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BRENDA BREWER: Good day, everyone, and welcome to the IRP IOT plenary call on March 19, 2024. This meeting is being recorded. This meeting is also governed by the ICANN expected standards of behavior, and if you would kindly state your name before speaking, it would be appreciated for the record.

And with that, I'll turn the meeting over to Susan Payne. Thank you.

SUSAN PAYNE: Lovely. Thanks very much, Brenda, and welcome, everyone. This is our call of the 19 March, and hopefully we will by the end of this call, be a fair way through to having our documents finalized for the public comment, although there is still a little bit of redrafting of the legal text to still be done. But I'm hoping we can make some progress on this now.

So as usual, first up, we'll review the agenda and do updates to statement of interest. I'll do SOIs now. Is there anyone who has anything they need to update on their SOI?

Not seeing anything. So just the usual reminder to please review your SOI from time to time and do update it as necessary. Sorry, excuse me, I've got a bit of a frog in my throat. Okay.

Agenda item two will be the action items. There are four of them, as you can see, they're on the agenda, so I'll actually sort of come

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back and go through them in more detail in a moment when we finish the quick agenda review.

Our agenda item three, then, will be for us to just look at the updates made to the rationales document for rule seven arising from our discussion on the legal draft of the redline text. We did that previous exercise on the other parts of the rules that we're putting out to public comments. So nothing unexpected there, but just a quick opportunity to check that I've captured what we wanted to reflect in that rationales document.

Agenda item four, then, is for us to continue on, and I'm hoping to finalize the review of the drafting instructions for the revision of the legal draft in that Google Doc redline. Again, we've done this previously. We made a start on reviewing the drafting instructions in rule three and rule 4A, and so we'll be picking this up from rule 4B and just continuing with that through to the end. And again, just noting that the drafting instructions are basically the things that we identified as we were going through that redline text. So it's just indicating where there's any sort of response to a question that was asked or where there's a slight redraft that we think needs to take place.

Okay. And then moving down to agenda item five, just a bit of an opportunity for us to talk about the timing and the next steps on getting this documentation out for public comment.

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And then our agenda item six is for us to look at the report on the second public consultation that Bernard pulled together. And you'll recall that we discussed this when we were looking at our public comment, our own public consultation draft text, in particular the introduction. And there's a reference in that to the two different public consultations that have previously been held. And we noted that there wasn't a staff report on the second one of those. And so as we discussed when we looked at that, Bernard agreed that he would do pull that report together on the second public consultation inputs. And that's been shared with this group since the 1 March. So it's just an opportunity, really, to check in and make sure that everyone's comfortable with that summary.

Okay. All right. So if we move back up to agenda item two and the action items—oh, and I'm just noting that Kristina's also joined us as well. So hello, Kristina. Thanks for joining.

Ok, so our action items. We had four of them, and the first one was for Liz to share the list of the standing panel training materials that identified. And as I was just checking my mailbox a moment or so ago, I did notice that I think Liz has actually just circulated that to us. So just pausing. Is there anything you wanted to particularly highlight, Liz? Otherwise, we'll just take a sort of action item for all of us now to review that, and we'll put that on the agenda for our next call.

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LIZ LE: Thanks, Susan. I think the document is self-explanatory, but Sam and I are happy to discuss it, should the group wish. Thanks.

SUSAN PAYNE: Perfect. Thanks. Thanks, Liz. Sam?

SAM EISNER: Thanks. And just a small follow-on. The document really is pretty self-explanatory, and we have an explanatory note at the top. But just to reflect to this group, a principle that we developed or that we aligned to when we were developing the list of trainings was that we really wanted to focus on publicly available trainings and trainings that didn't require ICANN to identify a specific trainer to go in and work with the panelists because we wanted to reduce any possibility of improper access to panelists or any possibility that that trainer had particular interactions with [them, which] might then be witness in an IRP, et cetera. So we really relied on items that were publicly available. And you'll see in there that there's actually a publicly available training that's under development right now that we're also referring to.

So that was really the principal basis that we made this list from. And then, of course, the IOT then has the further opportunity to identify if there are additional trainings or anything needed. But that's why the list that you received looks the way that it does.

SUSAN PAYNE: Thanks, Sam. So we will review that with that in mind. David?

DAVID MCAULEY: Thanks, Susan, and thanks, Sam. I just wanted to speak to what Liz said and sort of give a shout out to what Sam just said. I had been thinking about what possible training there might be, and it didn't occur to me—I think it's the second paragraph at the top that Sam was just talking about. But it makes sense that some kind of special relationship not be able to be formed. So I think that makes great sense. And using the publicly available body of training materials also makes sense. So I just wanted to say that I think those who are practitioners or have an instant IRP may want to look at those themselves to make sure that there's no area that needs to be supplemented or anything like that.

But I also think when we discuss it, we should discuss whether we have the power to, and whether we want to, have the panelists track their progress—what courses have they taken? This might be relevant to people when they choose panelists in the future. It might be relevant to how we, as the IOT, design whether someone gets a second term or not. But I think oftentimes in working groups, we see that we have our own attendance records and all this kind of stuff. So I'm wondering if maybe we should discuss tracking the panelists as they do their self-training.

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But I appreciate what Liz and Sam have sent us. I thought it looked pretty good. Thank you.

