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>> DAVID McAULEY: Morning, everyone. This is David McAuley speaking. It's a small group, unfortunately, but I do think we have a quorum with which we can press ahead.

So I would like to thank the folks who are here on the phone for gathering. Hopefully a few more may join us, but I would like to get started and ask the recording be started.

>> This meeting is now being recorded.

>> KAVOUSS ARASTEH: David?

>> DAVID McAULEY: Yes, thank you. Kavouss, yes, would you like to make a comment?

>> KAVOUSS ARASTEH: Yes, I am sorry, I am just coming out of a meeting. I am just on audio. I am not connected to the Internet. I will be on audio listening to you and may be online asking to comment. I apologize for that.

>> DAVID McAULEY: Thank you, Kavouss, and we are glad you are here.

So the recording has been started, and prior to talking about the size of the group or anything like that, let me just ask if there's anybody else besides Kavouss who is on the audio bridge only and not in the adobe room, although I do see your

name in the adobe, Kavouss. Anybody else in that status?

Hearing none, for those of us who have gathered, if anyone has an update or a change in their Statement of Interest, I would ask that they please make a note of it now.

Seeing no hands and hearing nothing, I think we can press on to our agenda. Bernie, I just want to double-check with you, but in my opinion we have enough of a group to press on. There is a five by five rule, that you have five minutes gathered by five minutes past the hour. I think we have met that. Regretfully it's not more, but I think we should press on and do the best we can given our size. What do you think, Bernie? Am I violating any rule in that respect?

>> BERNARD TURCOTTE: How could you violate rules? No problem. Let's carry on.

>> DAVID McAULEY: Bless you, Bernie.

So let's move forward and go to item 2. This is the status of the timing issue and input from ICANN legal. I see that Sam is on the call, and I also note that Liz sent an email to the list with further thoughts on the timing issue. I think that email came in yesterday, and I have given it a look. I hope that everybody in the group has given it a look. I am sorry that Malcolm has not joined us. He is taking a leave for moving this issue forward, but let me ask Sam if you would like to make any comments on the timing issue from the ICANN perspective, or should we simply take into account the email from Liz?

Sam, do you want to make a comment in that respect?

>> SAMANTHA EISNER: Thanks, David. This is Sam Eisner for the record.

I think the email that Liz forwarded pretty much says it. We would be open to answering any questions people would have, but I think at this point we can let the email stand for itself.

>> DAVID McAULEY: Okay. So Sam, thank you for that, and thanks for being on the call early your time.

So my encouragement to our group is to make sure you take a good look at Liz's mail, and then I will separately ask Malcolm if he would be interested or if he has any wish to make a further statement in light of these comments or how else he might envision being a lead on this issue to try and move it forward. So I think that's sufficient for now. Unless anybody has a comment or wants to say anything about the issue, I plan to move to the next agenda item. Is there anybody that would like to comment?

Not hearing or seeing any hands, not hearing anyone or seeing any hands, let's move on to the status of -- if there's any update from Sam on the ICANN legal/policy teams with respect to steps that we might plan to help supporting organizations and

advisory committees undertake their role with respect to getting the standing panel put together. Sam, do you have any comments in that regard?

>> SAMANTHA EISNER: Yes, thank you. So we are doing a couple of things right now. We are coordinating with the Policy team to make sure we have outreach to each of the SOs and ACs to identify what they have in place already, if they already have tools, if they've already considered how they do that.

Also, one of the things we are working on internally is a proposed at least a draft flow of how we could see this going so we understand the different points in the process and we can see where we would expect a community to come in and the different decision points. Because as we discussed on the last call that I was able to attend, one of the things that we had all agreed with that was really important to understand the timeframe overall. And so we are working to chart that out, and we will be using that as part of our discussions as we are doing outreach to the different SOs and ACs. Because we are concerned, as other people from the IOT were concerned, about having a good timeline before we put the expression of interest out so we can let the candidates themselves know about how much time the process would take. So we are working on all those different fronts, and hopefully within a couple weeks we'll have some further update.

