RECORDED VOICE: This meeting is now being recorded.

DAVID MCAULEY: Thank you. Welcome all, this is David McAuley speaking, and we have a small group so far, but in the past, a number of people have come in several minutes late, which is fine, so I would like to press on. We're close to the five person rule, but I think we're in shape that we can roll on right now. What I'd like to first do is ask if there is anybody on the audio bridge who is not in the Adobe room to please identify themselves.

Hearing none, then I ask if there is anybody on the call so far that has any changes to announce to their statements of interest. [AUDIO BREAK] Hearing none, I will assume that is the case. I just heard someone come in on the call, if that's someone that is on the audio bridge only, could they please identify themselves?

REG LEVY: This is Reg Levy.

DAVID MCAULEY: Hi Reg, David McAuley here, thank you. That leads in to my introduction of Reg. Reg is acting in the capacity of a chairing skills coach to me, and she participated in the last call, and she will participate in this call in background, not as a participant in the group. And so I appreciate everybody's understanding in that respect. So,

we've covered the administrative matters, and I'd like to get into the agenda.

Again, we're a small group, but we have enough to press on and I would like to make a record and press on and get to some of these issues. So I hope that you have seen the agenda that I sent out earlier in the week. Once we get past the administrative stuff, we move next to the work timeline and the impact on the staff report, and hope you've had a chance to look at that. I'd like to discuss it now.

The current timeline looks for us to have a staff report done on the public comments to the draft rule by March 29th. Obviously, that is no longer going to work. And so we need to set a new date and we need to do it in this meeting, in order to have sufficient time that the changed date can be announced prior to the 29th, and that takes a little bit time to do that. In my memo, I suggested that we move it to May 29th. I'm sorry did someone want to say something? I might've hear something.

BERNARD TURCOTTE: No, it was just me, David, I was just saying correct.

DAVID MCAULEY: Okay, thanks, Bernie. What has to happen between here and the new day, whatever date we choose – let me just stop for a second and ask if the person that just joined us on audio only, would they please identify themselves?

LIZ LE: Hi, this is Liz Le from ICANN.

DAVID MCAULEY: Thank you. We're just talking about a new date for the staff report. The things that have to happen between here and that staff report are we need to complete our work, that is, come to consensus on how we're going to handle public comments, and as you okay, there are a number of comments, some of them complex and very good, thoughtful comments that we need to work through. In addition, we need to pass our thoughts past Sibley, I believe, at least in my opinion we do, to make sure that we get a reality check, so that what we're doing, what we're suggesting passes legal muster.

We then need to then hand it over to Staff, so that they can write it up with some direction from us as to what we intend, and have all that done by May 29th. If we choose that date, which I'm suggesting, there's still a lot of work to do between here and there, and there is no rule against us beating that date.

So I'm now going to open the floor to anybody that would like to have any comments on setting a new date, and that being the date of May 29th. If anybody that would like to say anything, please feel free. I'm not seeing any hands, so I'm wondering if I could see green ticks or expressions of "aye," if that means that people are agreeing to the new date of May 29th.

Okay, is there anybody that wants to put a red tick up and object to that date? You can clear the green ticks now. I see no objections, and so I'm going to assume, the, that we have just the date of May 29th. And so

I'll mention to Bernie and Brenda to please act on that as the new date and do what you need in that respect. I see Kavouss' notes in the chat asking me to slow down, and I'll do my best to do that. Thank you Kavouss.

Next on the agenda is a brief report by me to this group about some comments I made during ICANN58 in Copenhagen. And it's something that we've expressed in our letters to SOs and ACs, as well. And that is we have notified SOs and ACs that under the bylaws, specifically 4.3J, they have a role coming up now in the near future, to consider people who apply to become members of the standing panel and the SOs and ACs have the lone role of nominating people to the standing panel, at least seven, and the bylaws are perfunctory in this respect. It really just sort of indicates that they will do it.

What it says in 4.3J is, "The supporting organizations and advisory committee shall nominate a slate of proposed panel members from the well qualified candidates identified for the process." And so they're going to need help, and I have said that the IOT would be willing to act in a helpful capacity, and it's something I think we've discussed before. But I just wanted to make sure it's on our radar screen.

We can discuss it soon, I might instigate a discussion on the list, thoughts on how we might do this. We might create a small team to do it, that would be helpful, we might do it as a group. If anybody has any thoughts on this topic, I would open the floor to them now to sort of help us move this particular bit forward.