SUSAN PAYNE: Thanks, David. And I see Sam possibly responding to that. So, Sam?

SAM EISNER: Yeah. We can definitely discuss this more when this is fully on the agenda, but one of the benefits that we have in working through the ICANN Learn platform, particularly, is that we're able to actually work with the administrators of that site to create kind of a collection for the panelists to access and then to be able to track progress through that. So that is actually something that we thought about. And then the further discussion of how that tracking might be shared with the community or with particular portions of the community at different times we can discuss later, but we do have tracking available.

SUSAN PAYNE: Thanks, Sam. David, is that a new hand?

DAVID MCAULEY: It's a new hand, Susan, just to point to Mike's comment in the chat, wondering if there's any update on the standing panel. Thanks.

SUSAN PAYNE: Yes, thanks for that. Yes, and I was going to flag that as well. I know Liz gave us a very useful update in our first session, the one that we had in Puerto Rico where we didn't have a quorum, but we did nevertheless have the opportunity to have a quick update from those. But I think Mike is just asking a question on what the sort of timing and status is on the standing panelists. So it's perhaps worth just circling back to that as well. Sam?

SAM EISNER: Thanks. So we're getting very close to the opportunity to announce the standing panelists. We're doing some final coordination with a few administrative items that we need to work with with the ICDR to make sure that that side's ready. And we've been maintaining regular contact with the panelists to make sure that they're understanding where we are in the process. We think we're not very far away, so I would imagine within the next few weeks, we'll be able to really move this forward and have a public announcement.

SUSAN PAYNE: Great. Thank you for that. Okay, well, that's good. That does mean that it ties in quite nicely if we do take the opportunity to review the list of training materials now.

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And then, just to close this one off and just to sort of complete this, the reason we had this discussion on the training materials is because the bylaws do say something to the effect of that this IOT will have some input into, or has the opportunity to have input into, the training materials that are recommended for the standing panelists to review or to have access to. And so that that inevitably led to a bit of a discussion about what's already been identified as being appropriate and suitable to be referred to the standing panel members to use as training materials.

And so that's where Liz has now shared the list of what's been currently identified. And so really, if we put this on our agenda for our next meeting, that gives people a few weeks to look through that list and just to see whether there is anything sort of glaringly missing from anyone's perspective that we could then identify to the group over email, and then we can take the opportunity on our next call to discuss that. I don't think there's an expectation that ... There's no presumption that there's anything missing. Let's put it that way. But it's just that we have this opportunity to cast our eyes over what's been identified, and as I say, to see if we think that there's a particular sort of training material or a particular aspect or issue on which we think the standing panel would benefit from training, which perhaps isn't currently covered. So it's there for that discussion, basically.

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All right, if we come on then to the second action item, this one relates to rule seven, section 16. But I think there were actually two or three sections where the same issue was identified by the drafting team. Effectively, we had a note from the legal drafters asking whether we should be considering protective orders for any documents that were disclosed and providing for that specifically in the rules. So Liz had taken an action item just to see whether there's anything specific that the drafters have in mind that could shed any additional light on that question from them, So I don't know if you've had an opportunity to look at this yet or not, Liz, but I just thought I'd circle back to you on it.

LIZ LE:

Thanks, Susan. I think, as it relates to whether or not a protective order would be appropriate in circumstances like this or any time during an IRP matter, it's really kind of something that gets decided perhaps between the parties, and they might take it up with the panel. I don't think that we need to put that into the overall rules. So I think it was just a note for something for the group to consider if they felt that it's needed. But from our standpoint, we don't feel that it's needed to be included in the rules.

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SUSAN PAYNE: Okay. So there wasn't a specific concern then that the drafters were trying to flag for us that we perhaps had overlooked. I think that's what I hear you saying.

LIZ LE: That's correct.

SUSAN PAYNE: Thank you. And in which case, we certainly did have a brief discussion on this when we were going through rule seven. And I think our general feeling was exactly that. We felt that this is something that obviously is something that the panel has the power to do, and that it didn't necessarily need to be specifically called out in the rules.

So I will just pause and see whether anyone is recalling our previous discussion differently or has had further thoughts on this subsequently. But otherwise, I think we can sort of mark that 1As considered then.

All right. I'm not seeing any hands. Okay. All right. And then coming on, there were also a couple of action items for me. The first one was ... Actually, I'll do the second one first, if that is all right, just because it's slightly simpler. The second one relates to rule three, section 5D. And actually, I might just ask you if you could pull up the Google Doc, Brenda, the Google Doc of the redline from the legal drafters, if you wouldn't mind.

BRENDA BREWER: Yep. Give me one moment. Is that the right line?

SUSAN PAYNE: Perfect. Yes. And then we're at ... Right at the start. rule three. I think it's probably the second page, because it's rule three, section five. Okay. I think we're nearly ... okay. Yeah.

BRENDA BREWER: Section five.

SUSAN PAYNE: There we are. Five. That's it. Yes. And so the point that I was to look at was that (it's not showing up too well in the document at the moment) we had had a discussion about conflict of interest or the appearance of conflict of interest. And in sub-paragraph five C, we had agreed, and there is a note for the drafters that we looked at in our last call, reflecting that we do want to have this clause reflect both whether there would be a conflict of interest or the appearance of a conflict. And I hadn't picked up that same point in paragraph five, sub-paragraph D. And so I took an action item to just go back and look at that again.

