

RAW FILE

ICANN

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IRP-IOT

>> Hello, everyone, this is David McAuley, but in order to get folks to gather, let's give it another couple minutes. Thank you. Mechanic

>> DAVID MCAULEY: Hello, everyone. It's David McAuley again, are the lead to the implication oversight team, and while we mate a minute or so for people to gather, Mandy, could I ask you what your role is on this? I'm not aware of your status in this group. Could I kindly ask you to comment?man.

>> I'm sorry. I was just unmuting. I'm a staff member. I work for government engagement. I'm (?) deputy. I received an invitation to attend this call. As far as I know, I don't know that I have a role. If the invitation was in error, I am happy to drop off.

>> DAVID MCAULEY: No. My question was really in the nature of, we have a quorum -- we have a quorum that we should try and reach by five minutes after the hour, which is five active members, so I will not count you in that.

>> No. You should not do that. Thank you.

>> DAVID MCAULEY: All right. Thanks.

>> David, hi, can you hear me. This is Liz.

>> DAVID MCAULEY: Yes, hi, Liz. Yes, I do.

>> LIZ LE: I'm sorry. I've been playing around with the mute button and unmute button. Sam Ivory is in the room with me as well.

>> DAVID MCAULEY: Okay. As far as I can tell, I believe we are at a quorum, and so could I ask that the recording get started, please?

>> This meeting is now being recorded.

>> DAVID MCAULEY: Thanks. We have a small group today, but others can catch up by listening, and we're also going to make progress on the list, so I would like to go ahead unless anybody thinks that we're not at quorum or otherwise has a different thought. So I'll see if there is any hands or comments for that.

Seeing and hearing none, let's proceed forward, and so let's do the first part of the agenda, the administrative stuff. If there is anyone on the phone who is not in the Adobe Room, I would ask if they would please identify themselves,

now.

Not hearing any, I will note that it's possible that Malcolm Hutty will join by phone. He's traveling but should be able to get to a phone very shortly.

Now, next item of interest, statements of interest, does anybody want to indicate any change, update, or anything else with respect to the statement of interest?

Seeing or hearing none, we can move on. Thank you.

So the second item on the agenda is the status of the sign-up sheet, and so this is something that we've visited before and it's simply a reminder, in a sense, that there is a sign-up sheet out there for issues. There are some open ones left, discover, evidence, and statements, although I started working on that, I'd be happy if somebody else wanted to pick it up, but if not I'm going to move it forward on the list in the next week or so.

Another open one is Other Comments, Payment of Fees. Another is other comment, WTO rules for least developed country, and there is two other comments at the bottom of the list, Translations and Interpretation is one of them, and Types of Hearing, and so if anybody would like to grab one of those, please feel free and I would encourage you and would love to see that happen.

I've also spoken, but with better thane, we're going to change the sign-up sheet a bit and expand it. By that I mean we're going to add some columns one for accomplishment of first reading, one for accomplishment of second reading, with some links to the meeting at which those things happen so that it's sort of a ready reference guys to where we stand, I think it would be quite nice.

Other than that, I have nothing much to say about the sign-up sheet, but would be willing to open the floor for comments if there is anybody that wants to make a comment?

Seeing and hearing none, I will note to better than ee, Brenda or Sarah, that I thought Kavouss was on the call and so if he was one that was called out to, you might doublecheck to see if that connection needs some attention.

>> BRENDA BREWER: This is Brenda.

>> DAVID MCAULEY: Hi, Brenda.

>> BRENDA BREWER: Hi, Kavouss did not answer his dial-out today.

>> DAVID MCAULEY: My mistake. I thoughts I saw his name.

So, moving forward, and Sam or Liz over to you, the third item is just a status or update if there is any of the ICANN Legal and Policy Team's work with respect to getting the SO/

AC's up to date or educated with respect to their roles in the IRP and helping them with the process work on that.

Sam, or Liz, would either one of you like to comment on that?

