
DAVID MCAULEY: Thank you. Good morning, everyone. This is David McAuley, as I said. I am the new leader of the IRP Implementation Oversight Team. The reason for the change is, as we all know, Becky Burr has taken a seat on the Board, which is good news for the ICANN community. The good news for us is that Becky is going to remain part of this group, but she will no longer be in the lead role. The co-Chairs of the CCWG have asked me if I would be willing to take over and I said that I certainly would. So that's why you hear a new voice leading the call this morning.

I'd like to begin this morning with introductions and Statements of Interests if there's any changes. That being said, we see who's on the Adobe. Can I ask if there's anybody who's on audio only to please let themselves be known for purposes of the transcript?

GREG SHATAN: It's Greg Shatan. I'm on audio only.

DAVID MCAULEY: Thank you, Greg. Are there others on audio only? If not, let's proceed. If anyone has a change to make to their Statement of Interest, please do so. If there's anyone that wants to note anything like that now, please do. Greg, if you would let us know. Otherwise, if folks would raise their hand in the Adobe chat, we'd certainly be willing to hear it.

Moving on to organizational matters, the theme, if there is one, to this call, in my opinion, will be: let's set the table for moving forward now that the heavy lifting has been done on putting together supplemental

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rules of procedure, the effort that Becky led so well. We know that the supplemental rules of procedure have been presented in Hyderabad. I participated in that meeting remotely, so I may have missed one or two minor things that only people present in the room could pick up. But by and large, we're all aware that supplemental rules have been read out twice, I believe, to the CCWG Plenary and are ready to move forward.

Having said that, later in the call, I want to raise a couple matters, a couple loose ends, to discuss on how we move forward with those.

The other thing I want to do is – as you've seen in the memo that I sent – I tried to lay out the task that we have in front of us with a view towards helping us reorganize and reenergize and set a meeting schedule and decide how we're going to work.

Bernie has very kindly reserved some times for this team to get together in the next several months, but I would like, if it's okay – I'm taking Bernie a little bit by surprise – to ask Bernie in a minute to talk about what he set aside. These are not confirmed in a sense, but they're available to us right now. These meeting times are a little bit like hen's teeth. I guess they go fairly quickly and are highly cherished because all nine Work Stream 2 sub-teams use these. We are sort of the tenth. We're a carryover from Work Stream 1, but we're in the same queue, basically.

So if I could ask Bernie just to talk about schedule, generally – what he has reserved for us, what's available – that way, as we think about this, we'll know what we can do going forward.

Bernie, would that be okay with you?

BERNIE TURCOTTE:

Thank you, David. Yes, I'm still going through the schedule here. Today we are sitting at November 22nd. Basically, we're looking at a schedule that would allow us to meet essentially every two weeks. Our next proposed meeting would be Friday, December 2nd, at 19:00 hours. I'll be sending those out via e-mail if people think this is okay.

After that, it's December 16th at 19:00 hours. We're taking a break for the holidays for the end of the year, and we're resuming on January 13th – Friday the 13th – at 19:00, and then Friday the 27th of January, 19:00 also.

We then go into February, but that seemed to be a bit far. I thought that we would stop at the end of January and figure out, before we break for the end of the year, the meetings we should go forward with. The calendar as of February is quite open, so there's no problem continuing once we decide what's best in mid-December, before the break.

I hope that covers it. Over to you, Dave.

DAVID MCAULEY:

Bernie, thank you. When you say that the February calendar is fairly open, are you also implying that the calendar in December and January is fairly closed? What I'm asking is: the Friday 19:00 time is perhaps inconvenient, especially in the folks in Europe, but I take it from discussions you and I had had and what you're saying now that the times are fairly booked up right now. Is that a fair statement? Or could you just talk a little bit about December and January?

BERNIE TURCOTTE:

Going back to the calendar. Hold on a sec. Actually, December is so-so. There are still slots available. If I go back – let me have a look. Part of the problem is Thanksgiving, of course, which is later this week and impacts the whole schedule going forward.

If we want to look at other times instead of 19:00, which is currently 2:00 P.M. Eastern, we also have the 13:00 slot, which is the current slot, meaning 8:00 A.M Eastern (13:00 UTC), that is available on Friday the 2nd. The Fridays are usually open. Once we start going into Thursdays, that starts being a problem. Mondays are usually pretty good also.