And so I have now done that. I listened back to the recording on our discussion on this, and as best I can tell, I do think that that was what our intent was, that we would pick up in paragraph 5D,

both the development (we've changed the wording on "develop" as well) of a conflict of interest or the appearance of a conflict of interest. And it did seem to me that that was what our intent was when we discussed this.

So I've added in a new drafting instruction to that effect in that section, 5D, now as an action for the drafters to replace "develops a conflict of interest" with "becomes aware of a conflict of interest or circumstances giving rise to the appearance of a conflict of interest." I'm not sure it's showing very well in the Google Doc at the minute in the Zoom room, but if you're following the Google Doc outside of the Zoom room, you may be able to see it slightly better. So I think that's what was intended. As I say, I've now put in a drafting instruction to that effect.

Pausing to see if anyone has any concerns. And I'm not seeing any. I don't see any hands, so hopefully no concerns. Okay, brilliant. All right. So that was the slightly less complicated one.

And then the other action item that I had was to look at IRP publication. And specifically, this was during our discussion on rule seven. We're proposing to run timings from the publication of the IRP. And that really is to ensure that, because we're talking in particular about third parties seeking to intervene or consolidate into an IRP that they're not a party to at the time, they have notice by virtue of something having been published on the ICANN website.

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And so in our last meeting, we had a discussion about when publication is considered to have taken place. And we did agree that we felt that it's when ICANN has had the written statement of dispute and has published that in the IRP section on the website. So I don't think it actually happens, but if and to the extent that just a notice of an IRP was published, our understanding from Liz was that that wouldn't be sufficient for someone to really know what the dispute was. And so it's where there's the full sort of written statement of dispute that is the case. And I think that's fine. That's certainly where we felt comfortable on our last call. But I did take an action item to just check what we said on our rule on initiation to make sure that we haven't said anything that conflicts.

And so, Brenda, if you wouldn't mind scrolling down now to 4A. I think it's just the next section. Yes. So 4A is our principles of initiation. It's what has become sort of rule text from this legal drafting exercise based on our original principles. And I think based on this, it isn't inconsistent. What we've got in rule 4A isn't inconsistent with that concept of it being the written statement of dispute, because rule 4A does here talk about initiation being that there should be a written statement of dispute and that there should be a filing fee and so on.

But having said that, I do think we've sort of slightly lost during this whole exercise. The text that's in the current rule four, the

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current interim supplementary procedures, is the time for filing. It's a very short rule, but what it does say is an IRP is commenced when a claimant files a written statement of dispute. And then it goes on to say that gets filed with the ICDR.

So I think actually what we've sort of lost in the process of our amending or our drafting exercise is we don't actually have any statement that specifically says that's how you commence an IRP. And we also don't have any specific reference to the fact that actually what you do is you complete an ICDR form called the notice of independent review and that you accompany that by the written statement of dispute. So, as I say, although I don't think what we've said about publication of the IRP and what we've got on principles of initiation are inconsistent, I do think we have slightly lost that preliminary point, which is just closing the gap and saying an IRP is commenced by going to ICDR, completing the notice of independent review, and submitting a written statement of dispute.

And so my suggestion would be that although this is a fairly substantive change ... Well, there's two different ways we could do this. One is, if people are comfortable with it, we could include an instruction to the drafters and ask them to insert an additional sentence into that paragraph, into rule 4A/section one, that makes that point, or alternatively, because it is a bit more substantive than we've really been doing during this exercise, we

capture this in our rationales document and say that currently that sort of step is missing.

But I'm subject to thoughts from the group. I'm favoring the first option because it seems to me to be a gap, and it's not really a gap that we're asking the community for their views on. I think if we agree that there's a gap, then I think it's something we should resolve. So I'm going to pause and I'm keen to get thoughts one way or the other, but I think I'll perhaps pose this to the group as: are there concerns with including a drafting instruction in 4A, asking for that addition to be made to 4A, section one? And I'll give people an opportunity now to raise any concerns about it or to discuss it further.

All right. Okay. I'm not seeing any. And so I will make that proposal. And then, of course, everyone will have an opportunity to look at this again when it comes back from the drafters so that we'll be able to double check on what the text looks like at that point.

Thanks for, Kristina. Thanks for your comment in the chat.

All right. With that, then, I think that's got us through to the end of our action items. That's taken a little bit of time, but I think it's been worth taking the time to do that. So we are now at agenda item three, which is we'll just quickly have a look at the rule seven rationales document where there was one update made to that that I've flagged in highlighted text.

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So, Brenda, would you be able to call that up? It was one of the Word documents attached with the agenda.

BRENDA BREWER: Give me just a second. I thought I had them all. Rule seven. Got it. Here it comes.

SUSAN PAYNE: Lovely. Thanks, Brenda. And we'll scroll down in a minute. But just to flag, first of all, the note right at the top, I included this note on previous versions and on the other rules as well. It's just to make it absolutely clear, so that there's no confusion, that I made some update to the rationale text. And this is what's come as a result of our discussion on the legal redline. But the actual text of the rule itself is still to be updated because we're waiting until we've got a settled text on the legal draft and then this will get pulled into this rationales document.

