in such a way that that group disagrees with it. And to be perfectly candid, that's not a headache that I need right now and I'm not sure anyone else does. I do think we should make absolutely certain that the previous public comments are still available and that the links do in fact work, because there's nothing worse than linking to something that isn't available. But yeah, I have to respectfully disagree with Malcolm. Thanks.

SUSAN PAYNE:

Thanks, Kristina. Then David?

DAVID MCAULEY:

Thank you, Susan. I would like to support Kristina's comments in their entirety, and I'd like to underscore the time element. I understand. I mean, I think it's a fair point that Malcolm raises. Having said that, however, the information will be there, the link will take people there. They can do some research. The community can work on this, too. If they have an interest, they can do their research. I just think that we need to move on. And we also have some detailed, explanatory Rationale documents that we've just been going through. So I just

---

underscore the time element. That's really a big concern with me. So thanks very much.

SUSAN PAYNE:

Thanks, David. Malcolm, I'll come back to you. But maybe I'll just first ask Bernard. I know that we've worked off some of the staff summaries already available that perhaps we could use, that we could link to, that might be suitable for public comment consumption. I'm assuming if there are, they're publicly available anyway. So it would be only a question of signposting people to where they can find them.

BERNARD TURCOTTE:

Well, it's the staff report which is kept with the Public Consultation document. So if you point to that, you have the whole kit and caboodle, if you will.

SUSAN PAYNE:

Okay. All right. Malcolm, I'll come back to you now. Sorry.

MALCOLM HUTTY:

I wasn't suggesting that we need to go through each one and try to paraphrase what each commenter had said. But you've just said that we should say that we have read the public comments and taking it into account, when actually what we've done is we've read the public comments and rejected it. The overwhelming majority of public comments in the first round said that we should not have repose. When we removed repose in response to that, the majority of comments that

---

was received then, although there wasn't much, but clearly, almost all of it, nonetheless, welcomed that we have rejected repose and told us not to reinstate it. We have rejected that. And our response to that is going to be, "Oh well, they can do their research." It's like, no, this is completely unethical.

SUSAN PAYNE:

Apologies. I'm trying to get off mute there, Malcolm. Well, I think what we had done, and maybe that you think it's inadequate, was flag that issue of repose in the Rule 4 document. There's probably more explanatory text and rationale in there than there is in some of the other rules, because we did want to highlight that certainly there's disagreement amongst the group on that issue. So I'm not sure if you think the Rules 4 explanation is inadequate. I'm happy to hear that—

MALCOLM HUTTY:

I'm just saying we need to be very clear that we read the public comment and we disagreed with it. That the [inaudible] we're willing to acknowledge that the public comment went overwhelmingly one direction and we're choosing the opposite. If you don't draw that out, it is deceptive to the community.

SUSAN PAYNE:

Yeah. Okay. I thought we had. If you think inadequate, then we can look at that. And I'm very happy to take your suggestions. But I thought that that was made clear. If you think it isn't clear in the Rule 4 text, that's fine. And we can cross reference to the Rule 4 text here in this

---

introduction, which is just meant to be an explanation. I'm not trying to mislead anyone. I thought we'd done that. But if you think it's inadequate, then I am happy to take on board your suggestions. David?

MALCOLM HUTTY: Thank you. Can I come back when I'm slightly less unwell with those suggestions? Thank you.

SUSAN PAYNE: Sure. Thanks, Malcolm. David?

DAVID MCAULEY: Thanks. I just wanted to strongly disagree with Malcolm using the phrase that we're acting unethically. I think this has been handled rather well. I don't think public comment means that we have to do a mathematical exercise and say, "Our considerations are bound by the equations to come out of it." But I do think you've handled it well, Susan, and the invitation is there to Malcolm to come up with a proposal for language to use and we'll take a look at it. Thank you.

SUSAN PAYNE: Thanks, David. Malcolm, I see your hand is still up. Is that a new one or an old one?