Okay, I may then instigate a discussion on the list, but if this group, the SOs and ACs are going to need help organizing themselves, our role would be administrative, not inserting ourselves in their role of nominating, but helping them with our understanding of the bylaws, et cetera.

Next we move on to public comments review. Before we move to the timing issue and Malcolm, let me again mention that I need volunteers. Before I do that, I want to note that Kavouss' hand is up. Kavouss, please take the floor.

KAVOUSS ARASTEH: Yes, on SOs and ACs to nominate candidates to the panel, the qualifications of those people are those which are referred to in the bylaws, is that so?

DAVID MCAULEY: Yes, that's correct, Kavouss. The 4.3J and 4.3Q I think are the sections in the bylaws that describe the qualifications that someone would have to have to become a member of the standing panel. And so as I understand it, ICANN will release an expression of interest, and I'm going to ask Sam to comment on that in just a minute, an expression of interest document inviting people to apply to become members, and from the bucket or the pool of people that do apply, ICANN or the SOs and ACs will parse through those applications to sort of put them in two separate piles, those who are very well qualified, and those who may be qualified, but don't fit into the well-qualified bucket.

And then from the well-qualified candidates, the SOs and ACs will nominate members to the standing panel. That nomination, by the way, is subject to board approval, not to be unreasonably withheld. Does that answer your question, Kavouss?

KAVOUSS ARASTEH: Yes, it answered my question, but something you have not covered during the Work stream 1 in the bylaw of all the qualifications, and I don't want to change anything, to add anything, but something that needs to be understood, that the first among the qualifications, must or should have been involved in the issue of the IRC during the first work stream. I have heard some people, there have never been any discussions and so on, so forth, and they line up other people to support them, so the quality person is not only something that people should judge, but it comes from the background and experience in the preparation in the discussions, knowing all of these things.

So I don't know how ICANN will take that into account. I hope that they will into account in the first meet, which I call it a short meet or I call them the [inaudible] for participants to be designated by the SOs and ACs. So I'm just referring to ICANN to be quite sure that the people have all qualifications required, because this is a very, very sensitive and very important issue, members of the panel. Thank you.

DAVID MCAULEY: Thank you, Kavouss. Sam, you have your hand raised, so I will invite you to take the floor.

SAMANTHA EISNER: Thanks, David. So just on a bit of an admin, on the administrative side, where our internal team is working on finalizing a document that will be previewing with this group before we would post on ICANN's website. We think that it's appropriate to get the view of the IOT on the document, to check that we're meeting the spirit of the bylaws and the qualifications that we're putting up and the things that we're including in there.

And then, to Kavouss' point, we're drafting to the specifications that are in the bylaws, and again, the IOT will have a chance to look at it, and then as David was noting, there is a vetting process, so we go through and we check out what is well-qualified, and then work with SOs and ACs to then make our appointments.

So if there are other qualifications that aren't necessarily listed in the documents, but that the SOs and ACs do apply against that list of other well-qualified applicants, that's something that certainly the committee could discuss, how they wanted to do that work, to take into account the typed of experience we're bringing in. But from our side, we're drafting it to the bylaws and some general standards, and aren't trying to insert any additional requirements that weren't vetted earlier.

DAVID MCAULEY: Thank you, Sam. Do you have any estimate on timing that you'll give us the document to take a look at?

SAMANTHA EISNER: Yeah, we're just doing a final pass through it, and we're – I had hoped that we had something out last week during Copenhagen, but we weren't able to do that, but we're hoping that we can get something out to you guys next week.

DAVID MCAULEY: Thank you, Sam. Okay. So, moving on, I'm going to ask Malcolm to take the floor in just a minute. And the goal here is to follow up on Malcolm's discussion last week addressing the issue of the time for filing claims, which was the subject of a number of comments, not least Malcolm's own.

I will ask you, Malcolm, as you go through this, to please keep an eye on time, and we're going to hope to move along, I would like very much to get into the next issue during this call. And so, Malcolm, I will pay attention to the queue, but I may also put my hand up, because if I have comments, I'll be commenting as a participant and not as the lead, and so I'll be watching the queue for you, but if it's okay, I'll hand you the floor now.