So, yes, I think David is probably correct. I think the update is on page four, if you wouldn't mind scrolling down for us, Brenda. Thank you. Yes, I think that's it, actually, and this is actually talking about that point about publication. And when we were discussing the publication point, we agreed that we'd add an additional note in our rationales document. And so I've tried to capture that as follows, by saying the IOT intends that publication of the IRP (and that's in parentheses) should be defined in section one. Actually,



it's probably rule one, thinking about it, but that is the rule that deals with definitions. So it should be defined in ... I think that should be rule one, and I will make that change to reflect that the publication by ICANN is considered to have taken place when any notice of the IRP and the written statement of dispute have been published on the relevant section of the ICANN website.

And so I hope there's nothing controversial about that. As I say, it's what we discussed at the last meeting, but it's just to make that point and flag it to the wider community because that will require then an update to the definitions. But that's not something that we're putting out for public comment on this particular comment period.

Okay, I'm just pausing and I'll just check to make sure there's no comments or concerns about that. Okay. I'm not seeing any hands. All right, then I think we can move quickly on to agenda item four, which is for us to just go back again to the legal redline document in the Google Doc and we'll start at 4B and then just run through and make sure that everyone is comfortable with the actions for the drafters that are highlighted.

And at this point, I am going to try to look at this outside of the Zoom room just to make sure that I can spot everything. So if you'll bear with me. Okay, so first up is in ... And again, I think you might find it helpful, if you can, to look at it outside of the Zoom

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room as well, because it doesn't display terribly well in the Zoom room, unfortunately.

So the first one though is in that section one. It had been proposed to delete "ICDR" and replace that by "IRP provider." And as we discussed, we now got an action for the drafters to revert back to using the term "ICDR," which is something that's used sort of throughout these rules, so it seems appropriate.

And then our next item is ... I'm not seeing any. Yes. Okay. The next one is what was paragraph three and it has been crossed out in this draft that you can see. And this is the text that says in order for an IRP to be deemed to have been timely filed, all fees must be paid to the ICDR within three business days, as measured by ICDR of the filing of the written statement of dispute. So we've got an action for drafters there that, as we discussed, we think that this should move into rule 4A because it seems to go much more appropriately with the rules about when an IRP is commenced. So that's the action item there for the drafters.

And then ... Okay. There's nothing else, I think, on 4B. Oh no, sorry, I'm missing one. I have got one other, which is with that paragraph, that section four in our draft. I think the legal drafters have been looking at a slightly earlier draft. And so in our draft, that section four, which says under no circumstances may a claimant seek to file a written statement of dispute more than four years after the date of action or inaction being challenged in

the dispute, was moved here to 4B from to 4C. So it's just closing that off: actually we were intending that text to be captured here in this rule 4B.

And again, I don't think there's any disagreement about that, hopefully, but that's again, just captured in the instructions for the drafters.

Okay. And then in terms of our next action, we have an action for the enforce section 1A. That action for the IOT is just a reference to publication and to make a specific reference in the rationales document. That would be about that. And that's the amendment. I think that is one that we already have captured but that we looked at in our last meeting, so we can keep going.

We have some square brackets also in that section where it says RSR, and then there's some square brackets where it says publication of the summary dismissed by the BAMC where appropriate. And the action for the drafters that's noted there is for them to remove the square brackets.

And then scrolling down again to subsection B here, the first point is not one that's an action for the drafters. And I think there's, again, a removal of the square brackets that I don't think isn't specifically noted as an action for the drafters, but I will amend that reference. We could do that now, while I'm here. Alright.

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I've just updated the previous action for the drafters that we had so that we get the square brackets removed from both A and B. Okay.

And I think that takes us to the end of the changes or the actions for the drafters that we have in section 4C. So I'll just quickly pause in case I've got any hands.

No? All good. All right. Then we can move on to 4D. I just need to work out if we have any ... Okay. Yes. I'll just scroll down to 4D, section two. That's text that we were talking about a moment ago where it's been moved into rule ... I want to say 4B instead. So there's no particular action for the drafters here because there's a drafting note already given to them earlier.

But other than that, I don't see. ... Okay. Yes. The next action for the drafters is not until we get to section five in this rule 4D. And it was a question from the legal drafters of whether we should change "have regard to" to "consider." And so it's just noting that we've discussed and we want to retain "have regard to" because we don't think the two terms are quite equivalent. And so that point has now been made.

We have a couple of other very small actions for the drafters as well. Also in that section five, we're requesting that the word "these" at the end of that, where it says, "light of these purposes," be replaced by, "In light of such purposes." Again, that's something that was agreed on one of our previous calls.

We also have a very small drafting point, again in section six, where it says, “For the avoidance of doubt, ICANN shall have a right to respond to the claimant's request for leave.” We're changing that to “shall have the right to respond to the request for leave.” So that's another request for a fairly minor drafting edit.

And then finally here in section seven, we have another action for the drafters about moving this text. Again, we talked about this previously, but we're moving this text about having been timely filed. The fees have to have been paid within three business days. That's being moved back to rule 4A, as we were, in fact, just discussing.

Okay, I'm pausing again. And I not seeing any hands, so we can keep going. But do please shout out if you want to make me slow down or want to discuss any of this.

