BECKY BURR: Okay. I think we're going to have to wait until David gets on to talk about administrative stuff. I guess a question he would ask is: does anybody have any new or amended Statements of Interest?

Seeing none, why don't we go ahead and start the discussion on the timing issue. I'll turn it over to Malcolm to do that.

MALCOLM HUTTY: Thank you, Becky. Okay. At the last meeting, we made some real progress, I'm glad to say. We made two significant decisions on [inaudible] the timing decision. Firstly, we considered the proposal from the Business Constituency and the Internet Service Providers and Connectivity Providers Constituency, but we simply put a moratorium on introducing any new rules on the timing issue and left it so that we could study what the effect of such timing rules would be in detail over an extended period.

We decided not to accept that proposal. There was a consensus to set that aside and not to agree with it.

We then went on to consider the time after the person became aware that they had suffered harm that they should be allowed in order to file a claim before the IRP, which had been set at 45 days in our first draft. We considered the public comments received, and we settled on a compromised number. That was 120 days. That was a compromise. It was something that was reached by consensus in the group. So that constitutes real progress as well.

The next item was on the fixed outer limit of 12 months – what's sometimes being referred to as the statute of repose. Now, I simply felt that in the meeting we were getting close to the point of saying that we would accept the recommendations from, essentially, all the public comments of not to have such a thing, but we were running out of time.

Sam Eisner did say that she wanted to come back to that issue on this call. So I would like to turn to Sam. Sam, you've seen that I've posted on the mailing list a summary of the public comments received, which shows some of the arguments that have been put. I haven't included all the arguments that were put in those. I just put some brief excerpts to give an idea of the feeling on this matter and some of the arguments that are being raised on it.

Sam, do you want to continue to argue for a fixed outer limit – a statute of repose? If so, I turn the floor over to you to make your case.

SAM EISNER: Thanks, Malcolm. I don't know for lobbying positions here or not, but I just wanted to make sure that we understood where ICANN was coming from in this conversation and give some points for thought by the group.

First, I have sent around a response to the note you submitted earlier. In particular, one of the things we were discussing last week was – I had heard you mention the fact that there's something to these memos that suggested that an outer limit wasn't appropriate, so, using that reference you gave this morning, I went through Sidley memo that that came out of. Whether or not the group agrees that there's a proper

statute of repose or not I think it's important to reflect that the Sidley memo was addressing a different point. It's not clear to me at least that they were saying that there's an issue with having an outer limit in the Bylaws [inaudible] they produced a draft that still included an outer limit for some [write-ins]. So I want to make sure that the record on this is pretty clear.

For number one, we don't think that it's inappropriate under the Bylaws to have an outer limit, if that's what's appropriate. As I think I mentioned on the prior call, we have to consider the IRP in total, including the purposes of the IRP that are stated in our Bylaws, and look at issues of efficiencies and look at issues of broader accountability, as well as what it means for the IRP to bring matters to a close, and that there might be some point where it could be too far from the time ICANN for the appropriate action to be an IRP.

Now, to be clear, I think that this is something that we need to figure out from the IOT standpoint. It's not necessarily just about the issue of repose, which is the issue of what we mean by the IRP in and of itself. I understand that there is a concern that there's one action from ICANN and, when you look at the idea of repose, it's use-or-lose it. If you don't use it within the 12 months, then it's gone.

But I think that there is some confusion about that that we from the IOT standpoint can also help clear up. For example, if you look at consensus policy, there's an action by ICANN when ICANN would accept the policy recommendation coming out of the GNSO on a consensus policy or any other policy through the GNSO PDP process. So that's one action that ICANN [inaudible].

Then there are the follow-on issues that come from that. I see, in the concerns raised, such as the NCSG, that it's not fair that ICANN would just take action on a consensus policy and any downstream action would have to be timed from, for example, a 12-month limit of repose on that.

