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REVIEWING THE CEP WORK STREAM 2 SUBGROUP
MEETING 5
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>> EDWARD MORRIS: Good morning, good afternoon, good evening, and welcome to meeting 5 of Reviewing the CEP Work Stream 2 Subgroup.

We will be attempting -- I note the slide, we are using the slides from last meeting. We are just going to dig in to the interviews that we had done with community members, staff and Board members, who had interest in or participated in CEPs. And the goal is to try to come up with questions and concerns we can put in a two- to three-page document that we can present to the plenary in Johannesburg to get their reaction and direction of what we should be doing in this group.

Last meeting we went through three things. Perhaps I should start by asking is -- does anybody have an update to their SOI? I apologize for not getting that right away. Okay. Fantastic. We do have an hour and a half. I don't think we'll need it. Do we have Anna Loup? Anna kindly made some notes of last meeting. Brenda, I understand we have those loaded. We might want to take a look at them if we could get those out.

>> BERNARD TURCOTTE: We should have that available, but

Brenda is running around a little bit.

>> ANNA LOUP: I could put a link to the chat -- no, let me change them over to Google Doc, then I will put the link in the chat.

>> EDWARD MORRIS: I believe they are loaded into the system, Anna. We just have to get them up. It's actually my fault.

Thanks so much. A wonderful surprise this morning. You've already started on the two- to three-page document?

>> ANNA LOUP: Yeah, I did a rough outline, so it's the link in the Notes section. I just wanted to have a working space so we could get ideas and questions together. And then, you know, either you or I or somebody else, you know, could then just fill in the blanks, put everything together.

>> EDWARD MORRIS: The notes are being put up.

>> ANNA LOUP: Yeah.

>> EDWARD MORRIS: Okay. Did you want to run us through the note, Anna, since you actually put them together?

>> ANNA LOUP: Sure. They are pretty rough, as I said in my email. Let me just scroll through here. Okay. All right. So we did talk about getting more involvement, and I think we decided that this two page would be really important to get people to start talking about it, so instead of telling them, sort of trying to spark a debate, which I think is a great idea. The idea is we need to have a two-pager for Johannesburg, which should be done one week before, which would put us at June 20. Then we went through -- I thought for me a lot of the conversation we had last week was about framing. How are we going to talk about how it's framing, either perception versus in the bylaws, and these are things about cost, access, and then what is the role of ICANN in shaping this framing? What is the link between the IRP and the CEP? Should they be framed together? How is this relationship formed? Then I just took notes basically on the principles of the CEP, which include documenting common structures, neutral third party, and questions that I think we should include in the two-pager that would spark debate.

And other than that, that's sort of my notes.

>> EDWARD MORRIS: Thanks, Anna. I think we went through the purpose and we did speak about the gatekeeper function and whether that should be included, actually, as part of the purpose in the bylaws, which we obviously don't want to change at this point, or at least in the CEP rules. We talk about the commencement of action and the link with the IRP, and we did have some questions coming up which we can post to the plenary. In terms of neutral third parties, questions concerning who that

third party should be, should it be the IRP mediator. We had mixed views. Again, questions that can be put to the plenary to get their views that we can take back to this group.

I'd like to go back to the slides if we could, and if we could start today on slide 32, which is -- 32, which I believe is going to be the question of case merger. Okay. Is anyone else having trouble getting a full view of the slides, or is it just me?

>> BERNARD TURCOTTE: I will fix that, Ed. Just give me a minute. Which slide are we going to?

>> EDWARD MORRIS: We are going up to slide 32, which is -- let me just -- which is other participants case mergers interview 1.

>> BERNARD TURCOTTE: There you go.

>> EDWARD MORRIS: I am sorry, I still have the partial slide. Everybody else have a full slide?

>> BERNARD TURCOTTE: I suggest we carry on, Ed.

>> EDWARD MORRIS: There we go. I have that. So we can go to slide -- everyone should -- does everyone have scroll or no?

>> BERNARD TURCOTTE: We can do that. Hold on a sec.

>> EDWARD MORRIS: Yeah, let's give everybody scroll capability. And the slides we are going to start with are the timelines. So if we could go back to -- there we go. Scroll. So I'd like to talk, open discussion today, on the other participants case merger issues. So give everybody a minute or two to take a look at the interviewee responses, and we can see what we want to flesh out from the responses to bring to the plenary.

>> ANNA LOUP: Ed, this is Anna. I would suggest maybe a quick overview again of your notation on here if everyone is all caught up, on how you did your notation of the different interview excerpts.