So that's what I can tell you for the moment. There are options for looking at other times for the calls, but in December, it's going to be a little harder. As I said, 13:00 on Friday versus 19:00 is usually not a problem.

DAVID MCAULEY:

Thank you. Thanks, Bernie. That discussion I think will be useful. I'd like to come back to this at the end of the call and talk about meetings going forward. We'll have that information in the back of heads.

The next thing I thought we should talk about besides schedules was how we would work. Do we want to move into sub-teams? But that may be premature because we probably need to take a look first at what we're going to be doing going forward.

Could I ask who just joined the call?

MALCOLM HUTTY: Yes. This is Malcolm Huty. Sorry I'm not on the Adobe. I'm in transit at the moment.

DAVID MCAULEY: Thanks, Malcolm. David McAuley here. We're just getting started. We were talking briefly about meeting schedules, but we're going to come back to that in a little bit.

What I'd like to do before we look at the tasks ahead is take a little bit of the lead prerogative and talk about supplemental rules first. As I mentioned at the top of the call, there were supplemental rules that had been read out twice now to the CCWG Plenary, as I understand, and have been prepared for going forward.

But as you saw in the e-mail that I sent when I was asked to take over as the lead of the group, there are a couple of loose ends. I think we ought to discuss them. I sent them forward, specifically a request from Jorge Cancio and another request from Kathy Kleiman in the interest of transparency to make sure the group was aware that there have been requests for new supplemental rules along these lines. But they did come in after the first or second reading to the full Plenary.

So I thought I would state my thought of how we should handle this and then ask the group to please comment on that and weigh in on how you think we should handle these comments.

What I was thinking was that, because the supplemental rules had been presented with the Plenary and prepared for moving forward for public

comment, the specific request that Kathy Kleiman and Jorge had sent separately to Becky and myself should be handled as a comment during the public comment period and that they can't basically be added on to the rules that have been blessed by the Plenary for moving forward. It just didn't seem appropriate.

What that would involve is letting this group know that those are on the table, asking this group what they think, and then, if that is the way we move forward, then I would certainly let Jorge and Kathy know that.

But I'm interested in what people think, especially Becky. If you have any thoughts on it, I'd be interested in what you think about this so that we can come up with a position that has been fully vetted in front of the group.

That said, does anybody wish to make any comment on these matters or on my proposal for how we move these forward?

Becky, I see your hand is up. Why don't you take the floor?

BECKY BURR:

I think Jorge mentioned issues about translations, and I pointed out to him that the Bylaws do provide that the proceedings will be conducted in English with translations as needed. So I think his question is really: do we need something in the supplemental rules about that?

Kathy had a question related to the joinder and intervention and whether additional rules were needed to ensure that anybody who had been materially affected by the proceeding itself could be heard.

When we talked about those briefly in Hyderabad, I suggested simply just asking those two things as questions in the proceeding. It seems to me it could either go that we or we could just encourage them to submit comments. Either one is fine with me.

DAVID MCAULEY:

Becky, let me make two comments in response to what you just said. One is that you just taught me a good lesson about leading, and that is I should give a little substantive summary of what the things are and not assume that everybody has read the mail that I've sent out. So that's a good thing. Thank you for summarizing what the two requests were.

Could I ask you a question about Hyderabad? As I said, I was attending remotely. I'm not sure I picked up on everything. Were these questions discussed during the meeting? I'm just not sure I fully get them.

BECKY BURR:

I think they were just noted in passing; that we had two additional questions. But I actually don't think, as a substantive matter, asking them – in fact, they're going to submit those comments as comments. So whether we ask the questions specifically or just suggest to them that they submit their perspectives as part of the comments, I don't think substantively it's different.

DAVID MCAULEY:

Okay. Then my temptation on these two – I'm willing to hear from others in this group – is that we move forward with the draft as it was presented and that, with these two questions, I go back to Jorge and

Kathy separately and say, "After discussion with the team, it is our view that you should submit these as comments. We don't believe that we can forward them with the drafts that were floated in Hyderabad and previously." I forget exactly when previously.

Now, that's what I plan on doing. Could I ask if there are comments if anyone has any concerns with that? Anything at all? Otherwise, that's the way I'm going to move forward with those two; that is, Jorge's request for language translation services and Kathy's request about parties that may have been materially affected that need some way to get involved with the process.