>> LIZ LE: Hi, David, this is Liz. So, yes, we have been working with our Policy Team in terms of we've developed the process in term of the contribution points that need to be made along the lines with the SO/ACes and also where ICANN can help this along. We'll continue to work with them and build out that process some more, and we'll report back when there is more to provide and update to the group on.

>> DAVID MCAULEY: Okay. Thank you, Liz. I have a comment, but before I make it, I'll ask Bernie, his hand is up, and I missed it before, but Bernie, please go ahead, you have the floor.

>> BERNARD TURCOTTE: Thank you. Two little point. On a practical point, you did see Kavouss's name, when staff is asking to dial out someone, you'll see their name and a little green arrow in the participant's box. It doesn't mean that they have answered, but it means that we're trying to connect with them so that may be the source of the confusion.

The second thing is, posting a had -- something relative to the public comment period. I've discussed with the people who managed the public comment, and they would be okay if we simply posted a summary of the comments without any comments next to them until we wrap up, and I'm wondering if that would be okay with the group?

>> It sounds like it might, Bernie, but I may not fully understand, when you say a summary of our work, a summary report of our work, is that what you mean?

>> BERNARD TURCOTTE: No, no, no, no, no, not at all, simply a summary of the comments that have been made.

>> DAVID MCAULEY: I don't see any problem with that, as long as that would also include a link to the actual comment page so that if somebody wanted to dig a little deeper, they could. Does that make sense? Does anybody else in the group have any thoughts on this?

But Bernie that sounds -- that sounded reasonable to me.

>> BERNARD TURCOTTE: All right. Thank you very much.

>> DAVID MCAULEY: Okay, so you're -- okay. Thanks, Bernie.

I just wanted to -- with respect to what Liz said, thank you, Liz. I plan on being present at ICANN 59 and so if there is any assistance I could render as the Lead of the IOT, let me know and I'd be happy to do it. I should note to the group that I have been asked to comment briefly about IRP to the

subsequent procedures policy development process working group, and that's going to be next week. Typically, what they're looking for, I believe, is what I did at ICANN 58, and that's simply any update to these groups as to what our work is, roughly, and where we are in the process.

And when I say where are we in the process, it's a general statement and not a specific statement, talking about our work on rules and comments that we have received with respect to the rules and that we're addressing them and moving forward and actually I would say we're starting to catch a good rhythm and pick up our speed.

And the CCSO has asked for a similar update again at ICANN 59, so when I do the slides, which I hope will be in the next day or so, I will send them to this group as well, and people, if they have any concerns, should let me know or come on list and let the list know. Avri, your hand is up, you have the floor.

>> AVRI DORIA: Yes, thank you. This is Avri speaking. As one of the co-chairs of the new GTLD Subsequent Procedures Group, I think they'll probably want -- that will be good to start with, but I do think, and so just that you'll be ready for it, more of a discussion. They're looking into all the issue resolution and the appeals mechanisms and everything else for subsequent procedures, so there may actually be question and answers on how all of this fits into that. So it isn't just give us an update. You should be ready for some conversation. I just wanted to warn you. Thanks.

>> DAVID McAULEY: Thank you, Avri, and if no one in this group objects, I would plan on doing that and the qualifier that I would give to that group is, of course, that this is where things stand now but things are not complete.

And even things that move through a second reading may in all probability be sent out for another public comment, so happy to do it, Avri, and I'm looking forward to it. Is that a new hand?

>> AVRI DORIA: No, it's an old hand, but I'll say something else and apologize. You know, they may even say things that cause us to review. I don't know to what extent we can, but, but you know because they're going through what are the requirements that need to be met by the various functions, so you know, it could be an interesting conversation, but yeah. I just wanted you to know that it isn't -- I don't expect it to be a simple report. Thanks.

>> DAVID McAULEY: Thank you, Avri. And to the extent there is a request that we do something, I will bring it back to the group as I remember it, and I'll also a link to the

subsequent procedures meeting so that anybody here would have a chance to take a look for themselves if they want. So, thanks very much. That makes sense. I think the CCNSO presentation at ICANN 59 is not going to be that big, it's really an update as I understand it.