>> EDWARD MORRIS: Okay. Sure. Good point. The interviews were conducted principally in Copenhagen. Two interviews were conducted after Copenhagen. And what we did, we had a problem in that in this group, only one of us -- namely myself -- had never been in a (Inaudible) so we had the blind leading the blind. We had trouble getting folks to speak up in a public sense because, particularly with community members, honesty could irritate parties that they have economic interest for, namely ICANN.

So what we did is put a comment out on the WWCCG list asking people who had been involved in CEPs to come forward and speak to a few of us, Anna or myself, privately to try to get their views on the current CEP. We also reached out to staff

members who had been involved in CEP and Board members who had indicated an interest in the CEP in the development of the process.

So as a result of that, we had a total of 11 interviews on various topics, and what I have done is taken the responses on our wiki page, the are the notes from each of the interviews, and I have taken the responses from various subtopics and put them into these slides for us to look at right now.

Anything to add, Anna, or anyone else?

Okay. Why don't we get into this. So the issue here is you have a CEP between a complaining party in ICANN, and the question is twofold. One is should third parties be allowed entry into the CEP? And two, should you be allowed to merge cases? If you have two issues with ICANN, should you be allowed to say bring a CEP on issue one but then have issue two come into play two? One of our respondents said it's a form of horse trading, giving one to take in two.

If you take a look at active responses, some of the questions before us are as follows: Community groups and community members. For example, if you have a issue with something, for example, that game up with a GNSO, should the GNSO as a right be allowed into the room? If a third-party has an interest in the subject matter, for example, if it's a new gTLD, the assignment from a new gTLD, should they be allowed in the room to see what's going on? If they also have an economic or other interest in the issue at hand? If so, should that be as a matter of right, or should that be as a matter of invitation, if both ICANN and the complaining party said hey, we want this third-party in the room, should they be allowed to do that?

I will open up the floor for discussion.

Bernie, I see your hand.

>> BERNARD TURCOTTE: Thank you, Ed. I hope you can hear me.

>> EDWARD MORRIS: Yeah, that's fine.

>> BERNARD TURCOTTE: I would just like to note that currently in the IOT, the IRP implementing group, they had put out some supplementary rules which, for public comment, which closed in February. They have been working very hard. There were some -- there weren't a lot of comments, about a dozen, but most of them were absolutely excellent.

One of the comments was about allowing third parties to join IRP cases and the right of those. And this came in also under consensus policy development, whereby the SO that develops the consensus policy, if that policy is being appealed in IRP, should automatically have the right to join that conversation,

if you will, or that action.

As to the details for other third parties to join under the heading of joinder, it was decided that, yes, there can be third parties that can join IRP cases. How they can join will be up to the panel to decide. So just trying to give some background to your discussion. Thank you.

>> EDWARD MORRIS: Thank you, Bernie. So I guess one of the questions we could put to the plenary is should the CEP in this area simply mimic the IOT rules? Or is CEP sufficiently different that we should come up with our own set of rules? For example, given that the CEP is initial settlement dispute procedure, that we are trying to make this matter get settled or narrow the issues for focus, is there a role for community groups? Is the CEP sufficiently different than the IRP that we should have different rules? So I guess that would be one question I would want to put to the plenary. Should we create our own set of rules that may be different than the -- what's coming up in the IOT, or should we simply mimic them? I am giving the connection and the fact that CEP in some ways is actually a subset of the IRP.

Comments?

Hi, Bernie, is that an old hand or new hand?

>> BERNARD TURCOTTE: New hand. Just a thought. We can think of the CEP as a sort of a subset of the IRP. But its fundamental aim is a little bit different in that the IRP, if the case is accepted, will result in a decision by the panelists, which, as we know now, will be binding. That's not really the case in CEP.

My second point, I think you have a very good question, but I think in part that question can only be answered once we understand what type of mechanisms we're thinking of using for CEP.

Thank you.

>> EDWARD MORRIS: Agreed, Bernie. We had discussed, put this in our notes, about the CEP's role as the gatekeeper, and I think that would come into play here.

Any other comments?

Again, Bernie, I see your hand up. Is that still the old hand or you have a new hand here? Okay. Great.

All right. Not seeing any other comments, I will note that we will put a question to the plenary about the nature of the relationship between the IRP and CEP and whether the group believes there is a difference. Should we come up with a different set of rules, or should we actually wait to see what the IOT comes up with?

Can we move on to the next set of slides, which has to do

with timeline? Actually, I find it to be a quite interesting chart of the responses we got.