Well, I don't think that that's something that ICANN has ever suggested should be the case, because as we know – and we have a consensus policy recommendation that's accepted in the first instance – there are other things that happen down the chain. It goes into implementation processing, then ICANN issues an implementation directive to the contracted party. That's a separate action from the acceptance of a consensus policy. It sets a different timeframe. So I don't think, from ICANN's standpoint, we were every considering – again, going to the consensus policy issue as the example – that it would just be that first action that you time everything from.

So I think that's an important concept, just to make sure that the [inaudible].

MALCOLM HUTTY: If I may comment to ask you on that. That's clearly that issue of whether the application as our policy, which is alleged to be outside ICANN's mission [driven set] worthy, in fact, probably many of the public comments. I'm surprised we could [drill] down into that issue.

Clearly in that scenario, there are actions further down the line. There's first the Board's decision to accept a consensus policy recommendation and adopt that as policy. Then there are various implementation actions

further down by ICANN to bring that policy into effect. Then later there may be further actions that are done by people that are not ICANN to bring that policy into effect. Further, there are various things that happen further down the chain.

But if you base the timing off one of those further-downstream actions, then wouldn't a challenge have to be against that downstream action? Wouldn't it be the [inaudible] if you wanted to challenge the Board's decision to accept that consensus policy recommendation on the grounds that they ought never to have accepted that recommendation because the recommendation required something that was completely forbidden to ICANN? That you'd have to challenge it based on the date of that decision by the Board? Would that be correct or do you read that differently?

SAM EISNER: I think that's right, Malcolm. You look at what you're trying to challenge, but what would be there in a policy – I think this an area that makes sense for us to discuss because I think, from the ICANN standpoint, this is what has made this conversation very difficult for us. It's hard for us to imagine what it is that was really bad about a Board acceptance of a policy recommendation that wouldn't have been challenged within a period of time, that was just so bad that it shouldn't ever have done that. When contrasted to how ICANN implements that, that might be something that's against the mission.

So is there an example of what that is? We've never been quite clear about what that concept is trying to get to; that everyone would have

not been on watch for a 12-month period about the acceptance of a policy that went through all the other transparency stuff about it within the GNSO Policy Development Process and went through public comment and had all those other things and got to the Board and the Board took action on it and that there was something inherently wrong about the Board's action on it.

What are examples of that?

MALCOLM HUTTY: Well, there's a detailed case example set out in my own submission, actually, Sam. If you look at those link submission for the public comment, it's a constructed example. So it's slightly silly on the face of it but it sets out the structure of such a thing and speaks to a policy which is fundamentally forbidden to ICANN as to the kind of policy it can have.

Now, it might be that such a policy was entirely supported by the community and the community wanted ICANN to do this. But it is, nonetheless, forbidden for ICANN to do it. Then a party down the line, when they're affected by it, might wish to challenge and say, "No. The community was wrong. It wasn't that the Board was somehow acting procedurally improperly or irrationally," or anything like that. It's just that what the broader community wanted to do as a whole the Board agreed to do on their behalf. It was something that is not ICANN's place to do and is forbidden for ICANN by the limited mission. That would be the nature of the claim that was being discussed there, and that's the nature of the claim that I think drove a number of the public comments. It certainly drove my public comment.

DAVID MCAULEY: Malcolm, hi. Can I interrupt for just a second? Thank you both for discussing this. I just wanted to mention that I'm on the phone now. I can speak. I want to apologize to the group. I want to thank Becky – uh oh. I just lost my Internet connection, but I'm still on the phone. I want to thank Becky for taking the lead. Malcolm, thank you for starting this conversation.

I'd like to say that, by reading your mail and Sam's, it appears to me that there may be a way forward, but it will require a discussion. It's sort of in the nature of a discussion, Malcolm, where you've taken the lead, and now maybe Sam and I could join you on a conference call and save the group from this part of the discussion. Maybe we could take it up separately offline in the next day or so or maybe early next week. That would be my suggestion, rather than having an extended argument about it now. I think there's, from the e-mails I've read, a way forward. We might be able to do that.