>> DAVID McAULEY: Seem to have a hard time getting off the mute button here. Thank you, Sam, for those comments.

Let me just mention one or two things about this. I participate in the ccNSO Guideline Review Committee, and recently I wrote to them there was -- the chair of the ccNSO, Katrina Sasaki, asked me to bring up to the ccNSO guideline folks what all was involved in IRP, and I sent them a memo. So I may send you a copy of that memo, Sam, and I will send a copy to the IOT team too, just for informational purposes, to see what I was suggesting to the ccNSO are things that they need to be aware of or coming down the pike, some of which they will be involved in but not all of which. So just so that in the interest of full disclosure, since I was telling them, I may just go ahead and copy it along here.

And so I know that as we remember, this group has written to the advisory committees and the supporting objections advising them of their role in the standing panel establishment, and that was, I don't know, some months ago. And then at ICANN58, I briefed some SOs -- well, the GNSO and one or two other organizations about it, and so there was -- there is a growing awareness and, I guess, a growing interest in finding out what this means. So these steps are important, and so

thanks, Sam, for that, and hopefully we can help along the way if needed.

If there is anybody who would like to comment on this item, please make yourself known now, or else we will move to the next agenda item.

>> KAVOUSS ARASTEH: David?

>> DAVID McAULEY: Yes, Kavouss, go ahead, please.

>> KAVOUSS ARASTEH: Are there any time limits? The letter you sent regarding ICANN58, is there any specific time by which they have to provide the name of those or not?

>> DAVID McAULEY: Thanks, Kavouss. David here for the record. No, I don't think there is a timeline, not that I recall, anyway. I think the time interest here is to move this along somewhat expeditiously because the standing panel is an essential component of the new IRP that was envisioned by the bylaws that just came into effect last October. And so it's important to move it forward in a sensible, informed way, and not let it languish. At least that's my opinion. But there was no timeline specifically that I recall.

Any further comments in this respect? Or questions?
Seeing none --

>> KAVOUSS ARASTEH: Excuse me. I didn't receive a quite clear answer.

>> DAVID McAULEY: Okay.

>> KAVOUSS ARASTEH: You said there's no timeline, but this, a member of the panel, would it be definitive that these are the members of the panel coming from the (Inaudible) that is my question. Has there been anyone nominated from any SO or AC up till now or not? That is the question. And when should this be completed? Now the member is established and the time that he is operating or ready to operate? That is my question on this, David. Thank you.

>> KAVOUSS ARASTEH: Thanks, Kavouss. To be honest, my ability to hear you -- you went very faint, at least on my line, so I am not sure I caught all of that. But Bernie, did you hear that?

>> KAVOUSS ARASTEH: I repeat. Has there been any member up to now identified by SO/AC as a member of the standing panel, and is there any time that the list should be completed that the panel should come into effect? If I properly understood the process, unless the panel has already been established, that is my question. I hope this time you have properly heard me. Thank you.

>> DAVID McAULEY: Excuse me. Thank you, Kavouss. I did hear you this time. My understanding is no SO or AC has chosen a member yet. If there are SOs or ACs who are -- now that they

are aware of it -- sort of looking for candidates, which is one of the things they should be doing under the bylaws, that is not known to me. So there's no panelists that have been identified formally, nobody's been appointed as a panelist, and the expression of interest will go out sometime soon once we and ICANN establishes what seems best for release in such a way that people who apply won't languish indefinitely. So that's my understanding of the state of facts now. If anybody has a different view or anything they would like to say, please weigh in right now.

>> SAMANTHA EISNER: David, this is Sam.

>> DAVID McAULEY: Okay, Sam, yeah.

>> SAMANTHA EISNER: If I could just come on top of your explanation, which I think is right. Kavouss, it might be helpful for you to understand and for everyone to understand that when the expressions of interest go out, it's not -- the SOs and ACs don't make the selection of the arbitrators in the first place. They don't make the nominations. We wait for nomination -- or we wait for the expressions of interest to come in from anyone, and it's only after that point that we'll get the list over to the SOs and ACs. That will be part of the process flow that we are trying to draw out right now that we'll share with the IOT. So the SOs and ACs are not -- they are not on the hook right now. The SOs and ACs are not expect today do anything at the moment other than prepare themselves for the process. They are not in a place where they have any obligation to make selections today.