So basically we've got to figure out when we are creating CEP rule what we want to do in terms of deadlines, we want them to have hard, soft, or none. I will give everyone a minute or two to take a look at timelines, the two slides of responses we got from the interviews.

Okay. I see Anna has her hand raised. Anna?

>> ANNA LOUP: Hi. This is Anna. This is actually an old hand, but it's okay because this will be something for us to think about when we are talking about the timelines real quick.

I think it would be good to note -- and I am noting this down in my notes -- that we should have general questions that we pose broadly and then sort of funnel down when we are doing the two-pager. So it might be helpful when we are talking about timelines to note which questions are broader questions, and we can get people thinking about the CEP more broadly in the two-pager, so having your question about mimicking IOT rules or is it sufficiently different at the beginning, and then sort of going, you know, sort of digging deep into things like timelines or other participants and mergers. So just note, like, if you do have a general question that comes up, you know, when we are discussing this, like if you could note that when you are posing it so then I could move it into a different sort of set of questions, that would be helpful for me. Thanks.

>> EDWARD MORRIS: Okay. Thanks, Anna. Will do.

Let me give you -- timelines were interesting to me in terms of the responses because the responses were all over the place. Generally, I would suggest that ICANN staff thought that the community often used the CEP as a means of stalling and delaying decisions. And although understanding that there needed to be flexibility, in other words, they didn't want hard deadlines that, by agreement of the parties, you could not move on from, they did want to note that it was very hard for ICANN itself to refuse to extend the deadline because that would be seen as not being responsive to the community.

At the same point, what really surprised me is some of the community members actually felt that using the CEP as a delay was actually the best part of the CEP, that it gave them time to either see how other cases and other issues played out or it simply gave time for the issues to settle in or for them to find a solution.

So I don't know where to go with this in terms of ultimately deciding what to do, but again, that's not what we are doing right now. So I'd suggest that based upon the interview responses, we literally just need to pose this to the

plenary itself, explain the different perspectives, and see what I too of response we get. I don't know what else to do here because the interviews were all over the place. So I will open up the floor for discussion.

I see Bernie.

>> BERNARD TURCOTTE: Thank you, Ed. One, a little bit of background, again, from the IOT discussions, from the comments we got from public comment. Huge, huge, huge discussion on timelines, and the two main issues were a time limit from when a party becomes aware or should have become aware of harm, originally proposed at 45 days, and the group I think has now settled after reading the comments from the public comments to take that to 120 days.

The second part of the timeline discussion in the IOT is about repose, meaning is there an absolute date after which, regardless if the parties became aware of harm or not, they can no longer appeal using the IRP? There was an original proposal of a year. There were some significant comments against this in the public consultation. And there was a first reading acceptance of the proposal that there be no time limit.

Now, again, I will underline here I believe if you are going to be asking the plenary to look at this, it's hard to do that in a vacuum. I think you are going to have to propose an initial framework for the CEP. Does it remain just two people locked in a room? Is there a mediation framework? You sort of have to set a context so that people can give you comments based on the context you are proposing. Now, people can shoot down the concept, that's fine, but just having these questions floating without a context I believe will make it harder for the plenary.

Thank you.

>> EDWARD MORRIS: Thanks, Bernie. I think that plays into what Anna had suggested in that we start out with some more general questions and then funnel down to something like the timeline.

Yeah, we are talking in some ways about two timelines. I think the one thing that just came at me from what you suggested, we have to work with the IOT group so that they understand that when they build their structure, that triggering the CEP should cause their timeline to actually stop. Because the CEP is the first step towards an IRP, and if say you have a one-year deadline, you can't have the CEP within their one-year deadline. The CEP has to toll the IRP deadline. At least that's an issue we should bring to Dave McAuley and his group or the plenary.

Second, when we are talking about the timeline in the CEP,

we are talking about the time from when the process starts to when the CEP process ends. So it's a little bit different than the discussions in the IRP -- for the IRP in the IOT group. So for example, our concern right now is you start a CEP, and right now there are some fairly firm deadlines that nobody is following. For example, after three days of the response -- you are supposed to get this done within a week or two, and that's just been blown away by practice. By both my experience in the CEP is by the time ICANN responded to our request, we had already missed the deadline for concluding the entire process. So we have deadlines that aren't being followed right now. So I guess the most important thing is to make sure the IOT people are aware, and I will definitely email Dave McAuley with him and speak with him in Johannesburg, and be aware of the fact that the CEP needs to toll what they are doing with the IRP deadlines.