MALCOLM HUTTY: No, it wasn't a new one. Okay. Look, I apologize. I'm probably not in the appropriate state to be contributing to this committee right now. But

---

yes, so I apologize if that language was more harsh than it should have been. But I do think that it's important that we are very clear with the community that we're rejecting their view. Thank you.

SUSAN PAYNE:

Understood, Malcolm, and thank you. Yes. I do appreciate it. We all know this was an extremely challenging topic, and people have extremely strong views and we came to a compromise. And we know that it is a compromise and that not everyone is in supportive direction we went in. But I believed that we had captured it sufficiently in Rule 4. But as I say, I don't want to mislead anyone. And so I'm very open to your further suggestions on this. But thanks for that. All right, Liz.

LIZ LE:

Thanks, Susan. In addition to the comments, echoing David and Kristina's comments, I do also want to point out that from the first public consultation to the second public consultation, we did not provide any sort of summary. Aside from the report on Public Comment proceeding, we did do a summary of the comments that were received. So what you're proposing is consistent with the way that we have handled the Public Comment proceedings related to the Supplementary Procedures.

SUSAN PAYNE:

Okay. Thanks for that, Liz. All right. Malcolm, again, I'm still seeing your hand. I'm treating it as an old one, but just let me know if it's not. All right, moving on to the next paragraph then.



---

“In October 2018, the ICANN Board adopted interim IRP Supplementary Procedures.” The interim—I think I’m missing an IRP there. Oh, this is new text actually proposed, I think, probably by Liz. “The interim Supplementary Procedures was developed by the IOT to align the Bylaws as updated on 1<sup>st</sup> October 2016 in the event that IRP is initiated before all issues are addressed to meet a final set of updated IRP Supplementary Procedures. The interim Supplementary Procedures do not take into consideration the community input from the second public consultation.”

That last sentence was certainly in the original text. And I do think that that’s something that is important for us to highlight because, again, it was it was one of those areas where there was a great deal of discussion at the time the interim rules are put together and some contention. So that much of that paragraph, the text that you can see in blue is a new suggestion. I think it’s a suggestion from Liz, but please forgive me if I’m incorrect. Kristina?

KRISTINA ROSETTE:

I put this, Liz, in a reply to that, your comment proposing that language. I found that language unclear. And I don’t know if there are words missing or why I’m having difficulty understanding it. But to speak candidly, if I’m having difficulty understanding it, I think it’s a safe bet that any potential public commenter is also going to have a difficult time understanding it as well. Thanks.

SUSAN PAYNE:

Thanks, Kristina. Liz?

LIZ LE: Thanks, Kristina. Thanks, Susan. Yeah, I understand your concern maybe what's missing, and I added is "to align the rules." And we can make it a little bit clearer to say that the rules that were in place before the interim Supplementary Procedures were created and adopted did not align with the current Bylaws. So the IOT at the time was concerned that we didn't have a set of procedures that was aligned with the Bylaws while we were working on developing the final set of Supplementary Procedure in the event that there's an IRP that's initiated that would be under the new Bylaws. So I don't know if adding "to align the rules with the Bylaws" is something then that would help the language or if the group feels like we need to further explain that, the rules that we're currently in place at the time was not aligned with the Bylaws.

KRISTINA ROSETTE: If I may, I think I'm clear until we get to—I think the part of the sentence that's throwing me is that before "All issues are addressed to meet a final set of updated IRP Supplementary Procedures." It just seems like there's a word missing, or "to meet a final set" is the phrase that's throwing me. So that's what I'm having trouble with. Thanks.

LIZ LE: Maybe we can edit it with "While that IOT continues working on the final set of Supplementary Procedures."

---

SUSAN PAYNE:

I'm speaking for myself. I think that probably would work better. That seems to make sense to me. And I think Kristina is agreeing. Thank you. So we can tweak that. And if you don't mind, I will keep going.

