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ED MORRIS: Thanks very much. Hey everybody. Welcome to the second meeting of reviewing the CEP work stream two project of the CCWG. I'm Ed Morris, and we would like to welcome our rather intimate gathering here. I see a few people who weren't at meeting one, so perhaps we will go over a bit what we talked about there.

But welcome to the meeting. The agenda, if we get the agenda slide up, we'll do the introduction, attendance will be taken off Adobe. Is there anybody here on the call only, not in Adobe? Please let us know.

Okay. Leon Sanchez does send his regrets. He is flying as we speak. Any update to SOIs?

I'll take that as a no. Okay. On today's agenda, we'll report back on some of our action items, report from India, where our staff was talking to Becky Burr about some of the issues relating with the CEP relationship with the reconciliation phase of the independent review procedure. Anna Loup will talk a little bit about bylaws. Any changes we may want to make, any consideration, to do something in that area.

Farzaneh has done some initial work on CEP rules, which he'll also talk about. Then we'll have a discussion about a big problem, which is how we can folks, in the community, who have experience with the CEP, to participate in our group deliberations, because we're having some trouble with that.

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Then hopefully at the end, we'll have a, we'll be able to come up with a way forward on these three areas. Then we'll complete with some any other business. I would like to... I see Chris is here. Chris Disspain from the Board. He is our Board liaison. Would you like to say anything Chris to the group? And to those members not here today, but will be reading the transcript. [CROSSTALK]

CHRIS DISSPAIN: Thanks Ed, and thanks for the warning.

ED MORRIS: Sorry about that.

CHRIS DISSPAIN: No, that's okay. No, not really, just we'll try, Matt and I will try to get to many of these calls [inaudible], and good luck. This is actually quite a difficult topic, so I'm looking forward to being of any assistance that we can be. Thanks very much.

ED MORRIS: Thanks very much Chris. Okay, so in India, I'm not really sure. Does everybody have self scroll on the slides?

Can you guys scroll? If you can, please go to report from India, if you can't, I'll ask staff to put that up. I was tasked with the duty of speaking, it was a pleasure, I should say, with speaking to Becky Burr, who at that point, was in charge of the IOT implementation oversight team. That

job has now been assumed by David [inaudible], but I had a nice conversation with Becky. I can confirm that the intent of the changes in the bylaws...

If you remember, conciliation used to, under the IRP, under the old rules, used to have an economic benefit for those who agreed to participate in it. That is not the case in the new bylaws. In speaking with Becky, the intent is to make the CEP a bit more important.

The CEP [inaudible] financial incentive for participation, and the idea was, the more we could resolve through the CEP, the less need for an IRP all the better. The other recommendation that came from Becky, was that when we start writing our CEP rules, rather than start from scratch as we so often done in the CCWG, we should look at some of the arbitration forums and mediation forums that are out there, that already have rules in place, and pretty much copy them.

And then include some of the arbitration [inaudible] so they're already dealing with, it has specific rules for ICANN's old IRP. So with that in mind, I'd like to turn the meeting over right now to Anna Loup. Anna was nice enough, during our last meeting, to agree to take a look at the bylaws old and new, and try to highlight some issues for us, to take a look at going forward. Anna?

ANNA LOUP:

Thanks Ed. This is Anna Loup for the record. I'm just going to go over a few things that I've noticed, the three are looking at the relationship between conciliation, CEPs, mediation, and the confidentiality. And you

guys have [inaudible] if you could just scroll through these. So I'll just start right now with [inaudible] regarding conciliation rules.

Just... Scroll down actually to the main questions here, and my scroll is frozen. Okay. All right. So currently, the conciliation rules are soon [inaudible] specifically dated by the new bylaws. [Inaudible] any question, that I think as a group we can tackle, [inaudible] to IRT implementation oversight team. So that development of conciliation rules and procedures.

Moving on. The self scroll is completely broken for me. Moving on to mediation. Working in the new bylaws, this is section 4.3 E, subheading three. [Inaudible] party request mediation for the first meeting. And do we want ICANN to be able to attend the CEP [inaudible] CEP because the compliant report and field mediation can help narrow the issue and resolve the complaint?

Should this be the decision of ICANN, or the complainant, or the mediator him or herself? I think it's something that we should clarify a bit more. And then finally, looking at confidentiality. In the original bylaws, or in the old bylaws, the confidentiality is stated, whereas in the new bylaws are bylaws on confidentiality, it's not clear.