>> DAVID McAULEY: Thank you, Sam. David here. I am having a real problem with this mute button. But thank you very much.

Anybody else want to comment further on this? Kavouss, did I answer your question or did Sam and I together answer your question?

>> KAVOUSS ARASTEH: Yes, properly answered by you and complemented by Sam. Thank you.

>> DAVID McAULEY: Thank you, Kavouss.

I think we are ready to move to the next agenda item, which is an update by me on issues as listed in the agenda plus one that I neglected to put in the agenda but later addressed in an email. And let me just explain what I am hoping to do here is I think we've had discussions surrounding these issues, joinder, panel conflict of interest, retroactivity of both substantive standards and USP rules and the idea of stanchion under the heading of materially affected as given to standing. We've had enough discussion that we may be able to move these forward. And so my hope here was to update these on the call, knowing that if we agree on the call, what I will do is put these out on

list as a call for first reading that people can comment to on the list. I would commit to getting this done by tomorrow, Friday. People would be able to comment to as a master of first reading on the list, leading up to next week's call, which would be sort of the when we would decide that it's past first reading if, in fact, it does, subject to what people have to say. So that's -- excuse me. That is what I am attempting to do, and that answers a question that Liz posed last week about, you know, she was concerned that we might be getting to first reading last week. So that's what the plan is here, is to go through these things, and that's what I intend to do, and I will start doing it right now. But does anybody have a question or comment on the process?

If not, let's move on, and so the items I was going to give an update on are the first one is joinder, and let me briefly read through where I think we are on joinder. Excuse me just one minute. Where I think we are on joinder, and it's as follows: I think we've agreed that anybody that has participated in the underlying expert panel proceedings, and with respect to a certain section of the bylaw, that they would get -- if they participated as a party there and another person challenges that, then those participants below would get full notice of the IRP and the request for IRP, those two things together sort of create the statement of the IRP, at the same time that the complaint is filed. And all of these parties would have a right -- a right -- to intervene in the IRP. But how that right is exercised would be within the discretion of the procedures officer. And you can see from the text, you know, that that might be as a full party, it might be as an amicus, whatever is decided. And it goes on to say that interim relief could not be available, settlement could not be available for an IRP without allowing people that have this intervention of right to have some say in the matter.

And then it goes on to -- I go on to say -- and these are in the slides I sent yesterday. Let me just take one second here. These are in the slides I sent yesterday. The third point would be the procedures officer would, despite these requests, try and do everything they can to keep the case moving as expeditiously as possible, as envisioned by the bylaws.

And then finally -- and this point is subject to some discussion on list -- finally we say that people who participate in this manner as amici in IRPs would be considered for the limited purpose of Bylaw 4.3R as parties. What that point was they should be eligible for cost shifting if their intervention is found by the panel to be abusive or frivolous.

Malcolm brought up a point on list -- and it's a good

point -- you know, that it should not be an open -- well, I shouldn't speak for Malcolm. He sent an email, and I would urge you all to read it. The way I took it is this would not be appropriate, that an amici would be subject to cost shifting because oftentimes they are just informational, et cetera, et cetera. I wrote back this morning saying maybe we could solve that particular part of it by saying the cost shifting would only be to the extent that an amici brief made ICANN incur costs in defending against a frivolous or abusive argument.

So I would propose that we agree with the joinder that I just summarized and with the change Malcolm submitted and with change submitted by me to the extent they require costs by ICANN to meet frivolous arguments.

So does anybody have a statement? Greg, you have -- your hand is up, so you have the floor on this respect.

>> GREG SHATAN: Thanks. It's Greg Shatan for the record, and I guess the -- a couple of things on this. First, in my limited experience, amici are generally considered to be nonparties and, therefore, are not subject to cost shifting in cases where cost shifting is available to parties. So I think there's kind of an uphill battle here to say that there should be cost shifting for amici in this case. I think it can also have a chilling effect on the participation of amici who may not have a dog in the fight financially to begin with to say that they could be subject to cost shifting.