So moving on, we have the second reading of the timing issue, but as I mentioned, be Malcolm sent me a note and he is traveling. He does expect to be available on the phone, so I'm just going to move him down after the other two second reads.

So on the take-up agenda, item number five right now, which is a second reading on the joinder issues, and I'm looking for hands and I don't see any, so I'm going to move forward.

I gave in the agenda, a link to the email that summarized this, but I would like to just read through a couple of things from the email to make sure that it's clear, and what I said in the email, which was sent out June 5, is we agree the first reading of certain things and they are as follows.

And as I read this, I'm not looking at the Adobe, so Bernie if you need to interrupt or hands come up, let me know. Here is what we agree in the first reading.

That all those that participated in the underlying proceeding as a party, and by underlying proceeding, we're talking about the expert panels, that they receive notice from a claimant, in IRPs under the bylaws section 4.3B3AC, that's the expert panels section, of the full notice of the IRP and the request for IRP, including copies of all the related file documents contemporaneously of the claimant serving these on ICANN mp secondly all such parties have a right to intervene in the IRP, how that right shall be exercised will be up to the procedures office -- excuse me, the procedure's officer, that's a defined term member of the panel of the IRP panel, who may allow such intervention through granting IRP party status or by allowing such parties to file amicus briefs as the procedure's officer determines in his or her discretion.

No interim relief or settlement of the IRP can be made without allowing those given amicus status as a right as described here a chance to file a amicus brief on the requested relief or term it's of settlement.

And the third point, in reviewing such applications and without limitation to other obligations under the bylaw, the procedures officer shall endeavor to adhere to the provisions of the bylaw section o 4.3S to the event possible while remaining fairness, that's the section on expedited hearings or maintaining moving things forward.

And so, that was the first reading on the joinder issue.

That is open for discussion, and the point here is to try and get agreement to a second reading. This has been out on the email as well, and I haven't seen anybody objecting, so that's what I'm asking for here. If anybody has a comment or objection, absent which I will take is consent for a second reading.

And I see no hands, and I don't -- Liz, you have a hand up? You have the floor.

>> LIZ LE: Thanks, David. So, from ICANN standpoint, I think just globally, the three -- the three points that you've raised here from the principle standpoint is with the exception of Section 2, the second paragraph, I think, and (?) ICANN is okay with that. I think there are certain things that we raised that need to be defined in the procedure as we develop them for joinder that we raised in our April 26 email as to timing and confidentiality concerns and standard of review for the procedure's officer that I think will need to be flushed out when we do develop the procedures for it.

One area of concern that we do have is with respect to the second provision, the cause there is no interim relief or settlement with IRP cannot be made without allowing those given amicus status as a matter of right as described here in a chance to file an amicus brief on the requested relief terms of the settlement.

We are concerned about that because it just seems that the right to enter into a settlement is between two parties to the IRP and it seems that somebody with amicus status should not be allowed to intervene in the settlement rights of the parties.

So, just trying to get a better understanding of what exactly this provision is intended, and how do you foresee this being flushed out when we build the procedures behind it?

>> DAVID MCAULEY: Thanks, Liz. The way I envision the amicus brief, someone who is participating as an amicus, rather, the way I saw their right in that stage was simply a right to comment on the settlement but not to be able to block it. I mean, that would be up to the panel to whether or not to -- I'm sorry. I was distracted, to accept or to agree to the settlement.

And so, with respect to the other points you raise, it strikes me then that on the joinder issue we are not able to get to second reading because I don't think we should sort of close the issue out with aspects of it that need to be flushed out, so my request to you would be, Liz, if you can as quickly as possible, and by that I mean in the next week or 10 days, maybe put these points on the list so that we can discuss them

and try and get to second reading in the next meeting then, or conceivably on the list, but I'd like to try and do it all together, at least that would be my personal preference, but I'm open to comments from anybody else or from you, Liz, if you want to make another point.