And I think we should be looking to consider this issue within the context of a bylaw change, or should we develop it within the CEP rules? That Farzaneh is going to be talking about next. Did I miss anything, Ed? Did I miss anything? Sorry, I'm trying to switch between two different screens now, from the forwarded PowerPoint.

ED MORRIS: You did a great job. Thank you so much. I think I can take the... You okay?

ANNA LOUP: Yeah.

ED MORRIS: Okay. Don't worry. As you know, the first call I did on an iPhone where nothing worked. The new Adobe has some flaws. Okay. So I'll take the first [inaudible] off the table. I do think we should probably figure out what the IRT oversight... Actually, Avri is on the call. Avri, are you on the IRT oversight implementation team?

Okay. Well, I will... [CROSSTALK]

AVRI DORIA: ...my microphone. Yes, I am. Sorry, it took me a long time to find my microphone, wasn't intending to speak. Yeah, I am.

ED MORRIS: [AUDIO INTERFERENCE]

AVRI DORIA: We haven't worked on that. We've been working on the IRP rules at this point.

ED MORRIS: Okay. Then I'll reach out to David, I guess [inaudible]... and try to see what the plans are going forward, because we may be able to work together on a common set of principles, if nothing else. Would you be able...

AVRI DORIA: I can certainly send an email into the group, and report from the group, that there was a question about it. I think you reaching out as rapporteur to rapporteur is also probably a good idea. But I'll certainly carry the question into the group.

ED MORRIS: [Inaudible] Avri, I'm sorry to put you on the spot, and thanks so much for helping out there. There are a few issues out there. Mediation, do we want ICANN, for example, to say, okay, when the third party [inaudible] comes in and says, yeah, I would like to have a mediator here. Do we want ICANN, as it is in the new bylaws, to be able to say, no, you want a mediator, [inaudible]? It's a question for discussion.

The other question is, bylaws are unclear as to whoever the [inaudible] or can be a mediator at the first meeting. Does anybody have any thoughts on these two issues? I'm looking... Actually, I'm now looking, as I should have been all along. Alan, your hand is up. I believe.

Actually, no.

ALAN GREENBERG: I think that's a microphone, not a hand.

ED MORRIS: It is. My apologies. Would anybody would like to speak to any of these issues regarding mediation? Or the conciliation issue? How we should be working together.

Okay, in which case, I will put these questions to the list, and see if we can get some responses from the broader group. Moving on, as far as...

CHRIS DISSPAIN: Ed, it's Chris. Sorry, I just put my hand up. The reason, I'm not sure if it's on topic or not, but I just thought I would mention it. One of the slides that I will refer to asks the question, do we want ICANN to be able to attend the CEP? I think we need to be practical about this and say, quite a lot of these CEPs may very well involve ICANN as a party.

So, obviously, they're going to attend.

ED MORRIS: [Inaudible] with that is [inaudible]... I think it was, do we want ICANN to be able to end the CEP, because...

CHRIS DISSPAIN: I'm sorry, I apologize. You are correct. That was my misreading. I humbly apologize.

ED MORRIS: Yeah, I assume, actually I believe all CEP proceedings would involve ICANN...

CHRIS DISSPAIN: No, not necessarily, because well, it would involve ICANN, it must involve ICANN as a facilitator. It's not impossible where you would have a situation where you are, in effect, running a mediation between two parties that might lead to... That might, in fact, [inaudible] of having ICANN [inaudible]... The [inaudible] springs to mind as an example.

Where in effect, although ICANN was a decision maker at the end of the day, what the CEP was used for, was to try and bring two sides together, if that makes sense.

ED MORRIS: It makes complete sense. And I think somewhere down the line, we actually have a question of third party notification involvement is an issue as we...

CHRIS DISSPAIN: Yeah. Just from the point of view of ending a CEP, just from my experience of actually having being reported to from the staff on the CEPs. [Inaudible] Some form of ability to end the process has to be built in, because otherwise, it can simply be used as a tool for time extension.

ED MORRIS: I've been on the other side of that where it was used, there were some ideas, that is absolutely correct. And we also have the problem, that if you look at how the interplay is between the CEP and the IRP, you can have a mediation on the CEP that goes on for a long time, and then once we get the IRP, the first step may be conciliation there, which is almost a duplicated effort.

So, I think there needs to be some work between this group and the implementation oversight time, to try to make sure that doesn't happen. So I will try to make a note of that and then I'll talk to David and see what we can, at least initially come up with. Thanks so much Chris.

Okay, with that noted, is Farzaneh here to talk a little bit about the CEP roles.

FARZANEH BADI: Hi, yes, I'm here.