Finally, especially where there is a question of whose side they may be on or nobody's side, it's a -- I guess it would be the other side who would submit costs, not the ICANN costs, would also have cost in the amicus brief.

It also brings the issue that cost shifting generally -- and I haven't looked at how it works in the IRP context -- usually involves, except in the case of, say, specific motion practice, all of the costs of a case. You know, loser pays type of thing. So you would have to deal with some sort of an accounting issue of how much time was spent dealing with an issue, which might be intertwined with other issues, not a discrete issue. So that creates kind of an allocation nightmare. So for those reasons, I am not in favor of putting a cost shifting burden potentially on amici. If there is an issue with frivolous or vexation briefs -- if they truly are, they are not going to be taken into account to a great extent, if at all, so that's a kind of punishment in and of itself. But I think that cost shifting is not the right tool to use to deal with the potential of frivolous, vexation, or bad-faith amici briefs.

We could also look at whether, in fact, amicus briefs need to be approved to be brought into the case. Or whether they

come in as a right. And it could be that if an amicus brief is such a pile of dung that it might invoke cost shifting if that were an option. The option would be just to say you are not a friend of the court, go away and take your pile of dung with you. Thank you very much. And thank you very much.

>> DAVID MCAULEY: Thank you, Greg. I see there's widespread agreement in the chat with what you said. I think with the email Malcolm sent, I am happy to let this one go. But let me mention a comment you were just saying. This particular amicus brief would be allowed in as a matter of right because these are from parties to an expert panel below. So they have intervention as a matter of right. It's up to procedures officer to decide whether that's as a party or as an amicus. So I don't think there will be an issue of accepting it, et cetera. But I do see the concerns you, Avri, Malcolm, and Samantha -- Sam -- has agreed with. So I am happy to let it go. So I think we are in agreement and will tailor this one not to have cost shifting for amicus briefs. Otherwise, I think that we are in widespread agreement on this, unless anybody else wants to make a comment. If not, I am going to move on to the next such update.

Sam, you have your hand up, so you have the floor.

>> SAMANTHA EISNER: Thanks, David. You know, as I noted in the chat, I share the concerns Greg raised around this, but I do appreciate the effort to try to hold some level of accountability to those participating in an amicus fashion. I think that going to cost probably isn't the way to do that. So the other thing we could consider -- and we can consider more, you know, online -- is, you know, are there other tools we can build in, are there other concrete rules or guidance to the panel about weighing interest and harm or something like that and not use money as the detractor for participation in the IRP?

>> DAVID MCAULEY: Thank you, Sam. David here. One -- let me just make my statement, and then I will ask if Kavouss has a statement.

One idea that comes to me in response to what you just said is perhaps we could write into the rules that even though someone has a right to intervene in amicus as a matter of right, that doesn't prevent -- or we should maybe expressly allow ICANN to immediately argue that such an amicus brief is abusive or frivolous and should not be considered, and the panel would have discretion to grant that. I mean, that's one potential.

But before I move on, I think I heard Kavouss. Kavouss, did you want to weigh in on this item?

>> KAVOUSS ARASTEH: Yes. I agree with what you put on the slides, but I don't follow with this counter proposal that you

made. What you are saying is in the list as you provided, I have no problem with that. Thank you.

>> DAVID McAULEY: Thank you, Kavouss. I think that we have changed the slides that I provided. I think that number 4 on the joinder recommendation is no longer viable; that is, that these people who participate as amicus curiae in an IRP would not be -- would not be -- eligible for cost shifting based on the discussion that we just had, and Sam made a good point that we might want to look for another way to hold such folks accountable for the quality of what their participation is, but we haven't reached agreement on that. That's just a matter under discussion.

I am going to try and move this forward to first reading, even though part of it may remain open, the part that Sam was just talking about, but I'll see if I can do it. But otherwise, I think this discussion is pretty much concluded unless you, Kavouss, want to make another statement or anybody else does.