MALCOLM HUTTY: Thank you, David. I apologize to anyone on the call that finds it hard understand me, I'm afraid I'm suffering from a bit of a cold at the moment. I hope you can hear me clearly. Okay, so to run through this quickly, firstly, the last meeting we had which was slightly sparsely attended, wasn't really decision making meeting, it was one where we provided the analysis of the public comments received and as

preparation I had a breakdown of that, which was presented at the meeting and we had a discussion, but no decisions were taken.

In short, though, to summarize very briefly, there were a number of comments who objected to the way the timing rule had been presented, on the grounds that it was either A, too short, or that the basis from which the calculation was done was wrong in their opinion, and that it needed to be based on when the harm was done or when the harm was known to the claimant, rather than on a fixed date as the date of the action, that might prevent the claimant from making a claim at all.

So there was a discussion about that, but no conclusions were reached. I did suggest that there was point out in the public comments that was the first threshold question that would need to be reached before we went to any further issues, which was the proposal from the business constituency, that there should simply be a moratorium on the timing issue.

Nobody on that call said that there was any support for that, but if there was not support for that, then we need to look at options for moving forward, and the structure of the rest of the session that I've got on this slide, that shows basically the main focus on that main point of contention, as to how the time is calculated, and also how it should be.

And then a small number of relatively minor and relatively un-contentious points have also been raised, that should be given consideration, but are not likely to be as substantial points of discussion as that main issue. So first off, is there anyone on this call that would

now wish to step in and speak in favor of just simply a moratorium and just dropping this topic? If there are none, and I see David.

DAVID MCAULEY: Malcolm, I did want to say I paid very close attention to the list and other than in the comment, I haven't seen support for a moratorium, and I personally as a participant would argue against a moratorium. I think we need to move on and get the rules in place. Thank you.

MALCOLM HUTTY: Okay, thank you. I was thinking personally, I would have been content with that outcome, but I see no support for it, and so speaking in a sort of subdivision chair role, I think we can now say that there is just simply no support for this as a proposal, and we can now discard it.

So if we can now move to the next slide, as to how time is calculated. This raises what I think is the main issue that has been raised, and in particularly, on this next slide we see the proposal that David brought up on the last call, and he and I have worked together for formulating into more clear words, the attempt to resolve the main issue that was raised by most of the respondents to the public comments.

And that proposal is this; to say that the rule on timing should be that the claimant must file their claim no later than the later of the two following dates, that's so many days after the date of harm, or if later, so many days after the date that the claimant became aware of the harm, or reasonably to have been aware of it.

So the effect of that would be, if we pick for example six months, that would say that six months after you've been harmed, that's the time that you have got for filing, you've got to do it within six months after you've been harmed, unless for some reason you weren't aware that you had been harmed, and if that were the case, then it would be six months after when you aware that you had been harmed, or if it's a shorter time than that, when you reasonably had been aware of it.

And to clarify the second bullet point here, that does mean when you ought to have been aware of it, or when you were actually aware of it, if you should have been aware of it beforehand, then that's the date that counts. But in practicality, it's likely to mean so many days after the harm, unless there is some reason that you don't know, and then when it is that you do know, or should have known.

So that's the proposal that was brought up in the last meeting, and with no disagreement in the last meeting, but it was sparsely attended, we worked on it together. We both believe that this would address the main of the objections that were raised by the public commenters, so I put it to the group. I see David's hand and Kavouss' hand. David are you first, or is that an old hand?

DAVID MCAULEY: No, that's a new hand, and thank you Malcolm. I think you alluded to it, but the one thing that I wanted to mention about this slide is I agree with you that if we can come up with whatever the number of days is, 45, 90, 180, whatever goes in as XX, if we can agree on that, then I'm fine with this, except to say, just to be a little bit more clear about it, I

think you said this, but to be a little bit more clear, the subparagraph 2, where it says, "X days after the date claimant became aware of the harm, or ought reasonably to have been aware of it," to me, that would be best qualified by saying whichever of those two dates is earlier.

And so I agree that it would be the later of the two dates, but with respect to this subparagraph alone, I think there are two potential dates there, when someone became aware of the harm, or should have been aware of the harm, the operative date there in that subparagraph is whichever of those two is earlier. That's my comment. Thank you.

MALCOLM HUTTY: Okay. So if we then add the word, "earlier" just on the end of that second subclause, so it reads, "X days after the date claimant became aware of the harm, or ought reasonably to have been aware of it, -- if earlier – would that satisfy?

DAVID MCAULEY: Yes, I think so. Thank you.