ED MORRIS: Thanks Farzaneh. You had brought up, I know [inaudible] this morning. You had brought up a question as to whether the CEP is meant for negotiation, mediation [inaudible]. Can you talk a little bit about that?

FARZANEH BADI: Yeah, sure. So, normally in arbitration rules and procedures, you see [inaudible] that the parties have to negotiate for a [preset?] amount of

time, before they actually start arbitration. So that is kind of standardized thing that we see in commercial arbitration processes.

The difference is that between negotiation, mediation, is that there is a third party in mediation that actually [inaudible] discussion. In negotiations, it's more kind of [inaudible] two parties sit together and try to discuss... And there might be someone that helps them, but it's not, that person does not go into the stacks and get involved.

So, it depends on what we want to do with it. Do we want a mediation process? If you want the mediation process, then like so many rules about mediation and how it should work, or do we want to have it as a negotiation without the third party? Or, and also [inaudible] conciliation, that we want to consider conciliation as well. There are rules for conciliation as well.

I think what we should look at is to see what sort... The nature of the dispute normally as written in the bylaws, and what the community faces, and what sorts of disputes have been raised. And kind of decide on the rules, which, sorry. Where is the...? Am I talking on the agenda now, I hope?

ED MORRIS:

You're definitely talking on the agenda. [CROSSTALK] ...negotiation [inaudible] both, and then [inaudible] by sources, which you came up with. So [CROSSTALK]...

Looking at the CEP, when Sam was on the call last week, she talked about the value of it being more of an informal setting between the two

parties. When you look at how we designed it in the new bylaws, where we had mediation as a possibility, that seems to lead more towards mediation away from negotiation.

And as you mentioned, we have [inaudible] conciliation on the IRP panel, process. Thoughts? It seems like we're trying to create a hybrid of goals, and again, with the relationship with the conciliation team, I think is very important. I think no other reason is, we don't want to [inaudible] build in mechanisms to be used as a tool to drag things out forever.

Any thoughts about these issues from anyone in attendance?
[Inaudible]...

FARZANEH BADII:

[Inaudible] so if we have to think about whether we wanted to do a negotiation or mediation, we've got to consider whether we want a third party as [inaudible] when we get to engage with the two parties, and if that is, as a process we want. For example, for negotiation, also as I said, you could have a third party, that person would then [inaudible] will not get much involved.

So, that is kind of the difference between the two. The other thing that we have to consider when we are considering confidentiality, is that confidentiality is good because it does not, it is there to facilitate resolution, because if it's not confidential, it might not be resolved.

But, for some cases, there might be that it cannot be confidential because there are some aspects to the [inaudible] to the dispute that

effects everyone else, and it cannot just be just private settlement. So we have to work on that as well.

So, I'm just going to wrap this up now. What we could do, we could look at these after we decide mediation or negotiation [inaudible] as well, and then we can look at the rules of various institutions, and look at what can be applied to ICANN. And based on the nature of the dispute, and based on the nature on how ICANN works. Thank you.

ED MORRIS:

Okay. Thank you very much Farzaneh. Would anybody like to comment on this issue of mediation versus negotiation versus conciliation? And what exactly we're trying to... Where exactly we're trying to place the CEP in the [inaudible]?

Okay. Anna, thank you.

ANNA LOUP:

Yeah. Thanks so much Farzaneh, this is great. Actually something I was thinking about when preparing for this. I think, and this is sort of jumping ahead a little bit, but this might be something we can come back to when we're trying to engage with the community who have gone through a CEP experience.

You know, sort of asking and trying to have them located, their experience within this conversation. Just a thought. Anna Loup for the record, I apologize.

ED MORRIS:

Thanks Anna. Anybody else?

Okay, what I'll do... If we go to the next slide, Farzaneh has provided a number of resource institutions that have rules in place, that we may want to take a look at going forward, once we figure out exactly how we want to position the CEP. Do we want to go to mediation? Do we want to go to folks who specialize in negotiation assistance?

That's a question we should probably resolve before we start looking for the rules. We then go on to the next slide, which are topics. And I'm going to add what Farzaneh has just brought up about the placement of the continuum in terms of what we're trying to accomplish here with the CEP, to some of the other topics that we're going to have to deal with, either in the bylaws or in the CEP rules.

And that includes these procedures and regulations for starting, connecting, starting the CEP, deadlines, procedures for making requests. Discovery is the big issue because some members of the community have stated that they don't like the CEP, and I again, I wish they were here, but they don't like the CEP, because they feel that ICANN Legal in the past has used it for discovery, with no real intent of reaching an agreement.