But then I would also like to recognize Kavouss, who has had his hand up, and see if we could move to the other timing issues that you mentioned, Malcolm – the ones that we need to clean up. Would that be a way to move forward?

MALCOLLM HUTTY: Right. Well, if Kavouss has got his hand up, before I reply to the points that you just made, David, perhaps we should go to Kavouss first and hear his comment.

DAVID MCAULEY: That would be fine. Kavouss, you can have the floor.

KAVOUSS ARASTEH: Yes, David, there's no problem if you, Malcolm, and Sam have some discussion offline, discussion in one way or the other to have something and postpone the issue until you have a result. But one thing is very important: I totally disagree to an open-ended talk. I also disagree that it should open-ended but subjected to arbitrary decisions by the ICANN for some time. Whatever time it is, we need to decide – 12 months, 15 months, 18 months, whatever. This must be a decision of this group but not open-ended nor some things will be decided [inaudible] according to the people that [inaudible]. That may or may not be fair. So I give it to you, but take these three important issues into account. Thank you.

DAVID MCAULEY: Thank you, Kavouss. If Malcolm and Sam agree – anybody else would be welcome to take part, too – I think we could probably address this fairly quickly and come back to the group with what we're suggesting. But I take your point. We do –

MALCOLM HUTTY: David, I'm happy to have that discussion, but before we obsess on matters of [moving] forwards, firstly, Sam has challenged my interpretation of the Sidley letter. I'm not entirely in agreement with Sam on her reading of the Sidley letter. So that's maybe something that can be looked at.

Secondly, even if it was determined that the statute or repose is permitted by the Bylaws, there are substantial reasons being offered, while nonetheless we should not go down that route, even if it is a route that is permitted to us. So if the basis of this discussion is to clarify whether it is, I don't know if those two points affect your desire to have this small group or not. If it rested upon actually sorting that out in the belief that then that would mean that actually there was a willingness to do this, then maybe it's not helpful and it wouldn't achieve that. But if you think it would be useful anyway, I'm happy to go down that route. I leave that up to you now, but I want to make this case [inaudible].

DAVID MCAULEY: Thank you. I think it would useful if you are both willing to do it – useful in the sense that it will save time on this call. We're looking for a way forward, and we have many comments to work through. The call time is becoming somewhat precious, and we've had a lot of air time with the whole group on this issue. So what I'm saying is: let's see if we can talk. Maybe it would be a short conversation. We may not be able to reach a meeting of the minds, and then we'll have to think, "What now?" But that's what I'm suggesting.

MALCOLM HUTTY: Okay.

DAVID MCAULEY: The other thing I would say is that I've read the mails, and one reason I like to participate is that I may be able to help in this respect. I don't know. Can you hear me?

MALCOLM HUTTY: Yeah. Okay. That's great. If that's the way you want to take this next, I would be happy to participate.

DAVID MCAULEY: Thank you. Sam, would you be willing to?

SAM EISNER: Most definitely. Thank you.

DAVID MCAULEY: Okay. Thanks. Malcolm, could we move to the other points that you had on timing?

MALCOLM HUTTY: Yes, certainly. If we can look at those on the slides, there are five points here. I think these are much less complicated propositions than the proposition that we've been discussing. So I hope we'll be able to get through these quickly.

They are, briefly, a proposal to exclude days that are spent doing mediation from the count of days for the deadline, a proposal that we explicitly specify that we're talking about calendar days and not working

days, a proposal that we should only start the day count when translated documents are available, a proposal that we give the IRP panel discretionary power, subject to limitations, to hear claims that are filed after the deadline, and that a proposal at the effectiveness of this deadline be subject to periodic review, or at least a first review after a defined period of time. So they're the five questions.

Let's go to the first one first. The proposal from one commenter was that, when we calculate the number of days to dispense, whatever the basis of that calculation is, we exclude days during which ICANN and the claimant are in mediation, whether that's a formal [statute of] mediation. Maybe that's the request for consideration or something like that. We take those days out of it while they're doing that mediation so as not to dissuade the claimant from engaging in mediation, so that they can seek to resolve this through mediation rather than forcing it to a full IRP.