All right. In rule 5B on translation, we do have an action for the drafters here for this whole of this rule, just asking them to standardize the numbering and lettering for the paragraphs and sub-paragraphs in line with other parts of the rules. And that's not a fault of the legal drafters. It's actually, I think, a fault of the IOT. We worked on translation quite some time ago, and we subsequently adopted a slightly different form of paragraph or section numbering than we used in 5B. And so once we have all the rules in front of us, it's just not uniform. And so this is largely a

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matter of cleanup, really, just asking the legal drafters if they could standardize the manner in which the paragraphs are numbered.

Okay. And then I will just see if we have any other actions for the drafters in this side B, and I don't think we do.

So again, I am going to just quickly pause and come back to the Zoom room. Okay. I'm not seeing any hands. All right, we can move on to rule seven then. Okay. All right, rule seven. These are the most recent drafting instructions because we went through this rule seven text during our second meeting in Puerto Rico. So that's more recent. Some of the other text has been with you for a bit longer.

So we have in paragraph one that reference to the first IRP. We've got an action for the drafters here, just asking them to clean up any remaining references to the first IRP that were overlooked in the sections on intervention or on amicus. This is because it's only in the case of consolidation where there could be more than one IRP panel. It's only really for consolidation that the term "first IRP" is relevant.

And as we discussed, I think we had intended to remove the other references to "first IRP" where it was used in relation to intervention and consolidation and participation as amicus. But it's possible that some got missed. And so it's just asking the drafters to undertake that cleanup exercise.

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Okay. All right. Our next action is in section six, which is the part of the section on consolidation. There was a suggestion or a recommendation that we should change the word “should” to “shall.” And so for completeness, we just noted that we agreed with that.

Then in relation to section six, subsection A, we have a couple of actions here, one for the drafters in relation to this term publication that just says that following discussion by the group, we agreed that publication of an IRP will need to be defined, and presumably in the definitions section, in section one, as referring to the publication by ICANN on its website as notice of the IRP, together with the written statement of dispute, and that perhaps this could be captured for now, reflected somehow, such as a footnote, and then noting an action for the IOT, which is what we were just looking at a few moments ago, to reflect this also in the rationales document that we were just looking at.

Okay. All right. So I'm not seeing any hands. I think we just talked about this in any event, so hopefully we're comfortable with this. And then if we come down to section eight, subsection C, little three, we had a suggestion from the drafters that rather than it saying, “having the primary intent of changing the IRP panelists who will hear over dispute,” it ought to be “selecting.” And again, just as we discussed, we agree with this change. So just a note there for the drafters to make the change to selecting.

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And in section ten, in our draft, we had the IRP provider or the respective IRP panels. And as we discussed, we agreed with the suggestion that actually we should be removing the reference to the IRP provider because of that inconsistency about between 7-10 and 7-3. So we're noting here an action for the drafters to remove that reference to the IRP provider in this section ten.

All right, just keep moving on. All right, the next point is in section 16. There isn't a note. So the draft is in here at the moment. But having had the discussion on the action item that Liz took away to check on this, I will include a note for the draft as to the effect that we don't need to make a specific reference to a protective order. And that is also the case when we come to this comparable provision under intervention and also under participation as amicus. There's the same point from the drafting team. So I will make that note on all of those sections and just flag that now.

Okay. All right. And then I just keep moving down. I think our next note for the drafters is in section 22. It was suggested that the appropriate filing fee should be defined, but as we discussed when we were looking at rule four, we didn't feel that the actual fee should be included in the rules. And as I said, we discussed that on rule four. And so just a note here for the drafters that following the IOT's discussion, we don't think that we need to do anything here. I think that that reflects what we've decided.

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But I will pause in case anyone has any concerns about that one. And if not, we can move down again to section 23 C, little three, that same point that we were just discussing a moment ago about changing the wording from “changing” to “selecting.” And so again, there's an action for the drafters that we've agreed to that amendment.

And 28 is one of those ones where I'll include the notes about the protective orders. Fine.

And then if we keep going down in the section on participation as amicus in section 30, it's same point again about the filing fee. And so again, we've got a note to the draft as saying that the IOT is discussed and we don't think we need to do anything here. So that's just to close that one off.

And then in section 32, this was something that we did have a bit of a discussion on in our last meeting, and the drafters had asked whether there ought to be a further opportunity for someone who's requested participation as amicus to be able to respond back to any response that was given by the parties themselves. And I think as we discussed in our last meeting, we don't think that the prospective amicus should have ... That's an additional opportunity to respond as is right. And so I think there's no action for them to take, but just to close off that question from the drafting from the drafters.

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Okay. And I think we're close to the end. Okay. Again, that section 35. That's the point about the protective order, again. And so, as I said, I will make a note to that effect in relation to those three paragraphs. And I hope that that's fine. It's just a note to the drafters that we don't want to cover off that concept of a protective order. So it's not asking for any specific drafting to be done, but rather just closing off their questions.

Okay. So that gets us through to the end of the review of the drafting instructions now, which is great. I think at that point we're at the end of our agenda item four, and we can have a quick discussion., I think, about sort of timing and next steps for getting things out to public comment, which is our agenda item five. So essentially what we now need ... We're close to the point where we can go out to public comment. As you will see, there's, like, quite a small number of redrafts. Generally speaking, they're not particularly complicated, but it seemed appropriate. The way we discussed handling this was that we would send it back to the legal drafters for them to do that exercise just for kind of consistency.