MALCOLM HUTTY: Yes, Kavouss? We can't hear you. I believe Kavouss has been disconnected, and we are attempting to recontact him at this point.

DAVID MCAULEY: While we're waiting for Kavouss, I'm just wondering if anyone has thoughts on what should be the XX? What's the number of days? It

sounds like 45 was not well received, and there have been some other suggestions. Did you want to address that now, Malcolm?

KAVOUSS ARASTEH: Yes I am on the call. What we're doing is later than the latest, this is very awkward, not later than the latest...

MALCOLM HUTTY: Perhaps it would be more elegant to say before the latest following date.

KAVOUSS ARASTEH: The wording, but not later than the latest, is not understandable for many people, like me. Maybe for you it's good, but for me it doesn't have any sense. Thank you.

MALCOLM HUTTY: Okay, I see people in the chat, Kavouss that they find it hard to hear you, but if I may repeat what I understood you to say, you found the phrase, "Not later than the latest," to be difficult to understand, and it could be rephrased in a way that was easier to be understood, which I'm sure can be done. I think at this stage we're looking for the principle here, and I'm sure the lawyers will find a way of phrasing it that works best, but we're looking for the principle. So maybe if "They must file before the later of the following two dates" or something like that. Any other phrasing that means the same thing, I'm sure would be acceptable.

DAVID MCAULEY: Malcolm, you have a hand up from Sam.

MALCOLM HUTTY: Sam, please go ahead.

SAMANTHA EISNER: Hi Malcolm, thanks. I just wanted to find out if with this phrasing the IOT is considering removing a suggestion that there is any outside time limit on an IRP, and it's solely based on when someone would find out about harm, is that what I should understand?

MALCOLM HUTTY: It's not only based on when someone finds out about harm, it is based on firstly the date that the harm occurs, or later, if they find out about this, or ought to have found out about this. So we'd expect that in most cases it would be based on the date that the harm occurs, although there is a possibility that if the claimant wasn't aware of the harm at that time, it could be extended, but no more later than when they reasonably ought to have been aware of it.

Sam, if you are alluding to the change from a fixed date, that there is no reference to the date of harm, I would refer you in part to the legal advice we received from our independent counsel, which said we needed to move away from a fixed date to one based on the date of knowledge. And we are in some respects responsive to that.

SAMANTHA EISNER: Right, I understand the need based on the timing of a date from when harm occurs, that's not what I'm asking about, but for the subsection 2, how long after an act could someone bring a claim? Whether we put in 180 days in there, or whatever, is it something that a claimant could bring five years after? Is that a reasonable reading of this? That's what I'm trying to get to.

MALCOLM HUTTY: I think it would be really most unlikely that anyone would say that it took five years for them to become aware that they had been harmed by it, and to sustain that was reasonable for them not to have been aware of it for that long. So what we are really looking at in that subparagraph is yes, if it's based from the date of the harm, and if you weren't aware of it immediately, then you can have longer, but only so long as is reasonable, such that you ought reasonably to have been aware of it.

DAVID MCAULEY: And while Sam is considering your response, Malcolm, I just wanted to note that you have two hands following Sam. Kavouss is next, and then after Kavouss is Greg Shatan.

MALCOLM HUTTY: And I think while Sam is considering that, we'll move to Kavouss.

KAVOUSS ARASTEH: I don't understand the difference between one and two. Let me explain. A harm occurred. Someone [inaudible] identify that harm. Then what you are saying in one and what you are saying in two, why are there two different? The harm, and as well as the harm? What is the difference? What are we going to say here? It's not very clear. Can you kindly explain what you mean by one and two? Either of them is understandable, but both of them, I don't understand. Thank you.

MALCOLM HUTTY: Kavouss, I think it is possible it may well be that the second paragraph includes the first, but we would expect in most cases that the claimant was aware of the harm at the instant that it occurred, and it would only be in exceptional cases when the claimant was not aware of it. So that's why it has been described in this fashion. But I think that we should try to get away from the precise wording of this. What we're looking for is an agreement on principle here. Do we agree on this basic principle, and if we do, then we can leave it to the lawyers to find some way of phrasing it more elegantly than I have been able. Does that satisfy, Kavouss?

KAVOUSS ARASTEH: Yes, if we are talking about principle, from the time both the principle one and two would there, right? So both of them you want to keep, and then later on at the end, we go with one of them, but not both, right?