The next paragraph. "In January 2020, the IRP-IOT was reconvened with additional volunteers to continue the review and revision of the IRP Supplementary Procedures, including the input from the second Public Comment and feedback from ICANN Legal and practitioner members of the IRP-IOT about their experiences with the IRP." A couple of tweaks there from, I think, Kristina. "And the IRP-IOT now seeks further community input." Again, I think those were your edits, Kristina. They certainly look good to me. And thanks for that revision, Liz. That looks good. All right, I'm not seeing any hands.

Then next section, "The Third Public Consultation. The IRP-IOT seeks comments on its proposed updates to the following rules in the interim IRP Supplementary Procedures." Okay. I think that's one of those sections where perhaps that needs a bit of tweaking just to make it a bit clearer the reference to the interim in there as you flagged, Liz. So I'll kind of tweak that a little bit to make it a bit clearer.

All right. And so the list in question is Rule 3, panel selection. Rule 4, time for filing, including 4A initiation of an IRP. 4B, time to file. 4C, timing considerations for a claimant to file an IRP following a Request for Reconsideration (RFR). That's a bit of a mouthful. 4D, limited circumstances for requesting permission to file after the 24-month limit. Rule 5B, translation. And Rule 7, consolidation intervention and participation as an amicus.

---

Then moving on to the next paragraph. “It is important to note that what is being proposed is not final language where an amendment is proposed to an existing rule.” I think we’ve got an extra “is proposed” so that could come out there. Comma, “The IRP-IOT has proposed revisions that have not yet been through a formal legal review where the IRP-IOT proposes new rules not presently reflected in the interim IRP Supplementary Procedures, in particular, in Rules 4A, 4C, and 4D. It has proposed drafting instructions to the legal professionals who will produce the final language subject to the IRP-IOT’s approval. As such, the IRP-IOT would appreciate comments on the principles and recommendations that have been proposed to update the IRP Supplementary Procedures and not on the specific language being presented at this time.”

I’ll pause there. Liz?

LIZ LE:

Thanks, Susan. I think I’m having a little bit of trouble understanding the intent in this paragraph. I was under the impression that we were going out for public comment on language that it was agreed upon, it would be adopted as final and be part of the final set of Supplementary Procedures. I didn’t realize that what we’re proposing is for public comment on the concepts of these rules that we’re putting out for public comment. That would mean that we would then end up having another public comment on the actual language itself. I’m trying to seek clarification. Is that where the group has convened on?

---

SUSAN PAYNE:

Thanks, Liz. Yes. My reaction would be yes, that is where we convened. For a number of the edits that we've made, we have essentially amended the rules. But we know they haven't been through your team for a sort of overview and cleanup. But in some parts of this, particularly as highlighted, 4A, 4C, and 4D, but 4A in particular is just a set of principles. It's not draft text at all. And we discussed this back and forwards at kind of great length, and I came to the conclusion that we should get this out and at least get input on the principles rather than taking months to wait for a legal text to be drafted in those cases. And then put something out to comment and then get perhaps community disagreement with what we were proposing. This was a sort of compromise to get things out. But I'll turn to David who has his hand up as well. David?

DAVID MCAULEY:

Thanks, Susan, and thanks, Liz. I just want to mention that for a long, long time, I held the point of view that Liz just expressed. I thought we were actually prepping language. But I do agree with what you just said and that is, in the recent past, we have discussed this at length, because at some point, it became clear that others thought we were creating drafts that would be taken by legal professionals and blessed or tweaked or whatever to become the final rule. And so I've accepted that, and that's fine. So I think we have sort of come around to that point of view. But I just want to mention that for a long time, I think I was of the same view that Liz was. And when Liz mentioned the possibility of yet another public consultation once that process is done, I hadn't thought of that. That just sends shudders to me. But I think it underscores the point that when we come up with what we come up

with, it'll be well enough thought through that I think we can instruct the legal people that are going to tweak it or do whatever they do with it is to not go off on a frolic and detour and start writing. Their job will be to turn what we've given them into a rule with not much room to maneuver, very little room to maneuver. It's been thought, it's been processed, it's really sort of the job of what used to be called an amanuensis. So I hope we can be clear about that. Maybe we can avoid a final public consultation if we think it's feasible. Thank you.