I don't see any hands. I don't see anything in the chat, either. Let's just say that's the way I'll move forward, then.

GREG SHATAN: This is Greg.

DAVID MCAULEY: Greg, go ahead. You have the floor.

GREG SHATAN: I got in under the wire here. More of a logistical question. Is the intention after this set of public comments to issue a revised set of rules and put it out again for public comment if there are material changes? Or is it one-and-done?

The reason I ask is, if we were to adopt especially the second one, it might make for some fairly substantial and additional change to what we've got. The question is whether people would comment on that. [inaudible] on that change, or if we made that change, it would then just go through without further comment? Thanks.

DAVID MCAULEY:

Thank you, Greg. I will be frank and say I don't know the answer to that question. I thought it was going to be one-and-done, but you bring up a good point. I do know that the staff will take the comments and summarize them. I would think, if it is a material change, we might have to go out for a second round of comments.

Becky is typing something in the chat. We'll wait and see what Becky – I'm sorry, Becky. Is that a new hand?

BECKY BURR:

Yes. I don't know if Sam is on the call or not. I guess it's pretty early in California. I think we anticipated that these supplemental rules would be iterative. In fact, the supplemental rules could actually be adopted and then there could be a change down the road to add provisions about translations or to change the timing, deadlines, or any of those things.

They don't have to go out for public comment. We thought that was a good idea. So if there was an additional change, you could just put the change out for public comment, but there's not an amendment to the Bylaws. When we were contemplating it, we were thinking that, as we

develop the full set of rules and as we got the Standing Panel in, there would be iterations on these rules.

So the first attempt was mainly to get the Bylaws implemented as quickly as possible, and the supplementary rules, and then iterate from there. So I don't see this as a one-and-done thing.

DAVID MCAULEY:

Thank you, Becky. Summarizing the discussion then – I'll move forward, as we spoke before. There is a second issue with respect to moving forward with supplemental rules, and that is a recent discussion on the list primarily between Malcolm and Becky. It has to do with timing. Let me set the table on this and see if I have it right.

The supplemental rules that are being forwarded, as I recall from the Hyderabad meeting, are that the timing on a claim would be that the person has to make a claim within 45 days. So if the action giving rise to the claim were becoming aware of that but with a hard cap of one year.

My recollection is that we had a hard cap of 45 days originally – no wiggle room. Earlier in this discussion – this was months ago – Malcolm raised a point about having a much more expansive timeframe. Then there we went back and forth on it, and, as I recall, I was the one who originally personally believed in the 45-day cap, but after listening to the arguments, I changed by position to a hard cap of two years. Others have weighed in with what their positions were.

But my recollection is that what was presented in the rules was that there was a change made to a hard cap of one year. That would be the outside time within which to make a claim.

In any event – and I believe that did not meet what Malcolm request was – I thought that that was what the group had agreed to go forward on and is in fact in the rules.

In the lists, in the last couple of days I see that Malcolm and Becky have discussed this a little bit further. My question is, is this issue settled, not in a sense that there won't be comments upon it and there won't be further action based on comments, etc., but are we in a position to send these rules forward with the one-year cap? So I'd invite Malcolm and Becky to comment on this if they would, just because I feel a little unsettled as to whether or not the rules are ready to go forward. I may be wrong. Again, I didn't pick up on everything that happened in Hyderabad, but I thought I was following and I thought they were ready. Thank you.

Becky, can I ask you to comment?

BECKY BURR:

Sure. I think that, actually, we don't have a substantive disagreement but some concern about whether the words implement what the sense was.

What kicks off the process, the beginning of the timing period, is an action or inaction that violates the Bylaws. Now, I think that, if a policy was adopted that facially violated the Bylaws – even so, somebody

would've been able to come in and seek injunctive relief or the community could come in. But I think that the time period really starts when the policy is enforced against a particular individual in a way that violates the Bylaws. With respect to that individual as to whom the inappropriate interpretation is applied, then the 45-days and one-year period runs. But it continues. Every person who is materially affected – every person or every individual – has the same opportunity to say, two-years later, “Suddenly ICANN is enforcing a policy in a way that violated the Bylaws,” even if it's two years after they adopt the policy.