So really, I'm looking to Liz and Sam, but hoping that it wouldn't take too long to have that cleanup exercise of just making those fairly small number of changes to the draft rules. The question is, do you think it's reasonable and is it possible for us to maybe get those changes made within a week, by sort of this time next week

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or the 26 March, so that we would then have the revised version of this red light text for early to middle of next week? Does that seem reasonable?

I'm not hearing, but Kristina is commenting "yes." So this is really, I think, a request then, to Sam and Liz that if we could have that updated legal text back by sort of this time next week, that would be really appreciated, because that would then allow some of the rest of the timings to work. Sam?

SAM EISNER:

So, Susan, we will do what we can on that. I think what we can do is send it back to outside council to review, and if they're not able to deliver it within that time frame, [they'll] give us the time frame within which they can deliver it. I don't know how. Their time is already booked out this week. So we can either get it by this time next week or make sure we have a timeline for when they can deliver it, understanding the quick nature of the return that we'd expect.

SUSAN PAYNE:

Thanks very much, Sam. I appreciate it. Hopefully, it won't be too much of a lift for them and that sort of timing or something thereabouts will work for them, because as I'll go on to explain in a minute, that will hopefully keep us on track for getting this out. David?

DAVID MCAULEY: Thank you, Susan. So my question is, how will we get this out? And the reason I'm asking is I'm hoping that we in the IOT will have a little bit of time to look at the package that's going to go out so that we can be prepared, for instance, if we get a question out of our constituency or something like that.

So, in short, what I'm saying is I hope we have some access to the package that's going to go out before it goes out to the public.

SUSAN PAYNE: Absolutely, David. Yes, that would be the plan. That's why I'm hoping that we can have the revised rules back reasonably promptly. What we then have is, whenever that gets returned to us, for all of us to just review what comes back and raise any sort of concerns or questions on the list. And I would suggest that we have a cut-off for that (I think I might have to send an email with all of these timings) as the Friday before our next call. So that would be the 5 April, would be the Friday, the next call being the 9 April.

And then in the meantime, what we have at the moment, obviously, is this legal text in redline form, as a redline against sort of our working draft. But Bernard has a bit of an exercise to do once we get the final form back: to pull together clean document and red lines against the existing supplementary procedures,

against the current rules, so that we'll have a clean version of our proposed rules, and a red line, as I say, against the current rules, as opposed to the existing redline that we've just been looking at, which is against our own working draft.

And then Bernard will also then be able to update the rationales document by taking the text that's now the sort of agreed rules text and replacing what's currently in the rationales document with the slightly revised language.

And so we'll have all of that circulated to us before our next call, and we'll all then have an opportunity to review and again to flag any concerns in advance of our next call, which I'm proposing will be on the 9 April. And that would allow us to discuss any concerns and so on. But I think at that point we essentially have the whole package. When that gets circulated, that will also include the introductory text that we had before. And so there'll be an opportunity on our call on the 9 April for us to effectively sign off on everything, and I think for completeness, also an opportunity over email to do the same, so that those who perhaps aren't able to be on the call do still have an opportunity over email to if there are any concerns that they have.

And then we then, I think, have a package of documents that are ready to go into the queue for the public comment. So that package of documents will basically be the introduction, which we looked at a few weeks ago, and then clean versions of the rules

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and redline versions of the rules incorporated into the document with all the rationales. And I think that that then is our package, basically. And so it's ready then to go into the queue to go out hopefully for public comment in April, assuming that we get things back in sort of prompt order, as I'm kind of hoping.

And I did actually notice in relation to the upcoming public comments, [that] there's a section on the ICANN website ... This is, I guess, a question for Bernard, but at the moment we aren't listed as an upcoming public comment in that section on the ICANN website. But is that something maybe that you can give the public comments team a heads up that we're looking to have this go out for public comment in April for, or if the processes take longer than that and actually it's more likely to be May, maybe it could just get flagged up there so that people, if anyone's looking at that section on the website, would be aware that this is coming? And thanks for that.

I can see you're confirming that you can do that.

So that, I think, is where we've reached. I think it probably makes sense for me to summarize all of that in an email just with the various dates, because I suspect, otherwise, that was quite a lot to take in. But essentially we've got about three weeks from this week before our next call. And hopefully that's the opportunity then for us all to review things and make sure that we're

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comfortable with text and that any changes that are made by the legal drafters are what we were expecting and so on.

And so I am going to pause and just see if there's any questions or comments. I'm noting, Flip, your comment that you may be in transit. "I'm afraid." Yeah. Okay. All right.

Okay. Lots of talking from me. Okay. And so just a reminder, I don't think you've got a calendar invite yet, but annex call is envisaged to be the 9 April. Okay. All right.

And then our final agenda task for this week is for us to review the report on the second public consultation, which, as I mentioned when we were going through the agenda, we've had now in our inboxes since the 1 March, so nearly three weeks.

Brenda, could you pull that document up? It was the other Word document attached to the agenda.

BRENDA BREWER: Is it the independent review process draft recommendation?

SUSAN PAYNE: That's exactly what it's called, yes. That is it. As I said, this was an action that Bernard had taken on to put together a staff report on the second public consultation and the input received, because it was something that appeared to have been overlooked. And in our introductory text, we were referring to the previous public

consultations and providing links to the public comment input that was received. And although this second one was a public comment on a very specific sort of narrow point, and there was relatively limited number of public comments received, we did feel that it was appropriate that there should be a staff summary of that public consultation.