SUSAN PAYNE:

Thanks, David. Yeah, I know, again, we did talk about this at great length. I think there are certainly some in the group who feel that we probably will need to put final final rules out. Seeking to avoid a final public comment would probably be unwise and something that the community would not be very happy about. But we certainly can keep this in mind, and we aren't at that point yet anyway. But I think the understanding was that we probably will have to have a final set of rules that get signed off by the community. Okay. Sorry, apologies. Sorry, I'm seeing a message from you, but I'm sorry, I'm not following it. I don't know if it's something that you need to flag to the group.

BERNARD TURCOTTE:

No, I was just noting that when there are various things which affect the Bylaws, or similarly, that the Board tends to run its own public consultation. So maybe that can be taken into account when we're talking about this subject is all I was trying to say. And maybe Liz can clarify that for us.

---

SUSAN PAYNE: Oh, thank you. Thank you. Yes, Liz.

LIZ LE: I understand the concept of wanting to put this out for public comment for us to get input from the community on the concepts and the rules of where we have today. I honestly don't know how, and I think I agree with you, Susan. I don't know how we will be able to avoid another set of public comment after this when we do have the final set of Supplementary Procedures. I think we're going to have to go back out for public comment for the community to approve that. I think it would be ideal and what we're hoping to do is—it will be ideal if we could just have one more public comment proceeding instead of two. One to get input on what we have worked up to date, and then following that, for them to approve the language of that. So I don't know how much time would be involved for us to draft these rules. And I don't know if that's to a point where it would be for us to be able to avoid two public comment process if we can. But that's just something I want to mention that for the group to consider.

SUSAN PAYNE: Thanks, Liz. It's not something we haven't considered, we definitely have. We had quite a bit of debate about it. I'm also conscious that we were getting a strong steer from Becky on a desire from the Board for us to get something out and really was hoping that would have been before now, frankly. If you were to come to me and say the versions of the rules could be drafted within a few weeks, we might reconsider. But

---

---

I'm very doubtful that we could do something where we had rules drafted for us, and we reviewed, and they were finalized, and we got to a point where we were ready to public comment. I very much doubt that that would be less than a few months, certainly not a few weeks. So if you want to take that back and make a suggestion as to how quickly that could be accomplished. But I think this is the path we're on and I'm reluctant to... Albeit that I agree with you, in an ideal world, we'd have all these rules wrapped up and we'd be done. But I'm doubtful. I think we will lose momentum again, we won't get the input from the community on some of the principles that we've been struggling with. We could have someone draft language on Rule 4 and the principles that we've developed and have the community shoot it down. And I think there's at least a possibility of that. So I think it's important we get the community input. Okay. I'm going to keep moving down. So I'm leaving it with you, Liz. If you are able to get a realistic timeline for doing a formal draft, then great. But I do note what you're saying that you're also doubtful it could be accomplished in a few weeks.

Okay. All right. So we move on to the next paragraph down which begins, "It is important to note that the IRP-IOT considered all the comments made in previous public consultations when working on this proposed update to the IRP Supplementary Procedures, and have included a number of these in the proposals presented here." Again, there's a highlighted text there and I'm not quite sure where that's come from. I'm just going to have a look at my version.

Okay. That's a comment from Kristina. I'm not sure if you want to speak to that. It may be that in the light of a number of these, it's perhaps a bit unclear and also perhaps in the light of Malcolm's comments, it may

---



be that this language gets amended a little in any event. So let me take another look at that.

Next paragraph. “The draft IRP Supplementary Procedures include a number of proposed time limits for taking various steps in the proceedings intended to allow parties a sufficient amount of time, but in the context of the Bylaws expectation that IRP proceedings should be concluded within six months. The IRP-IOT intends to review all timings (especially for consistency) before finalizing the IRP Supplementary Procedures but welcomes community input on these timings.” Again, a few tweaks here to the language which, from my perspective, are improvements. So moving on, I’m not seeing any hands.

