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IRP IMPLEMENTATION OVERSIGHT TEAM SUBGROUP MEETING

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(captioner standing by)

>> Let's wait until two minutes passed the hour or three minutes passed the hour. We'll get started soon, I hope. Thank you.

(captioner standing by).

>> DAVID McAULEY: Hello, everyone, it's David McAuley speaking, and thank you all for joining. I'm trying to determine if we have a quorum present, and so let me count for a minute and just take a look.

I see Sam has joined. Thank you very much.

Let me just take one more look here at some notes. So, let's begin. Can I ask that the recording get started, please?

>> This meeting is now being recorded.

>> DAVID McAULEY: Thanks, very much. Thank you to those who have joined. Very happy to see you. Let's just note that number one on the agenda is to discuss administrative matters, and let me ask if there is anybody who is participating on the phone who is not in the Adobe Room, if they would please identify themselves now.

Not hearing any, let me ask of those gathered --

(Chime)

(Chime)

Just one moment. There were just two phone entries that we heard. Could I ask if anybody is on the phone who is not in the Adobe if they would please identify themselves?

Okay. I just assumed those folks were in Adobe already.

If anyone has an update or a change to their statement of interest or anything to note about their statement of interest, could they please do so now?

Not seeing or hearing anything, let's move on to agenda item number two, and before we do that, Kavouss, you were expressing a concern about a quorum. I believe we are at quorum now and I think we can proceed. If you feel otherwise, Kavouss, could you comment now?

Kavouss, your hand is up. Take the floor, please.

>> KAVOUSS ARASTEH: I have no problems to start the meeting. If we pass the (?) we need the quorum. I don't think that eight people or nine people are sufficient for quorum. Unless it is that this is the result of this number, and ask them how they want to take it, it is up to them. But I think for the meeting, this is all issues, still there are some issues, I hope that people would not push a lot from their own view and we agree what we have agreed. Thank you.

>> DAVID MCAULEY: Okay, thanks, Kavouss. I think we have enough to go forward, and the way that we're handling this now, in my view, is both with a combination of the List and the calls, and so I'm hoping that we can move forward, and thank you for that.

So, the second item I put on the agenda was just a request for volunteers on issues, and then Greg had the good idea of creating a sign-up sheet. Bernie is taking some steps in that respect, so I'm going to ask if Bernie would comment on that right now.

>> BERNARD: Thank you. Brenda, could we bring up the sheet. All right. Thanks, everyone. You've seen the email of the Google Doc is up and we've got it in the window here. Let me try to make that just a bit bigger.

Nothing too fancy here. We've got the comment groupings on the left-hand side for person analyzing, and everyone has editing rights here. So, if you want to pick up a topic, you just need to write your name in there that you'll be having a look at that particular topic, and then the staff and David will be handling updating the status as we go along.

The only point that we may want to have a look at is if we got the comment grouping right, and I'll run through them very quickly just to be sure everyone understands them, and I do understand that on some screens this may look a little small, so let me try to get that a little bigger again.

So, the comment groupings we've got -- and I'll get to you in a second, Kavouss. 45 days, Consensus Policy, Discovery, Evidence, and Statement, Joinder, Notice, under the heading of other -- and these are alphabetically, sort of, and

not by importance -- On-going Monitoring. Under other, we have Payment of Fees. Under other, we have WTO Rules for Least Developed Countries. Under Panel we have Renewal. Under Panel we have Conflict of Interest. We have Repose. We have Retroactivity. We have Retroactivity Substantive Standards. We have Standing, bracket, Materially Affected, and we have Translation and Interpretation.

So, after going through everything we've got for comments and discussions on the list recently, this is what we thought would handle the various comments. Kavouss, over to you.

>> KAVOUSS ARASTEH: Thank you. Just understand, what I was volunteer, with all of these topics you need to volunteer for these topics or that these are the topics you have already discussed? And you just want to put them in the document (?), so I don't understand to volunteer to do what? To talk about it again (?). So, what is issue, and maybe I have missed something and I apologize if I missed something. If possible, remind us of the issue of volunteers. Thank you.

>> DAVID McAULEY: Thank you, Kavouss. It's good request for clarification from you, so thank you very much for that.