So that's this document. It's been with everyone now, as I say, for about almost three weeks. I haven't seen any concerns about this raised or anyone expressing the view that anything is missing, but I think maybe we'll just ... I certainly don't want to sort of read through the whole document, but perhaps it's worth us just quickly sort of casting our eyes over it very swiftly. We could skim through it. And I think perhaps there'll be a final opportunity whilst we have this sort of three weeks between now and our next call. I guess, if there were any sort of strong concerns or feelings that something is missing in this document between now and then, that's the opportunity to raise it. And it's not something, generally speaking, when staff do a report on public consultation, that really gets signed off on by a working group. But obviously, given the sensitivity here and given the importance of the various consultations on these rules, I just felt it was appropriate to have time to look at this.

Okay. David is noting that he hasn't really had time.



I'll just quickly sort of canter through it. And it's in a fairly standard outcome format, really. And I think the introduction there is about what the IOT is working on and that we've been dormant for a while, but I think section one is where we really need to start looking, which talks about what we received input on, and it particularly sort of identifies that there were two specific points that the IOT was seeking input on (if you could scroll down a bit, Brenda, that'd be great), which were specifically on changing the 45-day time limit for filing an IRP to 120 days, and on eliminating the one-year repose requirement. Those were the two questions to the community, effectively.

And then section two identifies which groups put in submissions. All very uncontroversial there.

And then section three is a brief summary of each of the submissions.

So as you can see, Bernard's done it as a table, which I think is quite helpful on the two questions, and then any sort of other comments that particular groups sort of submitted as well, outside of those specific questions on the 45-days and the repose.

And then if we keep scrolling down, Brenda, we've then got a short section four on an analysis of the submissions. And I think perhaps that's the one that's worth giving people just a bit of time to note. Perhaps if you haven't already had a chance to look at it, then this is probably the section you perhaps want to pay the

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most attention to because it's essentially providing a bit of a summary.

But again, just as a reminder, it's not normal, I don't think, for a working group to be signing off on a staff report of a public consultation, but we have the time at our disposal. And given that this is quite a sensitive topic, it's really just making sure that the group are comfortable that this summary is a sort of adequate reflection, bearing obviously in mind that nothing precludes anyone going back to the actual submissions if they want to know in more detail what any of the groups said, and that the links to the actual submissions will also be available.

So the analysis of the submissions is summarizing that all of the submissions supported the change from 45 days to 120 days, that on removing the repose (that's hard to say), there were nine submissions and six supported removing of the repose, and three opposed it, and then noting that the IPC submission did sort of say, "Well, if there is to be a repose, then it should definitely be a longer time period. It should be a minimum of 24 to 36 months.," and then flagging the comment, the submission from ICANN Org, effectively, if I paraphrase it, that there needed to be some kind of outer limit from their perspective, and that if there weren't to be some kind of outer limit, they would feel the need to raise this with the Board, and then noting in the third bullet some other notable comments, including that there were some submissions

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from three groups about tolling some of the IRP timings for other accountability mechanisms. And the INTA submission that was expressed in concern about the wording of “ought reasonably to have been aware” in terms of being when one has suffered damage. And so that's been specifically called out because that was a particular comment from a group that was not additional to the specific questions being asked.

Malcolm, sorry, I've just seen your hands. Hi.

MALCOLM HUTTY:

I didn't want to interrupt your description of the document. I just wanted to ask about the context in which this was being presented. So if you want to carry on and finish talking about the document, please treat me as in the queue until you finished.

SUSAN PAYNE:

Okay. Yeah, I think I'm close to the end. Section five was next steps, and if we can scroll down, Brenda ... Oh, there you go. Essentially, that is the review of the document.

So I think I'll put you back in the queue, Malcolm.

MALCOLM HUTTY:

Okay. Thank you. I just wanted to ask if we're presenting this as the report on the input we received from the community. We had previously consulted on this topic before and had rather more

responses than this. So are we going to provide a report on that first consultation as well, or are we going to mention that it's in refer[ence] to a separate thing? Or what are we going to do about that? Yeah, that's the question.

SUSAN PAYNE:

Thanks, Malcolm. So there already was a report on the first public comment, but there was a gap in that. It appeared that, when the second public consultation was null (I think because of what happened with the adoption of the supplementary rules and so on), a report never got produced. So this was a gap (that it hadn't previously been done), whereas the first public consultation ... My understanding is that there is a report, and I'm sure that someone will correct me if I'm wrong.

And so both of these documents are going to be referred to and linked to in our introduction to the public comment. I think if you remember the text that we had for the introduction, it talks about the fact that this is basically our third public consultation and we've done two previously. One was a sort of more overarching public comment opportunity on the draft rules, and then the second one was on the specific issue of timing. And so this then gives us a report to that second public consultation input that we didn't have before. So I hope that makes sense.

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MALCOLM HUTTY: Yes. Thank you very much.

SUSAN PAYNE: Super. All right, then. Okay, I'm not seeing any other hands. Any other questions or concerns? And if not ... I'm not seeing any hands. Excellent. All right, then.