MALCOLM HUTTY: I think, if I understand what you're saying correctly, yes.

KAVOUSS ARASTEH: Okay, no problem. Thank you.

MALCOLM HUTTY: Greg Shatan, you have the floor.

GREG SHATAN: We do need both one and two, and they are not the same, and I don't know whether two will be an exceptional case or not. One covers the date on which some harm actually occurred, and two covers the date that the claimant found out that the harm occurred, or should have found out the harm occurred, if they had been acting reasonably. Now there are a number of different ways, I don't know if we need to go through hypotheticals on these.

An example that has no relevance to ICANN, but it's an easy one, if you have a house in the woods, very far from the nearest neighbors, and it burns down on July 1, you don't go there until August 1. July 1st is the date from which one counts from, and August 1st would be the date of two. And if there is some unreasonable amount of time to spend away from one's summer home, even if you never go to the summer home and never actually find out about it, it should be assumed that you would have somebody reasonably looking in on your house at least a couple times a year, then that you reasonably ought to have been aware of it would be, say, six months after it happened.

Now you could argue about the exact point, but the point is that these are three different points in time and all of them need to be considered as potential end date. If you go only after the date of the harm, then you're basically creating a rule based on the date of occurrence, that has nothing to do with particularly circumstances of the plaintiff, and that could be very unfair to a plaintiff who does not become aware of things.

Again, we could run through a number of hypotheticals, I'm sure we could think of some, where awareness would not become immediate. The harm may take a while to occur, the harm may take a while to be seen, the harm may take a while to reasonably have been seen.

Finally, I would say that this kind of two-prong construction here is absolutely the standard for these kinds of result end dates, quibble about the language here or here, I'm sure that there is some canned language we could find that is maybe a little better, but conceptually this is spot on, and I don't think we need to do anything to change this. There is the point that Sam raised, which is the point of repose, whether it will be some date after which the activity occurred, as opposed to a harm based date, and that's a question.

I guess a lot of that is base, so I'm not sure why you have difficulty following the logic. Your house burns down on July 1, you don't know about it. August 1st you go and see that your house burned down, and you know about it. You never go to your house, at some point you should have gone to your house, you should have been aware of it. Those are three dates are all different. And all those should be taken into account.

Finally, if we're talking about changes to the bylaws, I'm not sure that there should ever be repose in challenging a harm that results from a change to the bylaws, so I think we need to talk about what activity we're talking about, before we make any blanket rules. Thanks.

MALCOLM HUTTY: Thank you, Greg. Sam, you have the floor.

SAMANTHA EISNER: I think we're converging, the issue of whether one and two make sense, I think they do, and we can refine the language a bit, but I think the concepts in there, timing it from that, are important. I do think, as Greg was phrasing it, that the issue of ultimate repose, I think we still have an obligation to look at the purposes of the IRP, if the purposes of the IRP and accountability are to reach some point of certainty of action, and that things will stand that were done, that maybe it does make sense to have some sort of external time limit on it.

The repose, if something didn't cause harm, if you didn't find out it didn't cause harm within five years, why would we entertain it and upset everything that has been relying upon that issue for five years? Because someone decided that they were harmed by it earlier. That's an issue to be handled in a different way. Maybe circumstances have changed, so the policy really needs to be changed instead of being challenged against the bylaws. There could be multiple things that need to happen.

So I think we still need to keep in mind the ultimate purpose of the IRP in considering whether or not there is an outside limit on the issue of repose while we still maintain the timeframe being from when you found out when the harm happened, or when you should have known about the harm. I think that the issues here aren't necessarily problematic, it's the question of could you always bring a harm, even if it happened 5, 10 years later, that's the issue I think we're concerned about.

MALCOLM HUTTY: Thank you, Sam. Okay, I think I can summarize then. At this point there appears to be a consensus of support for this approach, although it can be handed over to the lawyers to refine the wording of it. Sam is still raising the question of repose, but on the other hand it is noted that all the public comments that spoke to this issue, spoke against the principle of repose and our independent legal counsel had advised us that the potential for repose was not consistent with the bylaws as they stand today. So I would recommend to the group that we agree that further repose beyond this is not something that we can do, it's not within our power to recommend to do.

I see Kavouss saying that you oppose such a complicated and complex concept. Kavouss, we are saying that we will refine and clarify how this is put, the principle here is that you must file no later than the date of harm, or if it's later than that, the date that you should reasonably have become aware of the harm, or actually did become aware of it.