What we're looking for here is for people to volunteer and to take an issue and lead the discussion, and so Bernie has just done this. I've been tied up most of today. Usually I have a little bit more time to get ready before a call starts, and I would have filled in some of this information. But obviously, I've taken the lead on a number of these issues, but there are other issues -- so person analyzing. The Person Analyzing Column will be filled in, probably tomorrow morning by me with my name in certain places. Malcolm's name will appear beside 45 Days and beside Repose, if that's okay with Malcolm. But you'll see my name in some of them, but there will be some left.

What we're looking for with the some left, is if people would please volunteer to look up the issue and simply lead the discussion. As much as I've done with some of the memos I've sent on email on things like consensus policy, et cetera, and what I typically do is indicate who has made comments in this respect and put a link to their comments what the issue might be, what recommendations I make.

There is a template that I've used that's in the email, and I'd be happy to send something along those lines if needed. But where I don't think we have anyone analyzing yet, and I'll start at the bottom and go up just because it's a little bit easier. translation and interpretation. I don't believe that's being handled yet. Other, WTO Rules for Least Developed

Countries, I don't think anyone is handling that. Other, Payment of Fee, I don't think that's being handled. Other, On-going Monitoring, I don't think anyone is handling that. And Discovery, Evidence, and Statements, I don't think that's yet been taken.

Some of these will be a little bit more complex, like Discovery, Evidence, and Statements. Some of these, and I'll use the example of on-going monitoring -- I'm sorry, other -- on-going monitoring, will be fairly simple. If I'm not mistaken, that came in from the ALAC asking for on-going monitoring of IRP, and I believe the bylaws say it will be subject to a review similar to the ATRT review every five years or so, and so that's what we're looking for.

And then the Status Column would simply show, you know, Under Review, or Being Prepared for First Reading, et cetera. That's what we're looking for here, Kavouss. Does that answer your question?

If you're speaking Kavouss, we can't hear you.

>> KAVOUSS ARASTEH: Do we need somebody to lead the discussion because the reason, some of the issues you just mentioned and what do you need? What I heard was the WTO Rules for the Least Developed Countries, and I wonder what is that issue? And the other issue may be more of an accepting substantive standards, so which activities, the WTO (?) material I got and what the issue is, but I don't think we need to regroup or day to day, but it was from the day that you had the first -- where are you supposed to reopen the discussion? Thank you.

>> DAVID MCAULEY: Thank you, Kavouss. What I'm looking for, this is sort of a personal initiative of mine and I'm modeling on what Greg has done in the Jurisdiction Group. I'm looking for two things. You're right, I mean, I can raise the issues as the lead of the group and I've done that in a number of instances, but I worry sometimes that it's not fair to the group that I take the lead on everything, in case people get worried that we're getting one point of view sort of making recommendations and things of that nature.

And the other is, I could use the help, to be honest with you. Today is a good example. Normally, I would put a couple hours of preparation into a call, and today I put none into this call just because things have -- you know, I'm just tied up here in my office, a little bit unexpectedly, all day, so that's just the way that happens. So, it's in the nature of help, too. So that's where it's coming from.

I'd like to ask Bernie if he was finished with his comments on this sign-up sheet?

>> BERNIE: I am indeed.

>> DAVID MCAULEY: Thank you Bernie. What I'm going to ask him to do, is if after the call, if he could put out to the List the link to the document, and I'm just asking if people will take a look. And if they can, take an issue -- I'm sorry. Maybe not after this call. Bernie, wait until you and I coordinate tomorrow.

Malcolm, I hope you don't mind if we put your name in on 45 Days and Repose, but then once we fill in the blank -- once we fill in that column on the person analyzing, then I'll ask Bernie to put this out on the list with a link to the sign-up sheet so people might take a look and see if they had could help out taking the lead.

Malcolm, if that's not okay with you --

>> MALCOLM: That's fine with me.

>> DAVID MCAULEY: Okay. Thank you. And Bernie is that okay with you?

(silence).

>> BERNIE: Maybe not given I've already sent the link to this List --

>> DAVID MCAULEY: That's okay. I missed that then, that's fine. People, just be aware that we're going to fill in some of the things we're already discussing and I'll try to have that done by tomorrow. Thanks, Bernie, no problem.

I think we can move to agenda item number three, which is to come to a final discussion, is my hope, of the timing issue. This is not a request that people comment on every facet of the argument, but in the last couple of weeks, both Malcolm, as Lead and with a certain point of view, and Liz, with a different point of view, have made some entries on the email list. I'd like to sort of give each of them a chance to restate them briefly, and then if Malcolm as Lead to try to help us figure out where we are on the timing issue. It's possible we can close it now, or maybe we have to close it on the List. But in any event, I'll first you turn it to Malcolm, if that would be okay with Malcolm?