>> LIZ LE: Hi, David, sorry. Yes, with respect to laying out the other issues that we previously raised in our April 26 email, I'm happy to do that within the inthe next week. And on the settlement provision, I understand you're saying that you're not -- the intent is not for the party to be able to block the settlement, but I guess our question is, why would they be allowed to comment on the settlement if they're not a party to the IRP?

>> DAVID MCAULEY: Liz, the way I would look at it is the person or the party, rather, that's participating as a amicus or as a party to the IRP. Obviously, if they're partying as a party, they'll be involved. But if they're participating as amicus, it's because the procedure's officer put them in that role. We have to recognize that this is the winning party below with the expert panel, so I'm happy to read and to consider the points that you'll put out there on the list, and you know, that would be fine. I mean, I can certainly be -- and by the way, these comments I'm making are as a participant, not as the Lead. I don't have any weighted say in this, but my sense is, even if they're just amicus, they're the party that won the expert panel hearing below.

But I will look forward to your comments and rethink my position in light of them. Greg, your hand is up so you have the floor now.

>> Thanks, Greg Shatan for the record. Maybe something that is confusing things a bit is we don't have a lot of different terms for parties here, and so by using amicus, you know, amicus can mean a number of different things, generically. It can be somebody who has some sort of interest in the outcome. It can be someone who wants to contribute to some sort of legal thinking or argument, but just because they have some sort of connection to the case. But I think what we're talking about here is a very direct connection. We're talking about somebody who is essentially the party below, and maybe by rolling that status into the amicus status, we have created a bit of a fog. So rather than saying the party below has no standing as amicus to comment on or even challenge in any way a settlement that will actually affect their case, we can call them something other than the amicus to make it clear that they're, in essence -- and a third party beneficiary is not at all the right term for this, but they're more ping-pong

ball that is being batted around. I know the ball doesn't usually get a say in these things, but it seems in this case, that in terms of both substantive and procedural fairness, if this is going to affect the party below, they should have a say, not only that would be heard by the panel, but with regard to any settlement that ultimately affects them.

And other types of amicus, I don't think should have that strong of a role in settlement. But this is a particular procedural posture that we have to recognize as being unique. Thanks.

>> DAVID McAULEY: Thanks, Greg. I think this highlights the joinder issue is not ready for second reading, and I think you make a good point about the terminology. I'll have to take a look at that. Liz, if you would be kind enough to put the comments on List, I think we should all take a look and give this another thought in light of the comments you've put out there, and then we'll take this up in the next meeting.

Unless you want to say, you know, unless you want to object or have anything further to say about it?

>> SAMANTHA EISNER: David, this is Sam, I'm using Liz's Adobe, and I think, you know, off of what Greg just said, I think it's really important that whatever rights people have within the proceeding are also tethered to whether each individual is alleging that ICANN violated its bylaws or not because if they're concerned about an aspect of settlement that doesn't have to do with a violation of the bylaws then that probably wouldn't seem to be within the realm of rights for the IRP, so I think we have to be very careful about how we're aligning this, is this about a violation of ICANN's articles or bylaws of incorporation.

>> DAVID McAULEY: Thanks, Sam. You make a good point a settlement can be more even than the underlying dispute. I would ask in the comments, try to be as comprehensive as you can and make that point so that we can move this thing toward conclusion at the next call. At least that would be my hope. Obviously, once you make a comment, I need to reconstitute the issue anyway, the joinder issue in light of those comments, so hopefully we'll make some progress, but I appreciate your point.

Anybody else have anything to say on this issue before, I think, before we move to the next issue?

Seeing or hearing none, I heard someone join the phone. Malcolm, was that you?

>> MALCOLM HUTTY: It is, in deed. Thanks I joined during that discussion. I apologize for not having been able to join earlier, but I'm afraid my flight was delayed.