And if you should reasonably have become aware of it before you became aware of it, then it's when you should reasonably become aware of it that matters. And I don't know how to put it more clearly than that, but I'm sure the lawyers will help. I don't know if I can move forward or if we should continue this topic. David, please.

DAVID MCAULEY: Thank you, I wanted to do two things. One is, as the leader of the call, let me just ask, I heard a phone entry, so I wanted to ask if there is someone that is now participating who is on audio only and has not identified themselves before, and if so, would they please identify themselves?

REG LEVY: David, this is Reg again, I got disconnected.

DAVID MCAULEY: Thanks, Reg. And then Malcolm, I just wanted to comment too. I think Sam and Greg get to the difficulty here, and I agree that you and I worked up what is on the screen, I have no problem with that, and I certainly agree with that, but the question has been raised, should there be in addition to this, a third paragraph that says in any event there is a date of repose.

And what we're trying to do is balance equities between claimants and ICANN, and there is equity on both sides, I think, to be served. The one thing I wanted to note as I was listening to Sam is that in the IRP process, it's not the only remedy that someone has. There's always

litigation. Someone can go to a court somewhere if they have true grievance.

MALCOLM HUTTY: David, I'm not sure that's correct. In many cases, contracted parties I believe give up the right to go to a court and submit to the IRP as their only form of possible arbitration. Is that not correct?

DAVID MCAULEY: Okay, that's a fair point. Thank you. But I guess what I'm getting at, too, is the equities on both sides. So I can see the reasonableness of this. I do want to ask you to move on. I think you can move on, but my hope, and I think the hope of others, is that we can close this issue today.

We might give Sam a chance to come back. She asked where did this comment come from, to maybe look at this a little bit more closely and specifically, so I think we're making great progress, I don't have any quarrel with that. But we might have to do some work on list following it up. I would encourage you to move on, if you can.

MALCOLM HUTTY: Okay, in that case, I'll move on. We'll note that this is still a topic that Sam is raising an objection to. I would like to read into the record a comment Greg makes in chat, to change "no later than" to "on or before," which achieves the same effect while avoiding the double use of the word "later," which Kavouss, in particular, was objecting to. But before we move on, I'd like to read that into the record.

Now if we can move to the next slide, please. Regardless of how the time is calculated, we have the question of how long is allowed, based on when it is calculated.

DAVID MCAULEY: Malcolm, you have one remaining hand from Kavouss.

MALCOLM HUTTY: Oh, I do? Kavouss, I beg your pardon, please go ahead.

KAVOUSS ARASTEH: I would say that we need some sort of preamble for one and two. If one before talking of the date, which will say harm has occurred and claimant is aware of the harm on the date of its occurrence, then you introduce one. Two, harm has occurred and the claimant is not aware of the harm until later date, then we have to distinguish between the two before going to any dates. Two different cases. So it will be defined to quite clearly mention what are the two cases. Thank you.

MALCOLM HUTTY: Thank you, Kavouss. Moving to the next issue, we [inaudible] what we decide on the previous issue, we have the question of how would the XX be filled out? We had previously said 45 days to file and most public commenters responded, in fact, I think every public commenter that spoke to this issue, said that 45 days was too short. The most popular suggestion was 180 days, or six months, and the second most popular

suggestion was 90 days, or three months. I simply turn to the group and ask for your views on what would be an appropriate balance to strike?

DAVID MCAULEY: Malcolm, hi, it's David, and I've raised my hand as a participant. Let me do two things. Let me just read Sam's comment, which is a wrap up on the issue we just discussed, and is a prelude, I think, to what she will say on the list. Sam's comment is, "From what we can find on Sibley's advice, they noted that a one year bar on claims could stand and they provided other advice on the facial invalidity issue that we are no longer discussing."

Now, turning to the number of days, it seems that the most popular was 180, and the second most popular was 90. Maybe we could some to something in the middle, like 120; 180 seems long to me, but that's just my personal view. I recognize that 45 days may be too quick within which to react, but I could go for 90 or 120, I would be supporting something like that. Thank you.

MALCOLM HUTTY: Okay, I note that links did not actually recommend a particular time, but said that the test that we should ask ourselves is how long is so long that it would undermine the ability of the IRP to reach a fair decision. So perhaps I could ask the group, how long do you thing would be too long, such that memories would find, evidence would disappear, and then the IRP can reach a fair decision. Opinions please. Kavouss your hand is raised, go ahead.