>> MALCOLM: Thank you. I think we've had a very full discussion of this subject. We've arrived at a consensus on 120 days after the person had become -- or was aware or ought to reasonably to have been aware of the harm that they've suffered, then ICANN Legal asked for time to present consideration of any specific problems that that might have and that was the time that was allocated for Liz to come up with an email on the subject. But from my reading of that, I don't see any -- that that discloses any concrete problems, just a difference in perspective.

From my perspective, the essential thing is that the IRP purpose which purposes that all material effects (?) are able to challenge ICANN's challenge system for compatibility with bylaws is fulfilled, and that cannot be achieved if a party is not able to file a challenge, even if they act immediately that they have been harmed.

So, I accept the advice from our Independent Legal Counsel, that is said that the knowledge of the claimants must be the starting date for the -- for the timing issue. And, I certainly do not believe that it can be moved before the person even became affected and therefore had the rights to bring a challenge, so that's my perspective.

>> DAVID McAULEY: Thank you, Malcolm. Liz, would you like to comment in addition to your mail?

>> LIZ: Yes, David. Thank you so much, and thank you Malcolm. I think from an ICANN standpoint, we are -- we believe that we've relayed our position and objections on this issue in our half meetings and also through email.

We, at this point, we think that it's, you know, we think that the removal of an outside bar creates a material change to what was put out for public comment. But at this point, we also think if the IOT wishes to proceed with putting this out there, ICANN will not stand in the way of the IOT putting it forward and putting the proposal to the community for input.

We definitely think that this is something that should be provided to the community for input, and it's beyond just a Malcolm, Sam, and Liz issue. So that -- having said that, what the next step would be and how this would get updated? I don't know if there is going to be any direction, or if you intend to have direction specifically about updating this rule, and I think, we'd like a little bit more information on that part.

>> DAVID McAULEY: Thanks, Liz. This is David speaking. And I will answer the latter part first, and I'll ask Bernie to come in and comment afterwards if I misstate anything here with respect to the rules or how we're supposed to proceed. But it's my understanding that what Malcolm would do as the Lead in this issue is come to the List and say, you know, this has been a discussion. Here is the request for first reading on the timing issue, and he would state what it is. You know, I think 120 days from the date a person is materially harmed or should have been recently aware of being materially harmed, and we would wrap up what we discussed from that perspective and put it out for first reading.

And then, we would as a group, come to consensus which List or in the call to your point, and we would go to (Sivoli) for a change. Once we come to what we believe is consensus, we would

go to (Sivoli) for a rewrite on the rules to take into account what we agree on this phase of the implementation oversight team and put that rewrite of the rules out with some commentary from us as to what we've done, you know, sort of a final report from our group. That's what I understand. Bernie, if I misstated any of that or gotten any of that wrong, please correct me or comment if you wish.

>> BERNARD: Thank you, David. I don't think it's a question of being wrong. It's a question of there is always an option for another public comment if the group so feels it necessary. Thank you.

>> DAVID MCAULEY: Thanks. So, I would assume then that we would decide that, not based on the timing thing, but once we've come to a closure on all of the issues that we have in front of us -- not all the issues, but all the issues with respect to rules, I don't think that would prevent us from going to Sivoli for the rewrite. We can even do that in steps if we wish, but prior to wrapping up our roles treatment, then I take it or we should discuss among ourselves need for another public comment. I take it, Liz, that's what you're looking for; is that correct?

>> SAM: This is Sam. I'm here with Liz, and I think that that is -- we'd want to evaluate the rules across to see where the substantial changes have been and if they're so substantial that another public comment is warranted and that's a typical process from ICANN. And from looking at it now, from an ICANN internal position, is that the removal of our Period of Repose that was previously put out for public comment would be something that would be so significant that would require a further public comment, and there might be other things that we see within the rules changes, too. And then hopefully, we as the IOT would go through and identify some of the areas that we wish to highlight in a communication to help focus the public comments that we would receive on those areas of changes.

>> DAVID MCAULEY: Thanks, Sam.

So, I appreciate your point of view. I think we're at a point where we can move forward. In the debate on timing, I had suggested some possible workarounds, but I think that I better not mention them now and just do it on List as we move forward maybe and when we get to the discussion or second round of comments.