And secondly, for ourselves, the issues we are going to have to eventually come up with in the CEP rules are, okay, you start a CEP. How long does it take for ICANN to respond? When is the deadline for the first meeting? And how long can this go on? And can parties agree to extend the deadline? And if so, for how long into the future can the parties agree to extend the deadline? Perhaps the granularity is not something we want to involve the plenary in at this point, but in terms of a more general issue, if there are any views as to how the deadlines should play, should there be an absolute limit so we actually get to an IRP, I think we can at least talk about bringing an issue like that to the plenary, although perhaps that's better left to this group once we get responses on the more general issues.

Questions, comments? I see your hand. Let's go to Anna. Hi, Anna.

>> ANNA LOUP: Yeah, I think I agree, Ed. I think maybe going to plenary with sort of broader issues and then focusing on timelines, especially in light of what Bernie has brought up about the IOT discussions, I think that is a really critical thing that I have overlooked as well, even though I have been following it tangentially. So I sort of missed it. I think it would be good to talk to them and see where the CEP sits in their timeline and sort of negotiate that. But then because, you know, I worry, like you said, people had a lot of opinions about the 45-day to 120-day. Right? So people have opinions about very specific things. So it might be better if we start the conversation broadly, definitely provide initial context, you know, not just questions, but try not to be so specific that we are recommending specific days, 45 days until which they can

appeal. That's just sort of what I am thinking.

>> EDWARD MORRIS: All right. Sounds good to me. Anyone else want to chip in?

Okay. Why don't I take away an action item here that I will contact Dave McAuley of the IOT group and try to see where they are at and whether they are, in fact, considering the CEP as a toll or any other ways as a deadline. We will leave the specifics in terms of timelines to our group following the feedback and more general issues to the plenary. How's that sound?

>> ANNA LOUP: I agree. I think that's a good idea.

>> BERNARD TURCOTTE: Okay, Ed?

>> EDWARD MORRIS: Hi, Bernie.

>> BERNARD TURCOTTE: I have maybe one more take on it.

>> EDWARD MORRIS: Okay. Go for it.

>> BERNARD TURCOTTE: Just a note. That 120 days, which looks like it's going to carry, I think one of the points this group is going to have to answer is can a CEP be started if that 120 days has passed or not? Because if 120 days is passed, you will never be able to do an IRP, that's obvious. But does that mean it eliminates the possibility of doing a CEP?

>> EDWARD MORRIS: Yeah, the initial take is it should. But I still have -- I do also have the concern on the other side that if we have this 120-day limit, that if they file for CEP, that's going to toll that. I don't know if you've thought about that. Have you heard mention of the CEP role in the IOT discussions, Bernie? Or will this be coming at them with something they haven't really considered?

>> BERNARD TURCOTTE: No, I have not, and I think that's a really good question to ask in that does initiating a CEP within the 120 days count as starting an action for the IRP and, therefore, counts that an action has been brought within 120 days of being aware of the harm? I think it's an excellent question.

>> EDWARD MORRIS: We will get that to Dave McAuley and his group. I presume that we'll work together on that. We won't have to bring this to the plenary, but we should keep that as an option if there chance to be some trouble that way.

Anna?

>> ANNA LOUP: Yeah, I was just thinking that it might be -- and that's a really great point. Does the 120 days count as an IRP action having started? It might be worth looking at sort of past CEPs that have gone into the IRP process or have sort of subsequently gone to have an IRP and look at the timelines for those because some CEPs last for quite a long time. So maybe looking at that. I don't know how that would fit in, and being

able to look at sort of existing timelines and seeing what trends are with the CEPs. Do people spend a lot of time in a CEP because they are using it, right, as a mechanism, sort of as a holding pattern mechanism? I don't know. I was just thinking about what trends we are seeing and if we can talk to Dave McAuley about that. I don't know if that would be helpful.

>> EDWARD MORRIS: Let me respond this way. It's a great idea. Whether we can get the data I have no idea, but why don't I, as a second action item, contact ICANN legal and see if we can get actual timelines for what in practice they have actually been doing. As you note, I was a little bit surprised when we were speaking to some of the community members when they were talking about CEPs going on for years. We are not just talking weeks, which is if you take a look at the current rules is where they are, but there was at least one CEP that was described into a multiple-year process.

Let me contact Dave McAuley to see whether they have considered the CEP and what they are doing here and try to get some feedback that way, which then I will bring to this group, Subgroup, on list. Secondly, let me reach out to ICANN legal and see what data we can get in terms of the timing of actual CEPs. How does that sound as a way forward?

Hearing no objection, that's how we'll handle this little section.