KAVOUSS ARASTEH: Yes, my hand is raised because we have discussed at the beginning about the 45 days and we proposed that, but the way I understand it is most popular, or less popular, I think is based on a few comments, I think we should request logical and not propose a longer time, so I'm in favor a maximum of 90 days, but not more than that. Thank you.

MALCOLM HUTTY: Okay, Kavouss in favor of maximum 90. I read Greg in the chat saying, "120 days, we need to look at the timing of the empowered community and give it time to work."

Okay, so have the most popular suggestions are 180, then 90. Kavouss also saying no more than 90. And then a compromise being offered and seconded at 120. Is it possible for us to compromise on 120? It will be very useful if we could get this cleared up, if we could agree and compromise this now, we will have achieved something. Do I hear anyone objecting us agreeing to compromise on 120? Okay, David?

DAVID MCAULEY: Well, I was going to say, I could support Kavouss, too. I was either 90 or 120. If there is a hard feeling that more than 90 is too much, I could easily support 90, or I could support a compromise. I just want to go beyond 45, I think that's fair, and if we can stay under 180, I think that is excessive, myself, it's a personal view, that's all.

MALCOLM HUTTY: My personal view, actually, is that we are asking ourselves the wrong question as to how long is necessary and instead we should be asking how long impairs the operation of the IRP. I don't think that 180 days impairs the operation of the IRP, so I would go for whatever the longest compromise we could raise, so I'll add myself to the voices in a personal context, for 120. But David, you seem to be content with either 90 or 120?

DAVID MCAULEY: I am, and I would simply ask if there is anyone in the group that would object to 120? I know Kavouss has mentioned a hard cap of 90 days. Is there anyone else that would object to 120? Kavouss, your hand is up again?

KAVOUSS ARASTEH: Yes, if everybody agrees with 120, I don't want to be only one objecting to 120, I'll go with the others.

MALCOLM HUTTY: Kavouss, your spirit of compromise is greatly appreciated, and I'm delighted that we can close out one of the issues on this difficult topic on this call. Thank you. Please let the record reflect that the group has agreed on 120 days.

Bernie notes that there are 10 minutes left in the call. Now there are some other issues that were raised. The issue that we have just dealt with is the most complex and difficult topic. The remaining slides I have show what those issues are, and we will have to come to them at some

time, but I turn to David to ask, would you like me to proceed through those issues, or would you like to the other non-timing related issues in this call?

DAVID MCAULEY: Thank you, Malcolm. I would like to pursue the timing issues henceforth on the list. If it's okay, I would like to initiate a discussion about the joint issue. But saying that, we've recognized Sam has some comments to make on list, and there are some additional issues as you point out. I think we've made great progress, and I thank you Malcolm for taking the lead on this. But let me move to the next issue, if no one has any concern with that. So, Brenda, if you could put the other slides up, the ones that I sent. The slides, by the way, are really just talking points.

What I've put up on the first slide, is as we consider issues revolving jointer, let's remember two fundamental bylaw provisions that are sort of the backdrop for this discussion and all discussions, and one is that the IRP is intended to secure just resolution of disputes and that the rules of procedures of the IRP are meant to ensure fundamental fairness and due process. And so in that context, I wanted to note that a number of commenters talked at jointer.

We have jointer issues raised in the context of parties that were involved in other panel decisions below. For instance, we're talking here about expert panel decisions, which are now subject to IRP review. These are things likes string confusion and legal rights objections, those kinds of things. And so there is a request of people who effectively won

their cases below, are not ignored, if a claimant is unsatisfied with that panel's decision, goes to IRP, and could have a right to join. That's one of the issues about jointer.

The second bullet says that there is an issue over should a procedures officer from the panel decide questions of jointer, or should the panel decide questions of jointer. And then I think it was the IPC who said there should be a an express indication that there isn't a page limitation for other parties, so if we can scroll down to the next slide.

I mentioned two parties that commented. One is a law firm Fletcher, Hale, and Hildreth, I think Robert Baldwin was the author. But there is another author here who is the prime mover in this particular case, and that's Cathy Kleiman, who many of us know as a participant in the GNSO.

And then the GNSO's IPC also commented, and I should note that the non-commercial stakeholder group, and I failed to put them on a slide, that was my inadvertence, the non-commercial stakeholder group has made points that largely are similar to those made by the law firm Fletcher, Hale, and Hildreth. Cathy, in Robert Baldwin's note, asked for a couple of things to be done in the jointer issue. I see I have 6 minutes left. So I'm basically setting the table for further discussion.