So why don't we -- unless anyone else has a comment on this issue, I think we can move to the next agenda item.

And hearing or seeing none, why don't we move to item number four, which is an update of what's available, the what ICANN Legal and Policy Teams are doing with respect to the SO

and ACs, and also Sam made a good comment about charting up the process timeframe.

So, if there is anything else -- or anything new, rather, Sam, that you wanted to say, this would be your chance.

>> SAM: Thanks, David. So just to confirm, we're working on the charting right now. We've started coordinating with our policy colleagues, letting them know that we're working on the charting and trying to time out, and drafting some specific questions to ask in our outreach to the SOs and ACs. We're working with them on those items, so we'll hopeful of more updates, but it's all in process of based on what we were talking about last week.

>> DAVID McAULEY: Okay. Thank you, Sam. Is there any comment or question about that?

Hearing none and seeing none, we'll move to agenda item number five, which is titled on the agenda, first reading on a certain number of issues. The first of which is joinder. Let me just pull up my document here.

And, on the joinder issue, you've seen the slides that I sent before, and basically where we have come down on joinder is that anybody that participated in an underlying expert panel proceeding as a party would receive notice from an IRP claimant, and they would receive a copy of the notice and a request for an IRP, two separate things, but together they constitute the body of the request for IRP.

And, they would be to get the documents, that they would have such people that participated below would have a right to intervene in the IRP, but the procedure's officer of the panel would have the final say on how that is executed, whether as a party or as an amicus brief, and the procedure's officer would be exhorted to do their best to stick within the timeframes that the bylaws call for in handling IRPs.

And we have agreed to eliminate something I raised, and that is that people participating amici would be considered parties for the limited purpose of costs on frivolous claims or frivolous argument, so that would be -- that last bit is no longer part of it, and so we agreed to strike that. I think we've agreed on this joinder approach, and I think this could constitute a first reading, but I'm open to comments, questions right now, so the floor is open.

Okay. Seeing none and hearing none -- I'm sorry.

>> SAM: I'm sorry. This is Sam. Do you -- can you recall the date where the final joint approach was sent?

>> DAVID McAULEY: No, but I can do it after the call or tomorrow morning I could try and do it. I'll send something to the List about where this all came from.



>> SAM: Okay. Sounds good.

>> DAVID MCAULEY: I need to just take a moment to write a note. Okay. Just make a note. Almost done. Thank you.

So, moving on, Panel Conflict of Interest. Now, as Bernie's sign-up sheet indicated, this is probably turned into more than one issue, and the first point in the slides is one where I -- one where it appears that we're no longer of one mind, and it has to do with the panel's term.

And so, I think it's fair to say that this is still under discussion, so what I have sent forward as the suggested treatment on this is that there be a term limit of five years as is stated in the bylaw for panelists, but that my original suggestion, that an additional term be available, was no longer part of our recommendation.

There would be no renewal, but on the List, it's happened -- and I believe that Malcolm and Aubry -- Malcolm primarily and Aubry in support were supporting that position, and that position being that there be one term with no chance for renewal. And, I was of the view that there could be two terms, but I didn't feel that strongly about it and backed away and said that's fine, we'll take your approach. Because on that particular call, that's really the only points of view that were being expressed, and that's how we went.

But, then on the List, Greg came in and thought differently. Aubry has been reconsidering her position, and so I mentioned recently on the List, that I'm still of the view that another term would be good just because of the bylaw, interest in having people who are experienced with ICANN, knowledgeable, et cetera. And Sam, I think had pointed out in one of the chats, that it's not ICANN that makes the decisions anyway. The SOs and AC are the ones that nominate the panelist, while the board has to approve them, that approval can't be unreasonably withheld.

So, I invite people to comment on this now if they would like to, and I'm thinking of people that might be likely would be -- well I'll call you first in a minute, Kavouss -- would be Greg, Aubry and Malcolm. Kavouss, you have your hand up first, so why don't you take the floor.

>> KAVOUSS ARASTEH: Yes. You said that talked about one term of five years; is that right?

>> DAVID MCAULEY: My point is the bylaws say a term of five years. The bylaws did not pick up the language that there should be a renewal. I think it's silent in that respect. I can actually read it -- I'm sorry?