So obviously, I presume Sam and John would dispute that. But there is that allegation there. We need to have some evidentiary rules and exemptions. We need to take a look at the current processes. As mentioned earlier, third party rights and notification on an issue, as well as confidentiality versus transparency, something which Farzaneh just spoke about quite eloquently.

The next slide, you just look at some of the processes. There is a web link there, about some of the things that are currently in the ad-hoc process state that's been developed by ICANN, but we're going to have to include these in whatever rules we come up with.

And I think one of the things we do need to do fairly quickly, is try to determine which of these topics are fit for CEP rules, and whether there are any we want to [inaudible] for CEP rules and put them into the bylaws.

So, in the note of the meeting that will go out to the larger group, again, we're limited today, presumably because of the holiday. I will note that these are issues that we need to start placing in categories for action. Now, if we can note from the next slide, this is what I actually would be the focal point of the meeting, hoping to get some participation.

We have a problem here. We have a wonderful small, flexible group of folks on this working group, but we have very few members of the community here, who have had experience in actually working with the CEP. I'm sorry, Chris, I note your hand is up. I didn't see it. Please go ahead.

CHRIS DISSPAIN:

No problem. I was listening to where you were about to go, so I think I know the answer too. I wanted to just say something into the conversation for you to consider. You talked about, you know, some people in the community don't like the CEP. You talked about discovery. You talked about rules and regulations, and you've talked about possible clash with mediation as part of an IRP.

Have you considered going back to square one and asking the question whether we need to have a CEP at all? If you've got a process where you can [inaudible] a mediation prior to [inaudible]...

ED MORRIS:

I did bring that up the first meeting. My intention, when we started back on December 9, 2014 was to blow up the CEP, to be honest. [Inaudible], I didn't like it. I thought it was conducted in a way that was not conducive towards agreement, but rather... I'm on the side of those who would say, it was used more for discovery and delay than for anything concrete, in my instance.

So yeah, so that's... Do we need a CEP?

CHRIS DISSPAIN:

I mean, you need some form of... We need some form of pre-IRP process that enables you to go through a facilitated pretense to negotiate a settlement. Clearly. That's important. I would argue that it's worth considering whether that could be done, and I'm speaking personally here, whether that could be done as part of a mediation process, an adjunct to an IRP, rather than some kind of [inaudible] process for which there are no rules, and for which you will effectively be copying a series of rules from somewhere else.

I mean, if we simply said there was going to be a mediation prior to an IRP, then there are plenty of opportunities to use existing processes and independent parties to run those, I would have thought. Those are just

my personal thoughts, and I just wanted to throw them in at this stage. I've said it, you can move on in whatever direction you chose to do so.

ED MORRIS:

Those thoughts are very appealing to me. [Inaudible] Can we go to the group here? Does anybody have any thoughts, and perhaps considering the fact that the CEP is somewhat artificial in that what we need more is some sort of ability to mediate, immediately prior to an IRP?

Now, we could call it a CEP, but we would make it a mediation rather than what we currently have, which is this sort of hybrid that, as Farzaneh points out, doesn't really fit any known category. Comments, please.

Okay. With the permission of the group, I think what I'm going to do is make that question one, two, and three in a post to the group's list, and see if I can get a conversation going on the list, about whether we really do need a CEP, and if we don't, if we want a mediation, whether there is a way to actually reinvent what we're doing here, and actually, I guess we could, I'm thinking off the top of my head, we could keep a CEP, but we could create more of a mediation prior to an IRP.

And that goes back to Farzaneh's question. Anna, your hand is up, please.

ANNA LOUP:

Yeah, I think that if we reconsider the conversation... This is Anna Loup for the record. If we reconsider the conversation we're having around the CEP, we might get more involvement, because either from the

community, or at least, you know, in this working group. Because that might be an issue why it's such a hybrid process, which is it's hard to sort of tangibly understand occasionally, at least from my experience.

It might garner more support and more participation if we [inaudible] talking about it, or thinking about it.

ED MORRIS:

Okay. Thanks Anna. Alan... Chris, [inaudible] clarify, get some clarification on you and your thoughts. If we were to reconstruct the CEP to be more of a conventional mediation, would be that something that you think might be a good idea? Or at least something we could consider?

Okay, Chris, are you there?

Okay. I guess taking this forward, would anybody else like to comment on that idea? As I understand what Chris said, was that, yeah, do we need this thing that we really haven't defined at all...?

CHRIS DISSPAIN:

It's Chris. Can you hear me now?