Could we move on now to the next two slides, which are the transparency, issue of transparency. In the first slide, notification of proceedings. I just want to bring this up. One of our respondents actually was in a CEP and didn't know she was in a CEP. Which I find somewhat stunning. She wanted to talk to ICANN legal. It triggered the process. But it wasn't until the first call she actually understood she had triggered a process. So we will need to eventually at some point talk about formal notification of proceedings.

Notification to outside parties. The community, a general notification, or should there be a notification to specific parties who may have an interest in the proceeding.

In the notification of outcome, if there is an agreement, should it be made public? Must it be made public? How do you actually take the CEP, which, frankly, right now -- for those who are unaware of this -- on the CEP, you make a request, the meetings are closed, no transcripts, no recordings are released. In my CEP, we were instructed that we are not to make our own recordings, which was a little bit unusual. So basically, you throw the parties into a closed room, they -- ICANN legal, to their credit, now publishes the CEPs that are ongoing. That wasn't the case three years ago. So at least there is some

notification there's a CEP between the parties. Although you are still left in terms of -- guessing in terms of the actual exact subject matter of the dispute.

So we have these issues of transparency. Notification to the parties themselves, notification to third parties, notification to community groups, and then what is in the notification. And in terms of the proceedings themselves, should they be opaque? Should there be transcripts? If so, should they be released to the parties or to the community? And so there's a huge issue of transparency, given this organization's commitment to transparency.

If you take a look at the responses, issues 1 and 2 under transparency, I will give you a minute or two then we'll come back to this.

Okay. Questions, comments from someone other than myself? Okay. Looking at the responses, if you go on the second page, one response I thought was quite practical is if the CEP is continued, you need to have transparency, clear rules, particularly with regard to discovery, which we will get to next, and the concept that transcripts should be made and distributed to all involved. That's one option.

You have the concern, particularly of staff, that if you start having too much transparency, it's going to defeat the purpose of the CEP. This is supposed to be one-on-one negotiations in their view.

You have the perception of some of those on the outside, some of those who would have interest in what is going on in the CEP, to know what's going on because it affects their interest. And so one of the concerns that was brought out in so many words is yeah, you go into a CEP, there's a private agreement made that affects the community, and we don't know what's going on inside there.

And so in terms of resolving this issue, that's not where we are at, but in terms of bringing it to the plenary, any ideas in terms of how we should present the conundrum we have right here? Looking for some input.

(Pause in speaking)

>> ANNA LOUP: This is Anna. I am just going to say I think this is really important. I think maybe we -- because we really want to make sure at the end of the day the discussion -- you know, we can sort of start the big priority issues, you know, such as the relationship between the CEP and the IRP, the CEP mechanism as a gatekeeper, I think we really want to focus those. While it may be, I think, bringing up the idea of transparency vaguely would be good, I think people might tend to latch on to this because it's easy. But we really want people

to discuss and debate really what the relationship between the CEP and the IRP is and the CEP as a mechanism, what it is. Right? Is it a gatekeeper to the IRP? Does it stand alone? Things like that. And I think that's really what we want the debate in the plenary to focus on and not, you know, really getting into the nitty-gritty of what the transparency is. And that could maybe be the next step. So again, going back to what we talked about in the timelines. That's something that when we understand broadly what the plenary thinks, then we can come back to the smaller group and then develop more specific granular things such as transparency, which is not a smaller thing, but, right, in the scheme of this.

>> BERNARD TURCOTTE: Ed, if you are there, we are not hearing you.

>> ANNA LOUP: Looks like Ed got disconnected. If you want to just go ahead, yeah, I decided to speak. Yes, go ahead.

>> BERNARD TURCOTTE: We'll give it a minute. I am sure Ed will be back in just a minute.

(Chime)

>> Sounds like he's back.

>> BERNARD TURCOTTE: Ed, are you back?

>> EDWARD MORRIS: Hey, everybody. It's Ed. I am back. I have no idea why I was disconnected. Was it something I said? I apologize. What's been going on? If anything.

>> BERNARD TURCOTTE: We had Anna mentioning we should pick our topics for the plenary and that we can't get everything resolved and that we should probably focus on the higher-level issues and that, you know, bringing up things like transparency is very easy for people to latch on, but people might deviate to other things.

I had my hand up and was actually going to say something along the same lines. Let's remember that for CEP, we will probably have one hour of the plenary, maybe 90 minutes if we are lucky, but right now it's looking like it will be an hour. And I think in that time, if you think we are going to take about 10, 15 minutes to sort of bring everyone to speed, that will leave about 45 minutes, and I think you've probably got the time to do four or five topics max with the group and get feedback on those topics.