>> KAVOUSS ARASTEH: No. No. Sorry. I do not want to bother you to read it. Is it possibly instead of one term of

five years you have two terms each of two years and in order to have continuity of the situation and (?), half of the people that renew within in the second term will have already experienced in the panel. I think it's an issue we'll discuss many times, (?) and essentially where the problem has to have some sort of continuity with whatever you do (?) would be from the quorum and from some coming and the situation so you have all sorts of continuity of somebody that has sufficient experience of why it has been brought. Thank you.

>> DAVID McAULEY: Thanks. Excuse me. Thank you, Kavouss. David here. I think we are trying to get continuity in this. I appreciate your point. You're making a good point, that continuity is important. With respect to two terms of two years each, the bylaws do speak of five years.

We have in the background, a separate discussion going on about staggering terms and having some panelists begin with three years, but we think that maybe giving them an option for a full term after that may solve that particular bylaw's issue. I think you're right, Kavouss, but we have to have a five-year term as I read it.

So, I'm next going to turn to Greg -- oh, I thought Malcolm -- never mind. Greg's hand is up and he's next in the cue.

>> GREG: Thank you, David. I'm working from a tablet which doesn't put people's hands in order, but so in any case, I'll go next. I believe that there should be more than one term. I think we stick with the five-year term that's called for in the bylaws, you know, so we don't necessarily want to get into changing the bylaws. I would suggest, as I have before, that a single renewal would be allowed. We can even have more than one be allowed.

My view is the integrity and independence are kind of essential parts of the job description, and I'm perhaps somewhat less cynical than some, and I would not believe that the panelists would expressly or underhandedly try to shade their opinions and findings in order to, quote unquote, keep their jobs as panelists if a renewal came along.

It's true, perhaps, that a lame duck who has no chance of being renewed in their job is going to be more somehow free, but I think there is -- if the freedom was inherent in the job description and in the understanding, and if people who we are hiring have a sense of personal integrity, and frankly, if we were to be bringing in panelists for a single term, and we believe these panelists but for the ability to have a second term, there is -- if, in fact, they have the ability to have a second term, that these same panelists will go from being an

independent persons of integrity to pandering to keep their job, we probably shouldn't have those panelists in there even for an hour or a week because we're clearly so dubious about their moral and ethical compass. I frankly am just not that dubious, and frankly there are lots of ways in the world to turn a term like this as a panelist into other positions and that there is always a chance that after the term or that there is something that could be made of it. But I think, more than anything else, the way people advance their careers is by doing the best job they can and by being persons of integrity and by exhibiting independence when that is called for, and exhibiting proper -- proper judgment.

Furthermore, since everything here, I think, is going to be a three-person panel, the chance that any one panelist could, essentially, throw the game, to use a U.S. term, I believe, which I apologize for, but that really is another check and balance against a panelist wanting to see a particular outcome rather than letting the fact take them where they go.

So, long story short, or maybe long story long, I'm confident enough in our panelists and in human nature that I believe that a renewal term would be appropriate and would not result in judgments being made that were not high integrity and independence, but instead were of evidence of pandering and trying to impress those who would renew their position.

Lastly, I think it's important to have continuity and experience. I don't know how many IRPs any panelists were here in two years, three years, four years, but I think we'll be better off with panelists who have been around. They may decide they don't want to do it and they've had enough, but for those that want more and are getting in the groove, so to speak, those are the panelists that we want continue.

The (?) RP panelists go on essentially forever, so there is really no -- I just don't share the concerns that others do that somehow, we're going to, you know, prejudice the system by having the renewal system that we have. Thank you.

>> DAVID McAULEY: Greg, thank you. I'm going to go to Malcolm in a second, but before I do, I would like to just mention to Aubry that I would be interested if you would like to speak because you were on the fence, but before that, Malcolm, the floor is yours.

Malcolm, if you're speaking, we can't hear you.

>> MALCOLM: I'm sorry. Is that better?

>> DAVID McAULEY: Yeah. That's better.

>> MALCOLM: Thank you. Sorry. I was on mute.

Clearly, one of the most important features of the IRP is that

it be truly independent.

Now, I must say that I agree with Greg that I would hope that the selection process would weed out anybody who had the low moral fiber that they would deliberately defer a case that they had no faith in or judgment, but nonetheless in bad faith deliberately the decision such as to carry favor with ICANN, such a person really doesn't belong in the position for five minutes, just as Greg says, and I hope that we would manage to avoid that. You cannot be sure, but I would hope so.