If they're enforcing policy in a way that violates the Bylaws as to me, I would have the opportunity to challenge that in an IRP.

I think I will let Malcolm speak for himself, but there is concern that, actually, the 45-days and the one year run from the time, for example, a policy is adopted, which of course would be problematic because we don't know, for example, how ICANN would enforce some policies that are reflected in one agreement or another.

So until that implementation is there, and only as to a person against whom it is enforced, the period would have to run. But I'm going to defer to Malcolm. I think I've articulated the concern, but I'd like him to do it.

DAVID MCAULEY:

Okay. Thank you, Becky. Before we go to Malcolm, I have a question for you, Becky. Do you believe that the wording of the supplemental rules as they currently stand represent what you just stated you thought they should be?

BECKY BURR: Yeah. That's what I think, but everybody has to be comfortable. It's for the group to determine.

DAVID MCAULEY: Okay. Thank you. Malcolm, would you like to make a comment?

MALCOLM HUTTY: Yes. Thank you. Firstly, I'd like to say what Becky has articulated has been what she thinks it means and thinks it should be. There is not a lot of difference between what I'm aiming for and what Becky just said. So it sounds to me like, at least with regards to me and Becky, we're on the same page there as to where we're aiming.

I don't agree that we can have confidence that these words actually mean that. I'm actually, David, not at all sure as to whether there is really an agreement between you and between Becky as to what this is. I'm genuinely unclear as to whether you're on the same page there on that. And I'm certainly not at all uncomfortable that the words as they are written will necessarily be interpreted in the way that Becky [inaudible].

So I think that more work needs to be done. Even supposing that we agree with what Becky said, if you do, we need to make that more clear so that we can be confident that that is what will [inaudible].

As we do that, I think what will come out is that we actually may discover that you do not agree with what Becky was just laying out as

being [inaudible] because when you talk about the one [inaudible] hard cap of the year and Becky was saying, “No. if it’s an ICANN policy that is facially invalid, then that can be challenged when it is applied to the person that it’s applied to and not at just at the time when the policy is adopted,” I’m not sure that those things are consistent with each other.

So I think we still have more work to do to get this in a fixed state where it could actually be followed.

In terms of the process – David, you asked about where we got to in the process – what had happened was we developed some text within this group. Becky, as the Chair, had gone out to the CCWG Plenary to ask for comments on that. There were some written comments that came back that were essentially align with the concerns that I was raising and were saying, “Actually, we really aren’t concerned about that.”

So I don’t think that we’re at a stage where we can say we have got agreement on this and therefore it’s ready to go, partly because I don’t think it’s actually the quality. Also, from a process point of view, I think that the most numerous [inaudible] that are being expressed have been saying, “We’re worried about this.”

DAVID MCAULEY:

Thank you, Malcolm. To answer one of your questions, despite what I may have said on the phone here, I actually do agree with Becky and that they way that she described it –

MALCOLM HUTTY: Okay. I think maybe we need to go to the work examples to provide some clarity and then build the words from the work examples because there's a lot of confusion here.

DAVID MCAULEY: Well, I guess that's the question. Is there confusion here? Becky believes that this was what was captured. I agree with you that there may have been other comments, but what I'm grappling with is that there was a set of rules that the Plenary has said, "These are ready to go forward." These are rules that –

MALCOLM HUTTY: Have they said that?

DAVID MCAULEY: I believe they said that in Hyderabad.

MALCOLM HUTTY: [inaudible]

DAVID MCAULEY: Well, I wasn't there but I was participating, and that was my understanding. Becky, could you comment on that? Were these rules not passed on for submitting for public comment? Second reading in Hyderabad.

So it sounds to me, Malcolm, that – by the way, just to reaffirm, I agree with the way that Becky described it, so I think that we’re all not too far apart – one way to handle this would be a comment to say that more clarification is needed in this to make sure that it’s understood in a certain way. As Chris said in chat, how do you think the words would be interpreted? That kind of thing. But that’s one way of handling it.

MALCOLM HUTTY:

Okay. How would that work, then? We would put this out for public comment with this text with a clarifying note explaining it along the lines that Becky just said and saying that we expect to further edit after the public comment period to provide that additional clarity? Is that what you’re proposing?

[CHRIS DISSPAIN]:

No.

DAVID MCAULEY:

Let me ask Chris to comment first. Chris, you have the floor.