Thank you.

>> EDWARD MORRIS: Thanks, Bernie. Anybody else? Where are we on transparency? Sorry, Anna, since you apparently were involved, where was the conversation headed when I left? While I was gone?

>> ANNA LOUP: No, I was just talking sort of what Bernie said, sort of looking at priority issues. But I think Nathalie

in the chat talked about the list of CEPs that ICANN legal provided, and I think that's an interesting thing that we could show to the plenary. This is the current documentation, all about seeing what the current documentation is and then starting our conversations from that documentation.

So the current documentation that ICANN does is what they will have. They will have the CEP, the people who are involved in the CEP, and then they will have the date that it started and then the date that it finished if it's finished. And then -- or they will say moved on to IRP, and they report the IRP and the CEP proceedings together, if I am correct. I am going off of memory here. But I think this is a good place to start the discussion on transparency is using the current available documentation.

>> EDWARD MORRIS: If we go with transparency as one of the four or five topics, I think that's a wonderful approach, by saying here it is. This is what you have now. Do we need more? Is this sufficient? I think that would -- what we don't want to do at the plenary is get bogged down into minutia and details because what we are looking for is some general guidance. It's the Subgroup's responsibility to come up with the details. But I think that would be a great approach if others agree.

I see Bernie's hand is raised.

>> BERNARD TURCOTTE: Old hand.

>> EDWARD MORRIS: Old hand.

Okay. If we could move on to, actually, the final section of the interview responses before we get on to how we are actually going to proceed going forward. This has to do with discovery. Which was an issue brought up by virtually everyone we talked to. If you take a minute or two and look at the responses we looked at in terms of role of discovery within the CEP, we can move on.

Okay. Let me try to give a brief summary. Discovery comes into almost a more general and broader context in terms of the formal or informal nature of the CEP. Some of the respondents -- and again, this generally was respected of staff -- considers the informal nature to be its greatest attribute.

We had community members who suggested -- actually, there were Board members as well, to be honest -- who suggested that the purpose of the CEP, how it's been used by ICANN, is as a means of discovery. In other words, they would use the CEP to share information from the community complainant to determine how strong the complaint was, what the arguments were going to be so they were better prepared for the IRP. And so those members of the community that had that perspective wanted to

have a lot more formal discovery proceeding. They wanted to be able to go and use the CEP to get information from ICANN as well instead of just having to rely upon the IRP. They felt there was an imbalance in how discovery occurred in the absence of formal rules within the CEP.

So you have the question of the formal/informal nature of the CEP and about discovery itself within the CEP. What information should or could be exchanged in the context of CEP discussions?

So in terms of going to the plenary, I guess what I am thinking is we go with the more general topic that there was a dispute -- not so much a dispute -- different perspectives in terms of the informality, informal nature of the process, and then use discovery as an example of an issue under that subheading. How would that sound? What do people think about that approach?

Hi, Cheryl.

>> CHERYL LANGDON-ORR: Thanks. Took me a second to come off mute, of course.

I think it's a good way forward, Ed but I think we probably should also use this -- part of the problem, at least in my reading of what you've outlined in terms of interviews regarding the discovery, is actually a matter of trust, not actually matter of discovery. So I suspect we probably could look at the trust issue, and the trust issue can be dealt with at a relatively high level as well. That's not to ignore the concerns that were outlined in the interviews in terms of as a means of improving one party's likelihood of success in a following procedure, but I think just sort of the recognition of trust in general having a role. So you've got really a lack of familiarity from a community perspective of the process and, therefore, rules and awareness of usage and knowledge of whether it's a gatekeeping process or not, et cetera, et cetera, will assist in development of trust. But I wouldn't get too caught up about the fact that there is a lack of trust here because in many ways, the general improvements that we should see in the whole accountability aspects of everything we are doing should go some way towards improving trust.

Thanks.

>> EDWARD MORRIS: Thanks, Cheryl. A question. How would we present that to the plenary in the context of the CEP? I agree with you, there is -- you know, I hadn't considered it, but in trying to run the interviews through my mind under this perspective, there is a dramatic lack of trust on all sides. You know, accusations from staff members that the community just uses the CEP to stall it. They are not using it -- stall the

processes in implementation of certain aspects or decisions. They are not using good faith.

You come from the other end, we are getting the responses from community members that ICANN legal never -- this was devised for ICANN legal as a substitute for discovery. They have the advantage. You are right. There's a lack of trust on both sides. How do we present that to the plenary in the context of the CEP? Or do you have some ideas in that regard?