ED MORRIS:

Hi Chris, thanks. Yeah, thank you very much.

CHRIS DISSPAIN: Just very briefly to respond, I think, from a lawyer's point of view, I think, you know, repeated processes are never a good thing, apart from the fact that you can try to get some money for them. So, my view is if you're going to have, [inaudible] an essential step in the road to an IRP hearing is some sort of mediation, the CEP, in its current format, seems to me to be redundant.

ED MORRIS: Right.

CHRIS DISSPAIN: And therefore, one should look at combined the best elements of a CEP, and the formality, the informal formality, if I can put it that way, [mediation?] together, and have that one step instead of two.

ED MORRIS: [Merge?] mediation with the CEP, which makes complete sense to me. That's why I think we highlighted in the first meeting, was that we have these overlapping processes. Okay.

I will, I guess going forward, I will talk with [inaudible] and see what they intend to do with conciliation. When I talked to Becky, she hadn't really thought much about conciliation. She knew it was there. So let me see if I get some feedback from the other group about their views of whether they could build this into their process, and then [inaudible] the need for us doing any work at all here, or whether it may be [inaudible] and will involve the [inaudible] chairs as well, and perhaps the plenary, on whether it's best to develop a mediation process to

replace what we now [inaudible] as the CEP, that then leads into the IRP. If that's fine with everybody.

Okay, not hearing an objection, I will put the idea on our list. I'll also reach out to the [try?] chairs, and I'll reach out to Dave [inaudible] to see what their thinking along these lines, because I believe personally that Chris is right, that it's ridiculous to have a setup where we can wind up with two basically mediation sessions for the same issue, before you get to the meat and potato discussions if we were unable to work out a compromise.

I note in the chat, Alan has stated, it sounds like an idea worthy of discussion. So, I guess that's the way we go, as I mentioned in the call, the public call, I had hoped this would be a short meeting, in respect to the holiday.

We do have a problem if we're going to go forward with this group, in that when I look at the participants, both today and in our first meeting, largely, most of the folks here have never been through a CEP. Sam Eisner was going to deliver a list of community members who had been through a CEP, which we were then going to contact.

Sam has been on holiday since coming back from India, so we don't have that list yet. I reached out to the SO AC chairs, principally in the registrar group and in the CSG. I was given some names of folks that have had some experience and have expressed views on the CEP process.

All of them have responded, gee, this is really interesting, but I just don't have the time to be in the working group at this point. So, I was

going to propose that we do a survey, which is something that we're doing in the RPM group, with some [inaudible], but I would like to suggest we hold off on that until we get some answers and views on the question as to whether we really do need a separate CEP process.

Would folks have some opinion as to that is a way forward? I guess we're now into the any other business, and in a work plan. But I would be hesitant to go forward with anything we have here in the workplan until we know exactly what we're going to try to accomplish with this group, if anything at all.

So, do we have some thoughts on this? Bernie, hand up. Go for it, Bernie.

BERNARD TURCOTTE:

Thank you Ed. If you do get a chance to talk with David [inaudible], who is now heading up the IRP on this topic, I'm just wondering if you could actually write, if it would be worthwhile writing down some of these thoughts, is there a need to merge mediation and CEP, and bring that up in the plenary next week?

I think we're a little light on topics, and we will have this time, so it might be a golden opportunity, if you feel if you would like a larger contribution to this, to maybe bring up this specific topic [inaudible].

ED MORRIS:

Bernie, I think that's a great idea. Unless there is an objection to it, I propose that's the way forward. I will get in touch with David, immediately after this call actually, speak with him, see if we can work

out a plan to bring, or at least some of the questions that we're asking here, and bring them to a plenary and try to get perspective of the wider group, as you suggested.

Does anybody object to that procedure going forward? Okay. Then, why don't we do that then? I'll reach out to David [inaudible], we'll take a look at the notes from this meeting, attempt to converse with David and the folks in the implementation, IRP implementation oversight team, see what their thoughts are about conciliation and the CEP, and see if we can come up with a list of questions and ideas that we can present to the plenary next week.

Does that sound good to everybody? At least, does anyone have an objection to that or have any thoughts on that as a plan forward? Okay, fantastic. Let's go that way. I'll try to report to the entire list on the meeting, and I will reach out to David this afternoon.

Unless there is any other comment or question, I guess we can wrap things up a little bit early today.

Okay. We will conclude the meeting now. Happy Thanksgiving for those who celebrate, and thanks everyone for coming on to today's short meeting. Bye-bye.

[END OF TRANSCRIPTION]