What does the group think about that proposal?

DAVID MCAULEY: I see that Sam's hand is up. Sam, why don't you go ahead and take the floor?

SAM EISNER: Thanks, David and Malcolm. As a matter of background, for the current CEP process, which I assume is what's being referred to when there's a discussion of meditation – that we also have a new mediation thing within the Bylaws – we have what's allowed for as tolling. The CEP must

be initiated I believe within a similar timeframe as the IRP. But then your ability to bring IRP is then tolled or stayed until that CEP is closed and sometimes with a short period of time after for the party to then perfect their filing if they wish to then proceed to the IRP. So the concept of excluding days or using the concept of a stay isn't unheard of, and I think it's something that we would support.

I think you've raised some good questions, such as a request for reconsideration. One of the things that wasn't clear from the accountability proposal was that the reconsideration – the accountability proposal did not state that the reconsideration process was a precursor to the IRP or that claims had to go through a particular sequence in order to get to an IRP. I know we do have hard dates around the request for reconsideration process now in the Bylaws, where there used to be a bit more flexibility in how those were done.

I think it's a good question. I think we need to consider more whether or not it would be appropriate. If the claims that are in an IRP are closely-enough related to a request for reconsideration, it would make sense to toll an IRP for the request for reconsideration.

DAVID MCAULEY: Thanks, Sam. Kavouss, your hand is up.

KAVOUSS ARASTEH: Again I have a problem. I have a problem: here we're going to the open-ended situation, saying that the mediation time should not be counted. Suppose that we give them three months or six months. Will that be

counted? So I don't think that that is the logical thing to do, number one.

Number two, I do not know to what extent a public comment, one or two, overrides the decisions of the 76 or 78 people in the CCWG Work Stream 1 that you have decided these dates and this issue. Why would one or two public comments override that? I have been working in the ICG. I have also been in the CWG. I have worked with the CCWG for the first Work Stream. I don't think that we have taken 100% of all the public comments and overriding whatever the majority of the people decided by consensus. I don't understand. Why do you have to exclude the mediation time? There is no reason for that. Thank you.

DAVID MCAULEY: Thank you, Kavouss. Next I have my hand up because I'll comment as a participant. With respect to you, Kavouss, I think I largely agree with Sam's comment. Also, basically, the Bylaws ask for the IOT to come up with the timing parameters.

I do agree that we have to be wary sometimes of letting one or two comments change the course of what a group decided, but in this case, the group, in my estimation, decided to let the IOT decide on timing. Malcolm made a good point, among others that let's encourage mediated dispute resolution.

Anyway, I come down on the side of what Sam said, and I think there's some promise here. That's the end of my comment.

Does anybody else want to comment on this? If not, Malcolm, the floor is yours.

MALCOLM HUTTY: Okay. Thank you. I agree on the process issue. I agree with you and Sam, David. Kavouss, I don't think that the CCWG had reached a consensus decision on the final structure of these rules that we are discussing now. I think the only decision the CCWG has taken on this subject was the decision to send these out for public comments so that the public comments could be received by us and considered by us. And that's what we're doing now. We're going through that process.

KAVOUSS ARASTEH: And accepted by us. But not considered. Accepted. If you don't accept, you don't accept.

MALCOLM HUTTY: Well, indeed, we are considering it now. Actually, at the last meeting, there were two substantial constituencies, parts of the GNSO – the BC and the ICCP – that put in a proposal. At the last meeting, we decided to reject that proposal. So we are willing to reject proposals when we think it's appropriate, but we must give consideration to these. These are the issues.

Now, these five issues that we're going through now are simply issues raised once. They came out by a single commenter in each case. So the process where doing now is I'm putting it on the table to see if they gain support in this group.

Now, Sam has said on this that she would like to consider this. Kavouss, you said you don't want this to be open-ended, and I understand that. But I also heard Sam say that the request for reconsideration is now a fixed time-limited process as well. So maybe that was addressed – the point that you raised.