But, I don't see anything like black and white terms as Greg does. Independent to say -- to be honest, in compliance fields, the independence area is a highly-studied area of corporal governance that has many long-standing good practice recommendations in it. And whether or not the person who is supposed to be independent is beholding to another important for a renewal of their position, is one of the key markers there of lack of independence. This is not just me saying this. This is a widely-recognized marker.

And there is no specific (?) thing. I know I was being maybe slightly rye when I was pointing out from the List to Mike, I think it was, that for the -- probably the best explanation of this could be found in paper number 78 which spoke about how the most important protector of the independence of the supreme judges of the newly to be created -- the newly to be created U.S. Supreme Court would be their permanence in office, so that's making the same point.

Nonetheless, I do recognize the arguments that are being made on the List about the importance of -- of having people in place for long enough that they build up a good understanding of the system and a good level of expertise.

And personally, I would have been happy if the -- if the five-year cap had been seven years, for example. Unfortunately, that's not allowed. So I wonder, and I don't know, David, if you saw my email on the list this afternoon, this afternoon in UK time, this morning your time, in which I looked -- I wondered if there was some alternative mechanism that could be got at for -- for preserving that sense of -- or that characteristics of there being the panelist not being beholding to anyone for renewal while ensuring that they're satisfying this concern about ensuring that they're in a post longer than five years. If five years is longest allowed by the bylaws, but thought by this group to be too short of a time to be adequate -- to build up an adequate level of expertise.

So, I wonder if, actually, rather than going for no renewal, we might say that renewal is automatic. If we can deny a discretion in renewal. If we stop both ICANN and the

SOs from arbitrarily removing someone at the time, saying oh, we think it's time for fresh blood, or anything that's not an overt retaliation for a decision, but nonetheless, a purely arbitrary exercise of discretion.

If instead we said the renewal would be automatic or renewal would be automatic unless there was there was removal for cause of the panelist, then that would satisfy the arguments that I've been making about the value of no renewal for independence.

By another route, I'm at a route that would also seem to satisfy the concerns about allowing people to be longer in office to build up a greater level of expertise, so I offer that as a possible alternative approach to it.

>> DAVID MCAULEY: Thank you, Malcolm. David here. To answer an immediate question though, I have been tied up all day and have not really seen the mail from this morning, so my apologies. But hearing you now, I think that has promise, and I'm going to ask you a question about it, but first, Kavouss had his hand up.

>> MALCOLM: I think in the chat as well.

>> DAVID MCAULEY: Right. But I'd like to go back to the cue.

>> KAVOUSS ARASTEH: Yes. Sorry. I apologize maybe not so clear. (?). During the absolute independence, I don't know anyone. I have been working with many people during (?), I don't think you could put absolute independence. Independence is a relative issue. It's that (?). So, we should not push too much for independence, but understand of continuity.

In my view, if it can work from the concept of not in (?) having all parties renew, then it would work out how it would without touching this issue of independence -- can we -- (?) that all members of the panel should be new person. How could we could work it out, how we could divide the terms or at least half of them or two-thirds or some of them have a fraction of them to be always different, and (?) in order people maintain this continuity. Is that an experience (?), the issues of the panel and the (?) of the panel, in my view, is almost a null issue. It's different from what we do today because there is a lot of important (?). Why not work it out this to have to avoid to have any panelist on (?) -- How we could work it out? Thank you.

>> DAVID MCAULEY: Thank you, Kavouss. Aubry is next in the queue.

>> AUBRY: Thanks. This is Aubry speaking. I wrote most of what I was going to say on the issue in the chat. I still sort of remain on the fence though. I still tend to the

single term.

I think there is a fine line. When Greg speaks of it, he draws a short boundary between pandering and remaining independent. There is a whole middle ground of having accepted the mindset and become sympathetic or antipathetic to it over the course of five years, and so why one might not be pandering in any conscious way, they have -- they have joined the tribe and have drunk the Kool-Aid, so I worry about that aspect of things.

I worry -- I don't really have a problem with that if it's all the SOs and ACs that are evaluating and deciding, but as long as there is a choke point that is in the board's hand that says, yae or nay to a choice and that can be for a stated reason that may be similar to or different than a reason that, gee, this one is always, you know, this one is always the primary author or always the one that questions us hard, is always the one, is something that can be used as a reason to not renew one, so I really still very much tend toward, with no intention or prophesy on anyone just human behavior, I tend to be very much still in the stable, long enough term. So, five years is great. Even ten years is fine in my mind, but not anything where they have to appeal to a power group that can say yes or no. Thanks.