>> KAVOUSS ARASTEH: No, I don't have another statement. Right now as you express, I have no problem. The way you explained it now, yeah.

>> DAVID McAULEY: Thank you. Okay. Thanks, Kavouss.

So moving to the next issue, which I believe is panel conflict of interest, let's move to that slide. We discussed this, I think last week or in one of the recent calls, and where we are on this is that we've agreed that there's a term limit of five years for panelists. That's what the bylaws provide for. And I think we've agreed that there would be no renewal. The bylaws do not make that point, but Work Stream 1, the final report did make that kind of a statement. It just didn't get into the bylaws. I had proposed something else, but I think there was widespread agreement that would be one term limit of five years nonrenewable.

The next point was that panelists -- we discussed that panelists who are sitting on ongoing cases that are pending when their term comes to an end can nonetheless proceed on and serve as a panelist in that case or cases if there's more than one,.

Two things. One is Sam or ICANN legal had suggested earlier that we might implement staggered terms for panelists by appointing the first standing panel in a manner where roughly half are appointed for five years and roughly half for a three-year term, and I thought my personal reaction was that was a very good idea. And it would avoid losing an entire panel every five years and all the experience that goes with it.

And so assuming we agree with that in the end, if we use a three-year term, would such three-year panelists be eligible for a nomination for a five-year term for a total of eight years of

service? And I said I would recommend yes on that. But I thought I would put that out there for discussion and see if anybody has any comment on that.

Yes, Kavouss, go ahead.

>> KAVOUSS ARASTEH: Yes, I think no matter who proposed that, I proposed that two meetings ago that we should not lose the continuity, and continuity is important. So I agree. Thank you.

>> DAVID MCAULEY: Thank you, Kavouss. Does anybody else have a comment on this? And will I put this on the list in this manner, recognizing a little bit further discussion is needed here. This will be a qualified first reading in that respect.

I also mentioned how do we handle case assignments? You know, if a panelist is appointed for 5 years, can a panelist be assigned to a case 4 years and 11 months into a term?

Greg, you have your hand up. Why don't you take the floor.

>> GREG SHATAN: Thanks. Greg Shatan for the record.

If we are using staggered terms, first off, I share your recommendation. I am obviously still on the staggered terms thing, not the case assignments. But I generally favor other recommendation that we allow the -- those that have the three-year terms to be eligible for a second term. So I guess they would -- we just need to make sure that we keep a stagger. So I guess they will be staggered because they will come in and be in years essentially four through nine or four through eight while the other -- the five-year panelists are one through five and then six through ten. So that keeps up the stagger. But I do think they should be eligible. I mean, frankly, I think having one renewal would make more sense than no renewals, you know, allowing for a total of a ten-year term, noting that for UDRP, we have panelists who have been UDRP panelists for nearly the entire history of it, and there's a certain knowledge base that we lose if we say that people cannot renew. Although I guess they could -- we probably should say that they are not done forever. They could run for the other stagger, if you will, after a two-year hiatus. Maybe we need to clarify that if that's not clear already. I understand the desire not to have a permanent establishment, but given how long IRP cases run compared to UDRP cases, it seems counterintuitive that we might lose a panelist who has only, you know, served on two or three panels, perhaps, and finally has it down, so to speak, and all of a sudden we are back to square one with another fresh panelist and no ability to take advantage of the experienced panelists.

Thanks.

>> DAVID MCAULEY: Thank you, Greg. And Sam's hand is up,

so Sam, you have the floor.

>> SAMANTHA EISNER: Thanks, David. This is Sam Eisner.

You know, looking at the question around whether or not a panelist who is at the fourth year and 11th month of his term or her term and the IRP comes in, should they be able to be seated on that panel, or does their term effectively expire for new IRPs six months prior to the end of the term of their agreement?