And so, noting that some people probably haven't paid an enormous amount of attention to that report of the public consultation, as I said, I think we've got between now and when we have our next call. Please take the time and give it a quick review and share any. If there are any really strong concerns or feelings that something is missing or inaccurate, please share them on the mailing list, and then we can pick this up on our call on the 9th. And at that point, I think then we hopefully are close to being final on this.

And, yes, if I could urge you, please post any comments or questions on the mailing list. I think it allows everyone to come along to the actual call prepared and understanding what the question is, so that there's an opportunity then to have an informed conversation amongst us, rather than having to park something and go away and look things up. So thanks for that.

All right. Apologies. I don't have AOB on here on my agenda, but I think I did have one question that was raised in the chat that I maybe overlooked, which I think was Kristina asking if it would be

possible to get a brief overview of the sense of the community on our work based on the Puerto Rico interactions. Yes, I think it would. I will give you my comments, but I would very much welcome anyone else's comments as well.

I would say I think we struggled a little, as we often, do in Puerto Rico. With the agendas being so busy, in our first session we didn't manage to get quorum. And so we did have a really useful update from Liz on the status of the standing panel, which obviously Sam has then today given us a bit more of an update on. But it was a really useful opportunity to hear about what's happening with the standing panel and when we might expect to have them in place. And so we did also then have a bit of a discussion about the training materials, which Liz has just circulated. But we didn't spend time sort of going substantially through the rules.

I would say that to the extent that I was chatting to people around the meeting, they were certainly very interested in that standing panel update and sort of very keen to know when the standing panel is in place.

Our second meeting was rather like the one we've just had today—not necessarily the most riveting meeting, but definitely important in terms of making sure that we're all comfortable with the text of the rules and what will go out for public comment and what the drafting instructions are back to the drafters. We did

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have quorum for the second meeting. We were a relatively small group, but we had quorum for the whole of that meeting.

I think that's about as much as I would say. I don't think those sessions were open to the public. I'm not quite sure, but we certainly didn't have any observers. And the second meeting was on the Thursday, and so it was quite late in the ICANN meeting schedule, which I think to some extent also doesn't help in kind of getting wider community engagement.

But I would say that's about it from my perspective. But, David, I see you.

DAVID MCAULEY:

Thanks, Susan. Yeah, I do have a few comments about ICANN 79. I agree about Thursday. When we did reach quorum, I thought it was a really productive meeting myself. It was closed, as I recall. I think both of them were. With the Saturday meeting where we did not reach quorum, those of us that were there nevertheless stuck around and informally talked about a couple of things, one of which I believe, if my memory serves me correctly, was, what's next? We're very close to being done with these rules, at least insofar as to putting them out to public comment, which means they'll be off our agenda for at least a month or two or three or whatever. And so what comes next?

And since that was an informal discussion, my suggestion would be, when we get together on April 9, that that maybe be the third agenda item: what do we want to do next? And I think, if I'm not mistaken, the practitioners among us (or at least Flip maybe, who was there) mentioned that rules for the CEP may not be as important as some other topics that we have in our laps. And I also think that, maybe for our team, going from one set of rules to another might be tedious.

And so I just think it would be good if we could discuss what's next? What do we want to tackle next? What do we think is important and stimulating for our group to help us pull back some members, et cetera, et cetera? Thanks.

SUSAN PAYNE:

Thanks, David. I think that definitely is something we could discuss on the 9<sup>th</sup>. From recollection (and it is just my own recollection, as I'm not even sure if this was recorded, although hopefully it was while the recording was still running), I think the feeling was that the CEP rules are quite short, and so they're not nearly as onerous as the IRP rules. But certainly some of the practitioners were commenting that the CEP itself is perhaps of less value, albeit that it is something that is necessary under the bylaws to have a CEP, [or at least pretty much]. But I think there was a general feeling from practitioners that it sort of rarely really serves to narrow the

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issues down, particularly. I think perhaps that's the way they would have phrased it.

But I think definitely I'll make a note and we can add that as an agenda item for our next meeting. So do please think about that. I think we have a number of things on our radar. One is, as I say, the CEP rules. Current CEP rules. It's very brief. It's about the size of [inaudible or something like that—a single page. They're really brief, but they are out of date because they very much predate the bylaws change. So they currently are not really correct.

Yeah. Flip is saying the current CEP rules need review, but the CEP is indeed of questionable value. Yes.

Also, I think there is a question about whether we need to expand the rules on appeals. There is a very high-level rule in the supplementary procedures about appeals, but there is a question, and it's one that's, I think, tasked to us in the bylaw of whether we need or want to do more than that.

And I think there are probably other tasks that are assigned to us. Obviously, there's the training materials, one that we were talking about earlier. I will see if I can dig out the list, because we did at one point have a list of other items that are on our slate. So we could have that in advance and discuss this on our next call.

All right. Kristina is commenting that she thinks the CEP has the potential to be of more value if we want to make it more robust.

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Okay. All right. I think that brings us, actually, to the bottom of the hour. And so our time is actually up. I will share those timings that I talked about just so that everyone has them to hand. And we'll reconvene on 9 April, having all, hopefully, had the opportunity to review everything and flag any questions or concerns. So thanks very much, everyone, and, yes, I really appreciate all your continued participation. Thank you.

**[END OF TRANSCRIPTION]**