>> DAVID MCAULEY: Thank you, Aubry. Greg is next in the queue, then after Greg I'll make some comments and we'll move on. We have 12 minutes left in this call.

>> GREG: Hi, this is Greg. I recognize there is a spectrum, but there is also a spectrum of harm, if you will, from losing talent, and I think that -- I'm not sure that they kind of will have drunk the Kool-Aid since as independent panelists, and I think we have the requirement that the panelists not be active in ICANN in a number of stated different ways.

So for instance, if I wanted to be a panelist, I would have to resign from all working groups and from leadership of the IPC and possibly from the IPC as well, so we're actually talking about people kind of undrinking the Kool-Aid in a sense, which is I think yet another check and balance on independence, is that we're looking for people that are kind of able to cope with ICANN based on, you know, prior knowledge or the like, but not part of the Kool-Aid drinking club or any of the several Kool-Aid drinking clubs that exist, each with their own antipathy or propathy, whatever the opposite of that is.

Again, I like Malcolm's approach. I think it kind of comes committal on the issues. You can have a -- and if we don't want to change the bylaws and recognizing it adds an

additional hurdle. Having the five-year renewal, essentially the mechanical -- basically, taking any kind of kind of broad discretion or ability to change for any reason or no reason, which ICANN, and possibly the SO and ACs may also have that issue if there is someone they want to get rid of because they're too favorable to ICANN.

I think if we have this for clause concept, but other than for something stated and for a fairly significant reason, they'll continue to their second five-year term without having to pander at anyone or with any pandering, probably would be counter-productive and certainly not productive. And I think that's a way to solve the issue of keeping people around long enough that is really useful and yet removing any incentives or any significant amount of incentive for them to shade their opinions or their behavior in order to curry favor.

So, long story long, I think Malcolm's is coming to a middle, and I think when Malcolm is in the middle, I think that's a good place to be.

>> DAVID McAULEY: Okay. Thank you, Greg. I see that both Kavouss -- Malcolm, I thought your hand was up, but Kavouss you want to make another comment, so I'm going to give you the floor, but please try to keep it brief. I realize this is not yet ready for a first reading, but go ahead, Kavouss. Kavouss, if you're speaking we can't hear you.

>> KAVOUSS ARASTEH: (?) where coming from, right by, I have not problems with renewals of terms, but why two times five? Why not two times three, and why not two times four? And maybe too long, two times five and I don't know, maybe you take (?) from some countries, but where does five come from? It's too long.

And also, I'm sorry to say that I don't agree with everything, there is no problem with one term for ten years, and ten years it is too long. Really, it is. (?) maybe there are some conditions, but ten years is too long so I suggest you could have renewable but not two time five, maybe two times three or two times four. Thank you.

>> DAVID McAULEY: Thank you, Kavouss. The original -- the term of five years for a panelist is in the bylaws and I think that's what we have to work with right now, but I also note to this group, even though this issue is not ready for first reading, Kavouss raised a good point about we have to take steps and we're considering steps, but not all of the panelists, except at the beginning, not all of the panelists renew and that's the ICANN -- Sam originally gave us the idea for staggered panels, and I think that's something we have to pursue somehow. It's a very good point.

So, let me just say this about the whole issue of panel conflict of interest. It actually is a couple of issues. I think I need to recast this and I'll do it on list and try to break out the term thing into one separate bucket and deal with the rest of that slide separately. And I'm going to try to get us to close fairly quickly.

But the idea that Malcolm suggested, automatic renewal, I think has some promise in it, except the fact that we're dealing with five-year terms, so with automatic renewal, I think we need to put some procedures in there such as the SOs or ACs, you know, have the right to bless it.

I think ICANN should have a chance to request SOs or ACs not to -- I mean, there should be some kind of a process that there is a -- that even if the renewal is, quote, automatic except for some circumstances, that it's clear that how that circumstance works and who has a say in it. Aubry had a good point too. So, it's a difficult issue. I need to rethink and rework for the list.

And it's taken up a good portion of this call, which I think is fair. Fair enough. In fact, I really appreciate the input from everybody, especially Greg and Malcolm on this. And in future when this issue comes up, I think I'll point people that are not on this call to this call, the transcript or the recording and say listen to this, this is a pretty crisp discussion of what is going on here, so thank you for that.