So next paragraph. “With respect to Rule 4 dealing with the time to file an IRP, the proposals are the result of substantial discussion amongst the members of the IRP-IOT and compromise. They do not reflect the full consensus of the IRP-IOT, but do reflect a compromise that a consensus of the group could agree to put out for public comment. More explanation is contained within the Rule 4 document.” Again, just noting Malcolm’s comments from earlier.

All right, moving on. “Given the breadth of the proposed changes, the IRP-IOT is providing the following for comments.” First, the current interim IRP Supplementary Procedures. Second bullet, a redline version of the proposed changes to the IRP Supplementary Procedures against the current interim IRP Supplementary Procedures, which includes rationales—brackets in italics and highlighted in gray—explaining why each major changes being proposed. The IOT is not seeking comments on the rationales that are included in this document as they are simply

---

---

meant to be the explanations as to why the IRT is proposing these changes. These will not be included in the final updated version of the IRP Supplementary Procedures. And then final bullet, a clean version of the proposed updates to the IRP Supplementary Procedures.

Next paragraph. “The IRP-IOT has maintained the same numbering system that is currently being used in the IRP Supplementary Procedures to facilitate readers referencing that document for this public consultation. However, this does not imply that the numbering system will be used in the final version of the updated IRP Supplementary Procedures.” Then finally, “The IRP-IOT asks commenters to clearly identify which sections of which documents they are referring to in their comments.”

Okay. Again, a couple of little tweaks there that I would support adopting. They clean the text up a little. So that is the end of the read through. I will pause and see if there are any more comments for now. Okay. Otherwise, I’m noting the time. We have about 10 minutes left. Obviously, I would love to get this sort of finalized as soon as possible. I am conscious of the time of the year. And also Malcolm’s comment that he would like the opportunity to perhaps suggest some edits and hasn’t yet been able to do so. We’ve also got a bit of sort of tweaking and cleanup as a result of this call as well.

So what I would propose is that the document sort of remains open for further suggested edits and thoughts over the holiday period, and that we will reconvene in January, I think our call is due to be the 16<sup>th</sup> of January. I’m sure Bernard will correct me if I’m wrong. That we’ll look to have it finalized then and that we can then have the set of documents,

take them forward for being signed off for going through to a public comment that hopefully could open, if we're lucky, by the end of January.

I'm being reminded. I'm talking here really about us spending time on the introductory text here. Not planning to reopen again the other documents that we've been going through and finalizing unless in the case of Rule 4, unless there's a problem with that. But I'm hoping that that isn't the case, given that we have had the Rule 4 text in front of us now for a number of calls and it was receiving quite good support. So subject to that, the intent would be for us to finalize this introductory text and that we're viewing the rest of the rule text as being set now. Okay. All right, I think, in which case, I'll just pause and double-check with Bernard. Am I right that it's the 16<sup>th</sup> of January that that we will be reconvening?

BERNARD TURCOTTE:

Let me double-check that, but I believe that is correct. Yes, Tuesday, 16<sup>th</sup> January. Same time.

SUSAN PAYNE:

Super. All right then. In which case then, I think that's what we'll do so. So the introductory document remains open for comments. Hopefully, there won't be too many. But we do obviously want a set of text that reflects the work that we've done and what we're asking from the community. So if there are improvements that people want to propose, then they're very welcome.

---

And with that, I want to thank you all, really. It's been a really productive call. I really appreciate all the inputs and also you're making the time to join even though we're very much in that kind of holiday period. So I hope you all have a lovely celebration to the extent that you do celebrate anything over this period. I'll see you all in the new year. So thanks very much, everyone. Brenda, we can stop the recording and wrap up the call.

BERNARD TURCOTTE: Thank you.

SUSAN PAYNE: Thanks, everyone.

**[END OF TRANSCRIPTION]**