You know, we also could address that a bit through the way that we handle the contracts around the IRP standing panel. So we could have it built in that while a panelist wouldn't be eligible for a retainer past the five years, if they were seated on an IRP that was continuing after the time their term ended, they, of course, would be eligible for receipt of any of the hourly payments or anything that arbitrators get. So we could end a retainer function but still keep them on because even if we were to look at this only about things that start close to the end of their term, there always is the possibility that an IRP that began even six months prior to the end of the term would continue on past that five-year term. And so in any situation, we are going to have to account for the possibility that we'll have a panelist on an IRP panel who no longer is considered available for the standing panel for new IRPs as they come in.

>> DAVID MCAULEY: Thanks, Sam. I think the point you make is a good one. Handling it in contract would basically eliminate this as a question, and they would be eligible for case assignments throughout their five-year term. So I thought the question was worth asking, but I think we've handled it.

Now, back to the staggered terms. I agree with what Greg said, but then I did that in the last call, and Malcolm and others made a good case that panelists being beholden to ICANN for their payment would have -- you know, if they were interested in a second term, would have some interest in perhaps pleasing -- you know, I don't think this would happen, but at least the appearance might be that pleasing ICANN, so they shouldn't be eligible for a second term.

And so I have a question, Avri, for you. Because you put a green check up while Greg was speaking. But as I recall, you were in agreement with the -- with Malcolm's point about this. And so this is one of the difficulties of working in such a small group is I think prior to today, I think I was the only voice saying maybe they should be two terms so that we don't lose all the experience at once, but I am interested, Avri, if you -- if I correctly understood what you were saying last week.

>> AVRI DORIA: This is Avri speaking, and two things. One, somehow or other, that was an old green tick, I believe, or an

accidental one, because I wasn't even at my laptop at the time. But I was listening to Greg's arguments, and I've become less sure of my position, I think. I think the argument made about someone only having been there for five years, participated in two panels, being up to speed, and losing that experience being problematic. And I can see that point. And so -- but I also still worry about to what extent does the desire to be reappointed for another five years encourage a particular outlook in the review? And so I haven't completely switched over. I apologize for the remnant green check, but I am sort of in the middle of trying to rethink it, you know, based upon what Greg has said.

Thanks.

>> DAVID McAULEY: Thank you, Avri. And I think it's fair to say, despite what I thought coming into this call, this respect of renewal of a five-year term is still open and can't make it -- Greg, you have your hand up.

>> GREG SHATAN: I will point out what Sam says in the chat. ICANN does not control the reappointment process on its own; it would be the community process as well. So I think merely rendering decisions that were -- that somehow seem to cater to interests of the ICANN organization would not be good enough and, indeed, might -- if they are seen as slanted rather than fair, that would, I think, tend to disqualify them from further consideration, especially on the community side. So I think we have a check and balance with the community being involved. And I think it's also, perhaps, thinking too little of our prospective panelists that they would be toadies looking for reappointment rather than jurists looking to render fair decisions and perform their task to the best of their ability would integrity. So I am not quite that much of a pessimist about our potential panelists that I would believe that they would spend five years currying favor with the ICANN organization for the sole reason of trying to get another five years of the munificent remuneration that they will be offered as a standing panelist. Thanks.

>> DAVID McAULEY: Thanks, Greg.

And again, this is, I think, part of the challenge of working in a small group, but this point is open, the nonrenewal bit. I, perhaps, gave up too easily on it, but so we'll keep it open.

Let's move on to the next issue unless anyone has a comment. And that would be the retroactivity. Oh, I am sorry. I missed something on the panel conflict of interest, and that is the addition of this phrase from the International Bar Association arbitrator conflict of interest rules. We discussed

this last week and thought this would be a good addition to the rules, the language in red that's on the slide that's on the screen and the slide that I sent yesterday. And when we discussed it last week, I don't think anyone objected, but Kavouss did ask that we make a note in the final report where this came from, and that is it came from the International Bar Association, et cetera, which we would certainly be willing to do. What would show up in the rules is simply the red language. So if anyone has a comment, please make it now. Otherwise we can move on to retroactivity.