CHRIS DISSPAIN:

Thank you, David. Malcolm, I wasn’t confused and I now am. What it sounds like to me – I apologize if I’ve misinterpreted – that some of us are clear as to what it means. You’re saying you don’t think it means that. But what do you think it means? I don’t understand. You said you’re not clear and you said you don’t think it is clear. We’re saying we

think it is. What is it that you think needs to be rewritten? Because I understand it exactly the way that Becky has said it.

Are we arguing about what the result is – in other words, you don't agree with the results – or are we agreeing about the result and you're saying –

MALCOLM HUTTY: No.

CHRIS DISSPAIN: Then what is it that you think the words do that you're not comfortable with?

MALCOLM HUTTY: Okay. Take the following example. ICANN adopts a policy. Time passes. A couple of years later, that policy is applied by a registry to a registrant. The registrant doesn't like that and says, "ICANN had no right to bring that policy in the first place." If the registrant at that point then seeks to bring an IRP, saying, "This policy is facially consistent with the Bylaws and therefore ICANN should never have adopted this policy and it should not [inaudible] and ICANN should not be requiring to apply that to me." At a period two years after the original adoption of the policy, is the registrant out of time because we're passed the one-year – and in no case more than one year after ICANN's [thing] – or is he in time, provided that he does that within 45 days of being told that this is going to be applied to him?

I think that the one-year hard cap means that he is out of time because it is more than a year since ICANN adopted that policy.

CHRIS DISSPAIN: Yes.

MALCOLM HUTTY: Right. You say yes. Okay. If that what it means, then that's not saying that [inaudible].

DAVID MCAULEY: Malcolm, you cut out. Could you repeat what you said in the last 30 seconds?

MALCOLM HUTTY: I understand that that's [inaudible] will be out of time because, if [inaudible] for the policy. That's my interpretation of what [inaudible] Becky is saying, which is that the date that is taken is not yet [inaudible] adoption of the policy, but that basically [inaudible] policy. [inaudible]

DAVID MCAULEY: I think we [cut] a good portion of that. Something has happened with your connection to make it unclear.

Becky, if you take the floor –

MALCOLM HUTTY: Okay. David, if you can't hear me, I'm going to have to ask that this is taken up again on the list because this is a really crucial point.

DAVID MCAULEY: Well, now this past comment we did hear. Becky has her hand up. Let me give the floor to Becky.

BECKY BURR: Malcolm is raising an example that is particularly complicated because a registry's enforcement of a policy one way or another is not ICANN's. If a registry was enforcing it in a particular way because ICANN had told it to, then you would have a cause of action against ICANN for the interpretation.

If you're talking about a policy that says you may not allow people to have content that features green [kids] on their webpage, that would be a facial violation of ICANN Bylaws.

MALCOLM HUTTY: That was the example I meant, Becky.

BECKY BURR: Pardon me? That was the example you meant.

MALCOLM HUTTY: That was the example I meant. Yes.

BECKY BARR: Okay. First of all, I think in the community there would be a million different people who would stand up and scream, "ICANN's Bylaws say you can't do this!" So I think it's a far-fetched thing. If there was a –

MALCOLM HUTTY: That's irrelevant. The registrant has the right to bring –

DAVID MCAULEY: Wait, Malcolm. Let Becky finish her point. Malcolm, let Becky finish her point.

MALCOLM HUTTY: Okay.

BECKY BARR: Well, it's not irrelevant because we're trying to stand on our heads to do something. I think the only plausible thing that you're positing is that there is a provision, a policy, that's adopted that can be applied in a way that is consistent with the Bylaws. A registry chooses to apply it in a way that's not consistent with the Bylaws, and you want to bring an IRP against ICANN, although the interpretation is actually the registry's. Your cause of action, then, is against the registry, not against ICANN because ICANN has not applied the policy in a way that – I think we're trying to [inaudible].

MALCOLM HUTTY: But Becky, you [inaudible] my example.

BECKY BURR: No, no.

MALCOLM HUTTY: Becky, you're taking my example, saying it's not plausible, constructing a straw man, and then saying why that doesn't work. But that's a straw man. It's not the example I'm giving.