I must say I'm not hearing a strong view either way. It sounds like, from the views being raised, that what we desire is to table this, to look at this more and to have some more time to think about it. I don't myself hear a clear sense of: "Yes, we're agreed on this and we can sign off on it and be done with it," or, "We wish to drop it."

David, I see your hand up.

DAVID MCAULEY: Thanks, Malcolm. Again as a participant, I would say I agree with you. We've had a discussion. I think the discussion is leaning towards not counting these days, although Sam wants to consider it further. But I think what we want to achieve on the call is air time for people to discuss and then close these out on the list, if possible.

So I would suggest, if there's no further comments on this, that we move to the next item and try to get through these on this call with the understanding that, as a group, we're going to have to do a lot of work on-list in any event to make sure that we hit the next date that we set. Thank you.

MALCOLM HUTTY: Okay. Let me try to move this along then. Okay. The next one I think is an even simpler one. One commenter asked to clarify whether we were talking about business days or calendars days for the days that we're assessing. I must say I thought we were talking about calendar days. Are we agreed that that's what we mean? Then we can just be specific about it. What does the group think?

DAVID MCAULEY: My hand is up as a participant. I agree with you, Malcolm. Since we're talking about something on the order of 120 days, I think we should set this as calendar days. I think that's reasonable. Thank you.

Does anybody else want to make a comment in this respect? Seeing none – no hands up – why don't we move on then?

Malcolm? Can I be heard?

MALCOLM HUTTY: I'm sorry. I was on mute, wasn't I? David, go ahead.

DAVID MCAULEY: Okay. Thanks. Malcolm, I think we can move to the next one then.

MALCOLM HUTTY: Yes. Sorry. I was speaking into a muted microphone. I was just saying that I didn't hear any opposition to this but that we'd come back. But maybe the [inaudible] could reflect that there was no opposition to that proposal.

The next proposal is that the day count should start from the date that translated documents were available. This was from participants, from commenters, whose first language was not English, who were concerned that people whose native language is not English might be disadvantaged in the timeframes and the counting if documents were not available in their own language and that, therefore, the timing should be based on when those things were available in their own language.

So that's the proposal. I have my own views on this – my own views in the negative, actually – but I'll send this over to the floor before I give my own view.

DAVID MCAULEY: Thank you, Malcolm. It's David again. I raised my hand, and then I lost Internet connection on Adobe. This is just not a good call for me. I'm sorry about that. So I'll have to ask if Bernie could manage the queue. Or Malcolm, if you could manage the queue.

My comment as a participant on the translations is that I'm a little bit less certain here. For instance, if someone's first language is Spanish but they also speak English, then they will effectively have a longer period of time. What happens when translations aren't done, when there are no translations made? Even if we did agree to something like this, I think it would have to stipulate ICANN standard languages. But then we'd have to hear from ICANN on what they translate and when they translate, etc., etc. So I'm a little bit more concerned about this one.

That's my comment as a participant. I will try to get back in, but I'm not in Adobe right now. I can't see.

MALCOLM HUTTY: Okay. The next I see raised is Kavouss. Kavouss, please go ahead.

KAVOUSS ARASTEH: David, I disagree with you. I do not belong to those seven languages, unfortunately. However, you could not put too much stress on the English language, saying that the one who speaks Spanish who also knows English could have benefited a way until the Spanish is available. But that is [inaudible], so we should accept that. We should decide, if the [inaudible] is translated, the dates should be counted from the date that translation of that language is available. That's all. So this is something standard. We could not change that. Thank you.

MALCOLM HUTTY: Thank you, Kavouss. I'm looking to the queue. I don't see anyone in the queue. Sam, you're back in the queue. Please, Sam, you have the floor.

SAM EISNER: Thank you. I think we need some clarification if we were going to bring this in. What documents are we looking at? And there would have to be an understanding of whether or not this is a document that's required to be translated. Not all actions of ICANN, particularly now under the expanded IRP, are going to be reflected in documents that are subject

to translation. So we need a lot more particular guidance around this so we'd have some way to identify what it is that we're supposed to do.