>> CHERYL LANGDON-ORR: Cheryl again. Didn't put my hand back up. I think we need to simply -- well, hardly simply. Sorry. Let me state that a little bit more articulately. I think we need to encourage the plenary to recognize that trust, as anyone else in the room -- needs to be recognized across work each of the subteams are doing. But that by using tools such as relatively clear rules and transparency of process, if not the specifics, and there that's something, of course, that even things like nominating committee activities, you know, they have transparency of process, but not all the specific data, et cetera, et cetera. That's not unusual to see in this type of confidential aspect thing. But that, in itself, will assist. Trust is something that is developed and earned. Trust is something that is going to be a hurdle. But it's not going to be a hurdle for just CEP. It's going to be a hurdle for anything new and changing. Part of the motivation to put forward any of the improvements from Work Stream 1 or, indeed, Work Stream 2, is very much a matter of improving trust as well as transparency, accountability, and basically predictability. So it's one of those we are just going to have that or not depending on the success of the processes of what we recommend.

Thanks.

>> EDWARD MORRIS: Thanks, Cheryl. I think it's an exceptional point.

So in the document itself, we should note that trust -- not so much as the elephant in the room -- but trust is a major issue in terms of perceptions of past CEPs. I think we got that from interviews. I think we should note that. And then we can dovetail this, again, with the approach that Anna suggested. You mentioned that then you start talking about the informal nature and then you talk about specifics, or maybe we don't, such as discovery, such as transparency.

So I think that's a good point and something we should raise at the outset of our presentation to the plenary.

We've gone through the slides. And now I think we are at this stage where we've gone through the interview responses, we've highlighted issues, and now what we need to do is figure out how we are going to construct the two- to three-page

document and what we want to highlight, what we want to bring before the plenary. We have the specifics we can bring up, but what are the general topics we want to bring up.

Anna, you have started a document. Let us know what you have been up to in this regard, and I will turn this over to you at this point.

>> BERNARD TURCOTTE: Ed?

>> EDWARD MORRIS: I am sorry. Hi, Bernie.

>> BERNARD TURCOTTE: Just to add on to the last topic after Cheryl and yourself had spoken. This trust issue. And in effect, I thought in some ways provides a nice spring board to your thoughts about mediation, where there's a third party. To remove sort of that issue and address it up front. And ensure transparency is being dealt with practically and correctly.

Thank you.

>> EDWARD MORRIS: Yeah, agreed, Bernie. I think trust is something we can highlight at the outset. And it's not just the parties involved. There's a lot to trust. I am thinking of some of the responses we receive in terms of third-party participation. There's a lack of trust of folks not involved in the CEP over what those two devilish parties are doing in the CEP. So it's not just the trust between the complainant and ICANN and ICANN and the complainant, there is a lack of trust issue here with parties interested in what's going on in the dark little room. I think Cheryl has highlighted what may actually be the central issue to the problems of the current CEP from the perspective of almost every party involved. And what we need to do with the CEP -- and again, the purpose of this group generally is to construct the CEP rules or at least guidance for the construction of the CEP rules. I think what we need to do is develop these rules with the recognition that the lack of trust does exist, and hopefully by creating rules we can start engendering trust in the entire process.

Now we need to sort what we are going to do going forward. I know we are at the top of the hour, and thank you, Bernie, for the suggestion of extending this to 90 minutes during our last call.

So Anna, I wonder if you could -- I know you have thought about this actually a lot more than I have. Which probably I shouldn't admit. What do you see in terms of the workload, the work procedure going forward for this group? Bernie, would you suggest we need to have the document out by next Monday, Sunday, or when would you suggest we have it ready? Is

>> BERNARD TURCOTTE: The meeting is on the 25th, so that takes us 7 days before, so it would be the 18th, more or less. Let me double-check the exact date. Yes, that's correct, so

technically the 18th, but that's a Sunday. I am sure we can stretch that into Monday if we have to.

>> EDWARD MORRIS: So the drop-dead deadline for getting the document out is the 19th.

Anna, you have a work plan, I believe. Could you let us know what it is?

>> ANNA LOUP: Yeah, this is Anna. Also, just to check, because I know there are internal deadlines for ICANN staff for meetings and things that are going to be presented, so I just wanted to check and make sure that the 18th is okay and not something that's going to cause anyone a headache or, you know, it will end up that we don't get the document out or things like that. I just wanted to make sure that that's, like, you know, we are not sort of pushing it by moving it to the 19th, even though that would be very helpful. So --

>> BERNARD TURCOTTE: No, not at all. No issues.