BECKY BURR: I'm perfectly happy to say that something that is, on its face, a violation of ICANN's Bylaws can be challenged anytime. I don't really care, but I do want you to understand that you have to distinguish between ICANN's action and inaction, which is a cause which allows you access to an IRP, and a registry's actions or inactions, which doesn't.

MALCOLM HUTTY: I agree [inaudible] –

DAVID MCAULEY: Malcolm, wait one second. What I'd look to do is give Malcolm a chance to reply to what Becky just said. Chris's hand is up, so Chris will go right after Malcolm. Malcolm?

MALCOLM HUTTY: Okay. Now, as I say, I'm particularly dealing with the example where ICANN's action is facially invalid. Now, Becky is saying, "Oh, we don't

have to worry about that because the whole of the community would have dealt with that in good time.”

And I say, “So what? What if they haven’t?” An individual registrant has the right to challenge that. That is what the Bylaws say. If we introduce a set of procedural rules that deny the registrant that right, then they’re actually inconsistent with the Bylaws. Our own procedure rules would themselves be invalid. We have to protect the right of the registrant to bring that challenge themselves and not to rely on other people to do it at an earlier stage.

Now, I fully accept that there may be many cases where the policy is capable of being applied in a consistent way and capable of being applied in an inconsistent way. That would be a challenge to the registry, and that’s just not something that could be brought with an IRP. Absolutely I’m on the same page on that.

But what I am speaking to is the question where what is said is that, in this policy, there is no dispute with the registry as to whether or not you’re applying this in a reasonable and proper fashion.

I absolutely accept that you’re applying this policy correctly and reasonably. My complaint is that the policy exists at all because ICANN had no right to institute that policy and no right to obligate the registries to apply it. That challenge is one that we need to protect the right to bring that challenge.

DAVID MCAULEY: Thank you, Malcolm. Chris has the floor. Following Chris, I put myself in the queue, speaking not as the Chair.

Chris, the floor is yours.

CHRIS DISSPAIN: Thank you, David. Two things. First of all, what Malcolm has said, in essence, at the core of it, sounds fine. But that's not what this discussion is about. The discussion, it seems to me, is about the timing, not the principle, of whether or not a registrant can bring an action. I think that [inaudible] being accepted [years] ago. So what we're actually talking about is timing.

Secondly, from a process point of view, my recollection is the same as yours and Becky, David, which is that, in Hyderabad, the current draft was approved, for want of a better word, for public comment. I'm extremely uncomfortable with rehashing things at this stage. If there's stuff that needs to be dealt with, it should be dealt with as part of the public comment and dealt with by the working group in response to those public comments. Thanks.

DAVID MCAULEY: Thank you, Chris. I'm now going to make a comment, not as the lead. What that comment is is that, Malcolm, I appreciate your arguments, but I believe that this have been well-aired before. I tend to agree with Becky that – well, I do agree with Becky – and I agree with what Chris just said. The rules were floated.

Maybe the way to move this forward – just a suggestion – is to ask you to submit a minority statement – I’ll ask Bernie if that’s even possible – because you’re uncomfortable as to whether the words are clear enough.

Becky floated an idea in the chat that I thought was interesting, and that is: “And then ask Holly to look at this and provide an explanation in order to help us if we’re struggling.” So that’s one suggestion.

I will now take myself out of the queue and ask if anybody else has any comments on this subject.

It looks like not. I’m looking at what Becky is saying in the chat. Malcolm, you and I could propose a change. Let me say this. There is –

GREG SHATAN: [inaudible]

DAVID MCAULEY: I’m sorry?

GREG SHATAN: This is Greg. I think Malcolm and I are both on audio only, so if you could read out the chat, that would be helpful.

DAVID MCAULEY: Oh, I’m sorry. Good point. Becky says in chat: “Let’s just say that a policy that is facially invalid can be challenged at any time.” Another comment:

“Provided however that a consensus policy that cannot be applied consistent with ICANN’s Bylaws can be challenged by a materially-affected party at any time.”

Becky also offered – or, Malcolm, you and I can propose a change to address facially invalid provisions in the comments. It all gets to the point where I think we are, and that is to move the rules forward as approved at Hyderabad and ask people either to comment or – Bernie, can I ask you a question? Is it possible for Malcolm to submit a minority statement as these rules go forward?