Let's just go back to the example of how the IRP is used today. We have a timed deadline to file an IRP because IRPs right now that are only about Board action. You use the posting of the minutes from the meeting where the Board took the action. So that's where you start your count – from the posting of the minutes.

So we know – and we've been doing this for years out of ATRT – that we have an obligation to get those minutes translated. We try to work on approximately a – I haven't been doing this side of the work for a while – 21- or 28-day SLA to get those translations up. So there's that kind of timing aspect.

But if we're going to give people time to bring an IRP based on translation, we'd have to understand what the expectation of translation is, where the requirements are, and what the timing requirements are so we understand where everything goes.

Now, where translations might be important is when we're looking at these known or should-have-known – if someone who is not an English speaker doesn't realize that they were impacted by an action from ICANN until they read about it in a translated document, well, that's a way that someone demonstrates to ICANN and to the IRP panel that they filed their claim in an appropriate time because they had no reason to know until the information was provided to them in a language that they understood. That's an example of how it could be used.

But setting a hard timing deadline in these supplemental rules about translations I think would pose a lot of administrative burden in understanding where there were obligations to translate, where there weren't, etc.

DAVID MCAULEY: Thank you, Sam. Kavouss, you're next in the queue.

KAVOUS ARASTEH: The last point made by Sam is a valid point. We have to decide or the meeting should decide which documents require translation. However, once we decide that, then we should say, for the document which is in English, the deadline is still a deadline. For the document which is in another language, the deadline would be after the translation of that language is available. This is something we've done with other fora for more than 60 years. Maybe ICANN does not have sufficient experience but other people, other fora, they have. [inaudible] any problem. They could decide what documents should be translated. We have decided in other fora that X and Y will be translated and that will be in the initial or regional language.

So we have to decide on that. Is that going to be translated? The deadline for the English would be what is in the rules and the deadline for the other languages would be after the time they are available. This can be worked out. Thank you.

DAVID MCAULEY: Thank you, Kavouss. If there are no –

MALCOLM HUTTY: If there are no further hands, I'll come in as a participant.

DAVID MCUALEY: Okay.

MALCOLM HUTTY: Speaking as a participant, I have some difficulties with this. I sympathize with the aim to ensure that nobody is disadvantaged by the fact that ICANN's business is conducted primarily in English and that nobody is disadvantaged by the fact that they don't speak English in that or are discriminated against in the accessibility of the IRP. I think that's a very laudable aim and one that I would support.

But in terms of the implementation of this, to build it in as a strict requirement that timeframes count from the date of translated documents I think raises some considerable problems. Sam has spoken to many of those problems, but actually I think it goes even worse than that. I think ICANN would have an even greater difficulty than Sam is alluding to there because, under the new Bylaws, a complaint can be made not only about a Board action but about any action by the corporation at all if it is alleged that that action is a violation of Bylaws.

Now, that could be something that's about a document that certainly wouldn't be normally translated. It could be about an internal e-mail or an e-mail between two private parties. It could even be about something where there was no document involved it all. So I think there'd be real problems with applying this that way.

The approach that I would prefer to take on this would be to acknowledge the language issue when calculating whether somebody reasonably should have known what they presume to have known. That I think would deal with quite a portion of this, David.

The other way that I would hope to deal with this also would actually be the next proposal in line on our agenda, which is the discretionary power for the IRP panel to be able to handle a claim that would otherwise out of time if it's in the interest of the IRP process to do so that I think would also address this same thing without putting in place a rigid rule that would be very difficult for ICANN to apply. So that would be my preference.

Okay. That's me done as a participant.

DAVID MCAULEY: Malcolm, I had my hand up but I took it down because you made a point I was just going to make and it's a nice segue possibly to your next point. But I think not only is Sam point's a valid one, about should-have-know, but we're also going to deal with another request: that the Board be able to take out-of-time appeals in certain cases. So why don't you move onto the next issue?