And as Bernie noted shortly ago, the call is moving on, so let us try to move -- I'll move that slide. Retroactivity recommendations. And I think we discussed this as well last week with respect to making retroactive the substantive IRP standard. There was no support that I discerned for that. And my recommendation is that there be no retroactivity with this respect. The business constituency had asked for it. I didn't see any support for it when we discussed it or haven't seen any on the list. If anybody has any comment in that respect, please feel free to make it now.

And if not, seeing or hearing none, the other part was with respect to panel rules, whether they should be retroactive. And they would only affect cases that have been filed since the new bylaws went into effect. I am sorry, that are now pending or that have been filed since then and that are still pending.

We discussed this, and I believe we all agreed on the last call that the best way to handle this would make it a matter of discretion for the panel. In other words, we would explicitly say a party can make a request in this respect, but it's up to the panel to decide how to handle the request. They could grant the retroactive application of the rules or not, and we put some parameters around that by saying that it would not -- the panel would not allow rules to apply in pending cases if the action were to work substantial unfairness or increase in costs or would otherwise be unreasonable.

Does anybody wish to make a comment in this respect? Seeing or hearing none, I am looking in chat real quick. We can -- Sam, you have a comment. Go ahead. Take the floor.

>> SAMANTHA EISNER: Yeah. Thanks. Just a short note. We are taking a look at this. If we have any concerns about this, we'll come back on this quickly. But we understand the general -- what this is generally trying to achieve with the limitation of cases filed on or after October 1 for the applicability of the rules. So we'll come back quickly if we have any concerns around that.

>> DAVID McAULEY: Thanks, Sam.

And finally, on this update part of the agenda, let's look at the materially -- the standing issue that we discussed, the label it has is "materially affected" because those are the words used in the bylaws, you know, with respect to standing. Let me just move that a bit. Karl Auerbach, I believe it was, recommended anybody essentially be able to bring an IRP. That goes well beyond the bylaws, and I think we and I certainly recommend against that. But then the discussion came up in a recent call about imminent harm. Before I get into that, Sam, your hand is up. Is that a new hand? Whoops, okay.

So then a discussion came up with respect to imminent harm, and it appears that -- and Becky made the point that the -- you know, the rule with respect to interim relief would certainly handle this, and I think she's right in that respect. She mentioned that on list.

Kavouss, your hand is up. Why don't you go ahead.

>> KAVOUSS ARASTEH: Yes, my general problem with all of the (Inaudible)

>> DAVID McAULEY: Kavouss, it's very faint. Is there any chance you could speak up?

>> KAVOUSS ARASTEH: Hello. Do you hear me?

>> DAVID McAULEY: Yes, that's better.

>> KAVOUSS ARASTEH: Yes, my question was who would define that the harm is imminent or is not imminent? Thank you.

>> DAVID McAULEY: Thank you, Kavouss. It is my belief that that would be something that the panel would do. Bylaw 4.3(p) basically says -- and I am reading now -- a claimant may request interim relieve of a certain nature -- it would be sent to an emergency panelist, and if that panelist concluded -- I would believe -- that this is not qualified as something entitled to him -- to interim relief, they would not treat it so but dismiss the matter. So it would be up to the panel, probably the emergency panelist. But what the recommendation here is for imminent harm is to make sure that a claimant can take advantage of Bylaw 4.3(p), and I discussed it in the email and I've discussed it on the slide, and I think we discussed it at some length on the phone call last week. I don't think there's figure left that's controversial here. But Kavouss, let me ask you, is that an old or a new hand? Kavouss?

>> KAVOUSS ARASTEH: It is an old hand. It is removed.

>> DAVID McAULEY: Okay. Thanks very much.

The only thing we recommend against changing is those provisions in the rules that deal with breach of contract for the IANA naming functions contract. I mean, those are breach of contract claims that will be handled as breach of contract claims. I just -- I didn't see the need that this would be

changed, but I am open to comments in that respect.

Hearing or seeing none, I may put this out on the list, and then I think we can move to the next agenda item, which is challenge to consensus policy, but I also note that we are running -- we have ten minutes left. So let's discuss challenge to consensus policy briefly. And I encourage everybody to respond to my email on the list about consensus policy that I sent I think on Tuesday of this week.