BERNIE TURCOTTE:

The experience so far has been that the package including any minority comments is approved by the CCWG. So we have no basis from a procedure point of view to simply insert a minority comment at this point. If it had been approved in Hyderabad, absolutely, no problems. We’ve done this in the past in Work Stream 1 in a number of cases. But this would be a significant change, and as such, it would need as a minimum a ruling from the co-Chairs. But I would expect, from my experience with the group, that they would actually want to send this back to the Plenary. Thank you.

DAVID MCAULEY:

Thanks, Bernie. So let me just summarize –

MALCOLM HUTTY:

Okay. David, given that reply –

DAVID MCAULEY: Yes, Malcolm, you have the floor.

MALCOLM HUTTY: Thank you. Given that reply, David – and we’ve aligned here, then, on the notion that the Plenary was satisfied with this and that this is done and that, actually, really there’s no opportunity for any amendments or indeed comments at this stage. Is that really the CCWG Plenary’s position? Because, given what happens with the comments that were submitted in writing to the list, I’m not aware of any retraction of those comments or those people in any way changing their position on that.

So I think we probably should go back to the CCWG and ask them, “Look, there is this issue. There is this continuing descent,” and ask for a ruling as to whether or not they want to do that, including the option that maybe we should go ahead with a minority descent. Would the CCWG approve that?

DAVID MCAULEY: Let me think about that for a minute. I see two hands in the queue. Chris, I believe, was first. Bernie, is that a new hand on your part?

BERNIE TURCOTTE: Yes it is.

DAVID MCAULEY: Okay. So Bernie will be second. Chris, you have the floor.

CHRIS DISSPAIN:

Thanks, David. [inaudible] a fair assessment of where we're at. [inaudible] I think what I think he said was that, if minority reports needs to be approved by the CCWG – or minority statements, rather – it's not quite the same thing. This has been approved. The IRP Working Group took it to the CCWG Plenary in Hyderabad. It was endorsed for public comment, and I think it's abundantly clear to me that that's the case. None of that prevents you, or anybody else for that matter, from putting in comments that dissent from what the report currently says, arguing your point.

As I think we said at the beginning [inaudible] a general discussion beginning of call we talked about whether or not this document would need to go out for a second round of public comment. Becky also mentioned the fact that it's always intended to be an iterative document.

It's abundantly clear that any form of substantive change to the current draft – I would view changes of the types that you're promoting and suggesting to be material – would need to go out for second public comment. So I really don't see anything to be gained by throwing this back to the CCWG Plenary when we can send it out as it is. You can be the first or last, if you prefer, to throw comments in. Comments can be commented on, and doubtless they will be. We can then pick it up once we've got all the comments and see where we're at.

To take it back now to the CCWG would simply mean that we'd all end up arguing this in the Plenary, which I don't think is particularly beneficial or useful to anybody. Thanks.

DAVID MCAULEY: Thanks, Chris. Bernie?

BERNIE TURCOTTE: Thank you. A) What Chris said. I think my words were probably misunderstood. I'm sorry if I didn't explain it properly. Essentially, yes, there were no objections brought up that I can remember. I was taking the notes in Hyderabad. This was, in its second reading, approved for public comment and has been moving forward with those instructions to staff and should be posted soon.

Now, this is not an approval of the supplementary rules in its finality. The public comment will be reviewed by the IRP IOT, and the CCWG is expecting a report from the IRP IOT on the public comments to the supplementary rules.

So, along with Chris, I don't understand what the issue is. If there are any significant issues with the IRP IOT, it is expected that they come up in the comments. It is expected that they will be considered by the IRP IOT and that there will be a report including what the IRP IOT is proposing to do to address all the comments as we always do with all the public consultations.

I just wanted us to be clear on the process going forward and what the expectations are from CCWG Accountability. Thank you.

DAVID MCAULEY:

Thank you, Bernie. We have some 13 minutes left on the call. It's an interesting discussion. It's a passionate argument. Malcolm, my hat's off to you for making your argument, but I do with Chris, with Becky, and with what Bernie just said about the process. I think we need to move forward now and ask that you make this in a comment.

Having said that, Becky, could you just elucidate a little further on what you mean with respect to Holly offering an interpretation?

BECKY BURR:

Well, I do think that this is an important point. I don't want Malcolm to mistake our concerns about process for writing off the substance of his concern.