On agenda number five, we still have retroactivity and standing, which are fairly -- fairly straightforward, but we have five minutes left, and so before I go to those and challenges to consensus policy, I just wanted to ask that Bernie and I comment about -- I'm moving to Item number seven now, just have a brief discussion on List that we're moving to a point where -- where we're not going to be able to meet the deadline that we have, which is disappointing.

Our deadline, which includes, you know, staff putting their work on top of ours, I believe, is May 29th. So, we're going to have to figure out what we're going to do with this respect. I'm starting to think that we will be -- we would be fortunate to have this wrapped up in time for ICANN 59, but I'm interested in what people think about that. Greg, your hand is up, so why don't you take the floor.

>> GREG: I was actually going back on the last point that you made on the previous subject, just to say that --

>> DAVID McAULEY: That's okay that's okay.

>> I put 4.3J into the chat which says that removal can be for expected cause in the nature of corruption, misuse of position, fraud or criminal activity, and I would suggest that



those can also be the standards for non-renewal at the end of the first five-year term. And I think that could be just in the rules. That doesn't need to have evidence of change in the bylaws any more than having a single term would as opposed to renewing terms would need a change in the bylaws.

So, I think we have in the bylaws the answer to the question that you raised, which is how do we deal with having an all but automatic renewal, but yet somehow have some ability to deal with folks that have gone off the rails completely. And so, I think corruption, misuse of position, fraud, or criminal activity are all pretty heavy-weight problems, and I think would be a good -- good standard for nonrenewal, and then anything other than that would essentially lead to the second five-year term. Thanks.

>> DAVID MCAULEY: Thanks, Greg. David here. I also note that 4.3 -- you're right. That's a good quote from 4.3J. That provision also says goes on to say that it's up to this team to come up with rules on how to apply that standard which is something we'll do -- that's not part of the rules of procedure, at least not in my mind critical for getting the IRP up and standing, but it is something we need to do as a group, so thank you for that.

Back to the -- back to the -- our work and our deadline and how we're proceeding. I personal am encouraged. I think, that we're actually hitting good issues, we're having good discussions on List and in this group, and I want to continue that. That's why I'm looking for volunteers to pick up issues.

I'm going to try to recast this panel, conflict of interest in the coming week. I'm going to re-T-up retroactivity, standing, and materially affected and also the challenge to consensus policy. But in the meantime, I'll be talking with Bernie about our deadline and how we're going to handle this. And I'll come to the List with thoughts on it, but we need to handle it probably by the next call, just decide what are we going to do with this. It's not good to keep setting deadlines that we might miss.

And I'll also note, I think Malcolm asked me, I saw a glimpse of an email this morning where someone was asking about what other things we must do beyond the rules, and so it would be good for us to talk stalk of that. That's one reason I sent along a mail that I had sent to the CC and SO, but we have some possible role with cooperative engagement process. I know that group has asked us once in a while about some input.

We might want to consider whether we want to say anything about conciliation discussions or think more about rules for appeals, things of that nature. So, there is plenty to talk

about there, but we're at the end of this call.

So, these are the things in our future, our immediate future. Kavouss, your hand is up. I'm going to give you a chance to make a final comment.

>> KAVOUSS ARASTEH: Yes, kind of on the deadline, does it hurt if you extend that deadline by 10 to 15 days. Thank you.

>> DAVID MCAULEY: Thanks, Kavouss. I think we could, but I'm not sure that's sufficient. I think it will help us get to a good position to discuss this next week if that sign-up sheet is filled in, if we know that there is people handling issues, so thank you for that.

I think 10 to 15 days wouldn't -- wouldn't do it right now, but I think this is a discussion we have to have next week we should talk about it, and so I'm trying to create that -- create that idea.

So, I think we're done. Kavouss, I see your hand, is that a new hand? Nope. It's not.

So, unless anyone has a final comment, I actually think we've made a lot of progress. I'm very grateful for everybody that weighed in on the panel term. That's an important thing for us, and I think we had some very good discussions about it today. And so, I'm also grateful for Malcolm and Liz and Sam commenting on timing, so off we go. We'll see you next week. I'll be out there on the email List and I'll talk with Bernie in the meantime for ideas about deadline and things like that, but please do take a look at the sign-up sheet. I'll try to populate it as to where it currently stands by the end of the day tomorrow, so that's the end of this call and I'd like to thank everybody for attending. Thank you.

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