This was an area that was addressed by Kathy Kleiman's law firm, which we refer to as Fletcher, and I think the noncommercial stakeholder group as well. But the recommendations boiled down to be along the lines -- you can see in the email that I sent -- along the lines of joinder. And the recommendations were specifically for -- let me read briefly -- that any supporting organization whose policy was being challenged would receive notice from the claimant of the full notice of IRP and request for IRP, which is the full body of the IRP claim, and all the documents that go along with it, contemporaneously with a service upon ICANN. That the SO would have a right to intervene in the IRP, but again, it would be up to the procedures officer as to how the SO proceeds, as a party if the SO wishes. I am not sure they can do that under their budget and operating procedures. Or as an amicus, which may be of more interest to them, but that would be up to the SO as to what they are requesting, would be up to the procedures officer as to what is decided.

Stakeholder groups, working group chairs, and other community members. And frankly, thought that the supporting organization would be sufficient.

Fletcher also suggested some limitations on what the panel can do, what the panel's ruling can be. And my opinion on that was first of all, it's a bylaws matter, and the steps available to the panel in Bylaw section 4.30 were sufficient to handle this.

Here again, I am will be to -- or I am asking people please comment or state other views as they wish right now on the phone. Or on the list when I put this out for first reading. If anyone has a comment, please make it now.

Hearing or seeing none, I will just go ahead and send that to the list. Maybe we can wrap up a few minutes early.

But there's another agenda item, the call for volunteers, and it's something I have been asking. There are still issues left, obviously, if you go to the comments forum, and Bernie's very good Excel spreadsheet where he tabulated the comments under certain headings. There are still issues to pick off, and I think there's a reasonable template in place under which we

can handle them. Greg did something in the jurisdiction group in his capacity as lead in the jurisdiction group that I really liked, and that is sort of pushing a bit on the volunteers. So what I intend to do is reach out to people and ask if you could take one issue or two issues and move them forward. Now, obviously, members of this group from Jones Day and ICANN Legal, I think we would put them in a horribly awkward position because ICANN is going to be a party in these, so I won't be reaching out to them, but others may be receiving an email or call from me saying could you help. We have a deadline looming at the end of this month, and I don't know how we are going to meet it even now. Maybe we should discuss timing at the next call. But the idea of getting help on these is very, very important. I encourage you to look at the issues, look at Bernie's spreadsheet summary, see if you can pick some off and help us move them forward. Everybody's participation is very welcome, even if you can't volunteer to take a lead on an issue.

Is there anybody that has any comments in respect to that or anything else that we've discussed on this call? Otherwise we can wrap up a few minutes early.

Well, not hearing or seeing any, I have to admit I haven't kept up with the chat in the recent minutes, but I will take a look at chat after the call.

Let me thank everybody --

>> GREG SHATAN: David, this is Greg. I have just one quick point. Sorry to interrupt.

>> DAVID McAULEY: Greg, I am sorry, didn't see your hand. Go ahead.

>> GREG SHATAN: Thanks. Just in terms of, as you say, kind of pushing on the volunteers or voluntelling a little bit, I would suggest a sign-up sheet or something so as people pick issues, they can record what they pick, and also we can see what people are picking. And then where there are unpicked issues and unvolunteered volunteers, you can go to the next level of being a pusher, just in terms of the logistics of trying to track and strongly encourage engagement.

Thanks.

>> DAVID McAULEY: Thank you, Greg. Great idea. And I may ask -- offline I may ask Bernie if he can help me in that respect.

So, that was an excellent comment. Anything else? Would anybody else have anything they would like to bring up? Next week we have a call, it's much later than we normally do, which will give other folks a chance to participate. But if not, then I think we can wrap up this call. My thanks, as always, to the people for participation, for the ideas, the chat. I will look

at the chat in depth offline. I have lost track of it in the last ten minutes or so. And thank you all very much. This will wrap the call.

(End of call 1357 CET.)

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