MALCOLM HUTTY: Okay. Let me move onto that then. The next one was a proposal – full-disclosure. This was a proposal from my organization; none of the other proposals are from me, but this was one from me – that we give the IRP panel a discretionary panel to hear claims that would otherwise be

deemed to be out of time. That power would be issued subject to conditions, and the kind of conditions that were proposed were if the IRP panel was to decide that hearing that claim was necessary to fulfill the purposes of the IRP. Now remember, the purposes of the IRP are set out in the Bylaws themselves. And also to say that the IRP panel must only exercise that power to hear a late claim if they believe that the passage of time does not impair the ability of the panel to assess the claim fairly. So those are the kinds of conditions that we could put on it.

That would give a bit more flexibility on the timing issue and maybe hone off some of the sharp edges that might end up being unfair in a range of cases. One of those cases where having this flexibility would apply would be in case that the case that was being alluded to before, where, if a party was disadvantaged by the fact that they didn't speak English and therefore weren't really able to understand what was going on because of the language barrier. That would be one of the cases when the IRP might think that, in the particular case, given the circumstances, it was necessary to hear it. But there might be others.

So that's the proposal. I open the floor.

DAVID MCAULEY: Thanks, Malcolm. Kavouss has his hand up first in the queue.

KAVOUSS ARASTEH: Again, here I have some problems. Claims to be decided late – how late? One month? One year? How long? Thank you.

MALCOLM HUTTY: Okay. Thank you. David, your hand is up?

DAVID MCAULEY: Yes, as a participant. I'm not in concept opposed to this, but I think the conditions should include that ICANN or any other party is not disadvantaged in this and that it be an unusual circumstance. I can't come up with the words right now, but this should become a matter of course. That's what I'm getting at. And it should not disadvantage, as you point out, the panel's ability to hear the case and the other parties involved ability or their interest either. Thank you. That's my comment.

MALCOLM HUTTY: Yeah, it can't be just simply that there is no disadvantage to ICANN because obviously ICANN's interest is in having all claims struck out. But it shouldn't be unfair to ICANN. They shouldn't unfairly impact on their ability to defend the case. If it does, then that should be a very good reason for striking out a claim.

DAVID MCAULEY: Thanks, Malcolm. Sam, your hand is up. You're next in the queue.

SAM EISNER: First, to your recent comment, Malcolm, I think it's important to note that ICANN's interest really isn't just to have all claims struck out. I think that, if we're to embrace the accountability enhancements and the community accountability, ICANN's interest is really in making sure that ICANN is acting in accordance with its mission and Bylaws. If we have to

go through an IRP and we lose an IRP and it's found that we need to make changes to our processes, we'll make those changes. But let's turn now to the issue –

MALCOLM HUTTY: I'm delighted to hear you say that and I stand corrected. Please go ahead to the main point.

SAM EISNER: To this point, I think David raises a really key point because this isn't just about the impact to ICANN. The whole timing discussion relates a bit to the repose discussion that we had before. It isn't just about impacts to ICANN and how ICANN cannot face challenges. That's not the whole sum and purpose for my participation on these issues.

We have a broader issue here. ICANN's actions don't just impact ICANN alone. As David alluded, many of ICANN's actions actually have impacts on other people, too. We have contracts. We have sometimes actions relating to specific contracts with people. Sometimes they relate more broadly. But there are other people who rely on ICANN to provide a stable environment for policy development, for business, for all those things. So we have to also keep that in mind as we look at any of these items.

I'm not clear what "late" means here, particularly with the open question on repose. Is this about someone who knows something, who should have filed within 120 days? We also need to look at this in terms

of the dates that we actually put in place. I think we have to get closer to inserting real facts into here.

So if someone didn't file within 120 days but filed within 240 days, what's the reason for doing that? Why would we want to support someone knowing something for that period of time and not bringing to ICANN's attention if there really was a problem with it?

So we want to provide a proper incentive for people to raise their hand and bring claims to ICANN when they think that we violated our Bylaws and do that in a timely fashion. It doesn't benefit anyone in the ICANN system if that isn't happening as quickly as possible within the time limits that we've set.