One is, they would like actual notice to go to all the original parties in the expert panel decision that's being challenged. Two, they ask for a mandatory right of intervention, that is for people to be able to join, to people who were parties in the panel. That doesn't mean they have to intervene, that means they have a right to intervene.

And then three, there would be a right for parties to be heard prior to an IRP panel making an award of some intermediate remedy, like putting an action on hold, intermediate relief. Those are the things that motivated them and they thought that these rules address. The IPC said, and by the way, the non-commercial stakeholder group followed very much along those lines.

The IPC did, as well, using the words, "directly involved" in the action below, it should have a right to intervene, and I believe it was the IPC that said anybody that comes in as a party should have the ability to file equally detailed statements, whatever the limit is, I think it's 25 pages.

So, there are ways that we can approach this. I think it's a fair request that involved below who won at the expert panel, and now see their win being challenged, should be able to be parties, and should have a right to be parties, I can see that. We can also consider whether there are ancillary parties that might have a right to file an amicus brief, a friend of the court kind of brief. But as I set the table, I shouldn't take up all the air time, so let me just open the floor to ask if people want to comment on this subject, I mean, we're going to have to do more work on it, I'll have to address it in our next call, but are there people that would like to make a comment? And I see Sam Eisner's hand is up, so I'm going to ask Sam to comment.

SAMANTHA EISNER: Thanks David. So, this is not actually about the substance of the recommendations and jointer, and the question of whether or not people are appropriate to be part of it, particularly as if it relates to a

panel decision that other parties were involved in, et cetera, I think we do need to be careful as we consider these, that we recall what the definition of disputes are, and that we don't write rules that allow people to re-litigate a panel decision through the IRP, but make sure that any one that we would allow jointer, or for this instance, using the example of the expert panel, that it's tethered to whether or not that expert panel decision resulted in a violation of ICANN bylaws or articles, and that we make sure that we tailor any jointer to supporting that discussion within the IRP.

Because we're not granting the IRP the ability to re-litigate things, we're granting the IRP the ability to make a determination on whether or not an action violated ICANN's articles or bylaws. So, I think we just need to be careful, if we intend to include jointer rules, that we make sure that the purpose of them is well described and limited to the purposes of the IRP.

DAVID MCAULEY: Thanks, Sam. I think that's an excellent comment, and I was basically assuming it, but I think I should have said it. So, I agree. None of the things that we're talking about should enlarge, or can enlarge, in my opinion, enlarge on what the bylaws provide. So, the people that are theoretically joining as parties that would be considered under jointer here, are going to be sort of on ICANN's side of things.

In other words, bending the case against the claimant. And so my expectation is that the claimant is going to bound to make the claim that the panel decision violated the articles or the bylaws, and it's going

to be a high bar to meet. So, I think you made a very good point. Thank you for that.

I promise to the group to address this further in our next call. By the way, our next call is next week. Is that correct, Bernie?

BERNARD TURCOTTE: Yes, I've posted it in the chat.

DAVID MCAULEY: Okay, thanks Bernie.

KAVOUSS ARASTEH: David, is that 27th? The 27th of March is Monday, Thursday is not the 27th.

DAVID MCAULEY: Oh, I believe the call is on Thursday, a week from today, which would be 30th, thank you Kavouss. But in any event, I have to go through this a little bit further, but I wanted to set the table and start the juices flowing on this issue, because I'm going to be looking for comments next week.

It seems to me that there are some legitimate comments about people having a right to join as a party, and I think that if you take a look at the slides and maybe some of the comments, those three comments, non-commercial stakeholder group, ITC, and the law firm, Fletcher, Hale, and

Hildreth, you will get a good feel for what the issues are, and I look forward to further discussion.

We have about a minute for any other business, and so I'll ask if anybody else has any other business that they would like to raise, and then I will simply mention in that, I'm going to come out in the list and talk a little bit more about people volunteering, and how we might be able to manage the comments and move them forward.

Anybody want to make any comment? [AUDIO BREAK] Seeing none, I would like to thank everybody for what I think was a productive call and everybody's participation, and look forward to chatting next week and seeing you all on the list. So that will be the end of this call. Thank you.

[END OF TRANSCRIPTION]