I think that we can ask Holly for an interpretation of the provision. We can ask specifically what would happen with respect to something that, on its face, could not be implemented in a way that didn't violate ICANN's Bylaws and ask, while the comments are going on, for proposed revisions that address that if, in fact, we are all agree that the language in all other respects takes care of the concerns, which I think it does.

I do think that there's a corner case issue – and I don't mean to minimize it by calling it a corner case issue, but that's the point of the public comments: to identify these kinds of things and address it.

So I think what's critical is that we right now have supplementary rules that don't match the Bylaws with respect to the substantive standard of

review. I think it's important to move the process forward, but I think we can do it while simultaneously addressing Malcolm's concern here.

DAVID MCAULEY:

Thank you, Becky. I think it's an interesting idea. So, essentially what we'd be asking to Holly to do is to make a comment, and it would be a comment to a question presented by – maybe you and Malcolm and I could work on a question. That's what I think I hear, and I think that sounds like an interesting idea.

So that, I believe, is the way we have to move forward. Malcolm, would you be willing to work with Becky and I to try to create a question that would generate an interpretation from Holly that could address whether this is satisfying or not?

MALCOLM HUTTY:

Absolutely. I'd be very willing to do that. Actually, if I may quickly respond to Becky's point about not wanting me to feel that I'm being brushed off on the substance, absolutely I understand that. I'm disappointed because I thought that, going into Hyderabad, the preponderance of you were supportive of me, and I haven't had any visibility on how that changed to it going through. I'm concerned that it may simply have been a general failure to participate, including on my part in Hyderabad, that allowed us to get in this position, rather than a direct preference.

But I guess that just means that we need to step up in the public comment then and make it very clear. So thank you for that offer. I'll certainly [consider it].

DAVID MCAULEY:

There's a few minutes left. I was wanting to go over, just to discuss generally, the tasks ahead. But if any of you have not read the memo I put out in that respect, I would ask you to do so. I'm laying out the tasks that we have ahead, the nature of what our work is. It's not merely drafting anymore, although we'll have to draft questions to send to SOs and ACs, or maybe something in the nature of a note saying that they're going to be called on to nominate people to the panel – things of that nature. We may have to draw up some specific rules for PTI cases and that kind of thing.

But let's not getting into that now. There's not enough time on the phone call. I would just ask you to look at that, and I might try to prioritize that in a memo to the list in the next couple of weeks.

In the meantime, I want to circle back to the meetings because Bernie has told us what's possible. Given that we've agreed that the supplemental rules as presented in Hyderabad can move forward as they are, I'm wondering if we need a meeting on December 2nd or if we should just rely on a meeting on December 16th, given the fact that the holidays are upon us, in a sense. For those of us in the U.S., they are, but they're close for a number of people.

That would give me time to get together with Malcolm and try to work out a question that could illicit the comment from Holly and maybe run it past Becky.

So my question is, what do you all think with respect to the next meeting? Should we have a meeting December 2nd, which is just a week-and-a-half from now, or should we have a meeting on Friday, the 16th of December? I'm interested in thoughts.

By the way, my temptation is to say we probably don't need one December 2nd. If you think I'm incorrect in that respect, please let me know.

I don't see much take-up, so it sounds – let me see what's going on in the chat. So, if it's okay, Bernie, we won't do the second and we would do – I'm having a hard time reading that – the 16th at 19:00 UTC. It's not a great time, but it would give us a chance to get together before the holidays, see what's happening in the comments, give a report on what's going on with Malcolm's issue and then perhaps start in on some of the tasks ahead. Malcolm, that was something to the group before that.

That's what I see as moving forward. If there's anybody that has any comment or objection, please speak now. Otherwise, we'll be able to leave the call a few minutes early.

Marianne, I agree that the time is not convenient, but I'm asking for your indulgence just for the middle of December with respect to one call. We will revisit the question of meeting times going forward in January. In the meantime, I'll talk with Bernie and see what else is

available. But for this one case of December 16th, I'm going to ask for folks' indulgence, if it's possible. Thank you so much.

That being done, I believe that we've accomplished what we can in this call, so I would like to thank everybody for participating and indulging me in my first effort in taking on one of these things. Thanks very much to the people that commented. We shall adjourn and meet again on December 16th. Thank you.

BECKY BURR: Thanks, everybody.

[END OF TRANSCRIPTION]