So those would be some of the concepts that I encourage the group to think about if you're going to move forward with consideration of the discretionary hearing of late claims.

DAVID MCAUELY: Thank you, Sam. Could we move to the next one, Malcolm? Oh wait. I'm sorry. Kavouss has his hand up.

KAVOUSS ARASTEH: Yes, please, can you wait? I think gradually we are totally violating really the purpose of the IRP, taking all of the dates and putting a lot of things like these – that would be a shaky IRP. I do not agree with this concept of late claims.

I fully agree with Sam on saying if someone knows that, they should comply with the deadline. They could not wait and think that, according to that, "I am late. Please accept this." I think we have to stick to whatever dates that we have. Outside that, they should not be acceptable. So I would disagree with that and I would not join any consensus on this issue. Thank you.

DAVID MCAULEY: Thank you, Kavouss. Once again, I just got bounced out of Adobe. It doesn't matter. We now have just a couple minutes left. Malcolm, could I ask you to mention what I think is the last timing issue? Then let's recognize we're going to have wind these up on the list. But why don't you run it past us on the phone?

MALCOLM HUTTY: Okay. The last one, David, was a proposal that, for whatever timing we will adopt, the effect of that should be kept under review or should be reviewed after a period. Or either after one period or periodically on an ongoing basis. That was the proposal, but there wasn't much specifics offered in that proposal as to how that would happen or who would do that. So that raises for me the question of: would we be doing that? Would the IRP panel be doing that? Or is this something that would be recommended to be added to some other body that might do such things, such as ATRT3? We might have it in.

When we report, one of the options that would be available to us would be to say, "This is our recommendations for the Rules of Procedure for

the IRP, and we also recommend that this issue be subject to review by ATRT3 (or by some other group).” That would be one of the options.

DAVID MCAULEY: Okay. Malcolm, thank you. I see Kavouss’s hand up. I’ll close the queue after Kavouss, and then I’d like to have some final comments as we close the call. Kavouss, if that’s a new hand, I believe it is…

KAVOUSS ARASTEH: Yes. I think this is a concept which lacks a lot of details, as mentioned by Malcolm and to answer, I don’t think that, at this stage, without having a complete proposal for who will review that, how long the review would be – every four years, every two years, and so and so forth – it is difficult to consider something that is just a rough idea of this kind. We don’t what it is. There’s no details about that. Thank you.

DAVID MCAULEY: Thank you, Kavouss. As a participant, I’ll simply say that, under 4.6-something, IRP may be reviewed under the accountability provisions. But we can get to that. I think we’ll have to close out the timing issues, Malcolm, on list. I’ll be happy to help you with that. I will be the one to try to get a phone call arranged with you and Sam and I. Anyone else, if you would like to join, please let me know.

Let me just finish this call by saying thank you –

MALCOLM HUTTY: David, does that mean that we will not coming back to the timing issue on next week's call?

DAVID MCAULEY: I don't think we will, Malcolm. No.

MALCOLM HUTTY: Okay. Thank you. That's important to me because actually I have somewhere else that I need to be then. But I will sacrifice that for the [inaudible] issues needed. But if we're not going to [inaudible] my apologies for next week.

DAVID MCAULEY: Okay. Thank you. My thanks this week to Becky for stepping in. it was not a very nice position to put Becky in. And my thanks to Brenda and Bernie for working feverishly to get me on the phone. And my thanks to the group for your patience.

We didn't accomplish what I had hoped, so let me just say I will come out with mail in the next couple of days – I want to get back home from Brussels, so probably early next week – to reconstitute things and stress the importance of moving some things on the list. So, sorry we didn't get to all that we had hoped to today, but I want to thank everybody for your participation. I thought it was a good all, and I'm very, very grateful for you all hanging in there.

That's all I have to say. Thank you very much. I believe that the call is ended, unless anybody wants to make a final comment.

Hearing none, let's adjourn. Thank you very much.

[END OF TRANSCRIPTION]