>> ANNA LOUP: Okay. Okay. I just don't want to cause anyone a headache. I can do it on a Sunday, but Monday is preferable. Okay. Cool. Thanks, Bernie.

So moving on, I have a document that I put in the notes section that's a Google Doc. I have just been thinking about how we would frame this in the plenary and how we would spur debate or just at least basic discussion. I really think Cheryl's -- the concept of trust is a really central issue, as Ed said, for all parties involved. So it might be a good idea for -- first my idea on the document is to start with sort of what is the CEP, where the CEP is, you know, sort of within the ICANN bylaws, what our task is as the CEP working group or subgroup, and then start talking about the broader concept.

So first, situate people so that they understand what is the CEP and differentiate it from the IRP so they don't get the two confused, and then start talking about things, sort of situate it within trust, and then move on to high level and then sort of more specific topics that we have come up with in the interviews.

That's just a thought that I am having about this. I am going to have to change the two-pager working doc that I have linked a little bit to reflect that, just after our discussion today. But I'd love feedback or just development on that.

>> EDWARD MORRIS: Okay. Thanks, Anna. The doc is up in some form right now.

I think for those of us who are working on this, we say CEP, we sort of know the rules. Those who have been in it, actually, some of them understand the rules, others even after having gone through it, the response was well, I went through it but I am still not really sure what it was all about. So I do

think to start the document by explaining what the CEP is, what its role is, how it relates to the IRP currently, issues that have been brought out -- explain what we have done, explain steps we have taken in terms of going to the community, the interviews, the responses, putting in links, for example, to -- I believe putting in links to the actual interviews, and then delve into some of the subtopics in terms of things we are considering. That would be one step for the document. And then from the document itself, the presentation, obviously we extrapolate the major issues for presentation to the community, and after we get this document done, we can have discussion on the list to make sure we are going down the right road for that.

I like the outline, actually. Any comments other than Anna on the outline of the document that is now before you on the Adobe Connect?

Okay. Folks seemed to have signed off on this. I will commit to starting the text later today. If that's okay. And then we will just continue to work on the doc. We'll put out alerts on the mailing list as the week goes on. And carry our discussion there. Why -- I am in transit, actually, on Thursday when I will probably do a lot of work on the flight back to Europe. But why don't we start that way? I will try to get an initial outline of some of the things done by tonight, get that out to everybody both on list and in the Google Doc, and then we continue to fine-tune and make it better as the days go on. Does that sound like a way forward?

Anna, I see your hand.

>> ANNA LOUP: This is Anna. Just a quick sort of follow-up. I am going to also type up the notes and circulate those again, make sure everyone got those notes from the last meeting. I will just reply all to the transcripts in the notes from this meeting just so that maybe take a look at those because I think those are going to inform a lot of how we are moving forward with this outline in this two-pager. So if you do see something where I have understood something I've said wrong, let me know and I can rephrase it because I know we made a lot of really great headway today, which was awesome, but I want to make sure I captured everybody's sentiments and opinions correctly.

>> EDWARD MORRIS: And are you still going to try to get some metrics done before the meeting on the 25th of the interviews?

>> ANNA LOUP: Yeah, that's my plan. I owe, like, several people --

>> EDWARD MORRIS: Sorry.

>> ANNA LOUP: That's okay. I got myself into this. Again, my plan is to hopefully have -- that's my weekend job this

weekend is to pay my metric dues. So yeah. So hopefully we can get those by Monday or Tuesday. I don't think I will get them in time for the two-pager just because there are quite a few interviews, but I will have tomorrow preliminary stuff going.

>> EDWARD MORRIS: That would be fantastic. Then we go into the plenary with the two-page or we go in with metrics and hopefully a decent presentation.

And the goal, of course, is to come away from the plenary with more defined idea of what we want the CEP to be, how it's going to relate to the IRP, and then after -- I mean, I am envisioning that we are going to pretty much be doing weekly meetings from here until the end, at least until we have the CEP rules or guidance of the rules themselves done.

>> CHERYL LANGDON-ORR: As long as it's not in the middle of my night.

(Laughter)

>> EDWARD MORRIS: Any further questions, comments before we wrap things up?

Okay. Thank you for your attendance. Please look at the list. Please comment, please contribute to the document, and I look forward to working with everybody in the coming weeks as we try to create a process and procedure that actually puts a little bit of trust back into the process.

Thanks so much.

>> CHERYL LANGDON-ORR: Thanks, Ed. Good-bye, everybody. Bye, Anna, thanks. Bye.

(End of session, 1406 UTC.)

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