>> DAVID MCAULEY: Not a problem. I mentioned you were traveling. Before we get to you, let me just mention timing of this call. We're now 26 minutes into the call, and so Malcolm wants to move forward on timing, and I noted in the chat that Avri, who was going to lead a discussion on on-going monitoring is leaving a little bit early, so I will not -- I said I would move up second reading on joinder and retro activity, and I won't move up retroactivity and we're going to move to Malcolm and then Avri and then come back to retroactivity and go from there.

So Malcolm, if you're prepared, over to you.

>> MALCOLM HUTTY: Okay. Well on timing, we need a first reading on our last call. I think most things -- I think really the points have all been extremely thoroughly aired. Essentially, I mean, Greg put it very well, I thought, on the List this week when he said that people should not be allowed to sit on a claim that has ripened and of which they're aware, indefinitely, they should be allowed to bring it forward or to lose it, and that is to everyone's benefit, and that's to the community's benefit in ensuring that ICANN is held to account.

And to that end, we have got a item we have agreed, a very strict timing rule of 120 days, much more strict than in many comparable things, but 120 days after the claim has ripened and the claimant is aware that they are able to bring it.

However, a claim should not be struck out for being too late before it is possible to bring it. And therefore, that cannot be a concept of repose. And that is it, so we are now ready for a second reading, I believe.

>> DAVID MCAULEY: Thank you, Malcolm. I have over time tried some workarounds, that really don't get any traction, so I too think we're at a position ready for second reading, and so the floor is open.

And seeing or hearing no comments, I think we can accomplish second reading and then what we're going to do, I believe, is as we close issues, is we'll build our report based on how we close the issues. And it's my belief that we will probably go out for a second round of public comments, and so Malcolm, as we write up this section, I may look to you to write that up, but we're not there yet. But I mean, if you want to start on this, you could certainly be welcome to.

>> MALCOLM HUTTY: Thank you for the notice. I will get working.

>> DAVID MCAULEY: Okay. So I think that issue is done. And then we're going to move, Avri, are you ready to lead the discussion on on-going monitoring?

>> AVRI DORIA: Sure thing. This is Avri speaking.

>> DAVID MCAULEY: Thank you.

>> AVRI DORIA: Okay. And this has actually been a funny one because when I first looked at it I thought oh, that's easy, and then the more I started to dig at it, the more I realized that there is a few questions to be dealt with.

So, the reason I thought it was -- and basically ALEK recommends as we gain experience with the new procedures there is on-going monitoring to ensure continued improvement.

And I searched through the rest of it, even though there was a table, I searched through the rest of it for monitoring used anywhere else in the comments, and I didn't find any, so I'm fairly certain that this is the only one.

Now, this may be based on my having a misunderstanding or a misreading of the role of the IOT in that I had assumed that there was a continuing IOT in some sense, past the creation of these procedures.

I'm not so sure about that anymore. I mean, the bylaws talks about an IRP oversight team shall be established in consultation and then it goes on about its duties and we know those. It never talks about it blinking out of existence once the work is done, as it were, as the -- God, I'm losing my words, once the rules of procedure are done. It doesn't quite say then. And reading of it is oh, it's there, so any of the monitoring and such should -- it should have a role in that, but as I read through, there is no way to review the IOT listed in the bylaws it no longer makes sense to me that that is the solution or I have doubt that that is the solution.

So if, in deed, there isn't an IOT there, it drops down to the next paragraph that talks about a standing panel itself may recommend amendments as such to the rules of procedure.

Now, personally, I find that sort of problematic, even though it says that they'd have to be approved by the board after comments, but somehow that the rules of procedure could change just because the panel said it should and the board agreed after a comment, struck me as far too much exclusion of the rest of the community, so that in deed struck me as a problem there, you know, to say that they're going to look at possible improvements to the standards of procedure without there being some community process, some ICANN community process, seems problematic to me to say, oh, okay the panel will just take care of it and they should monitor.

So looking for it -- so at the moment I have, and as I say, I'm not at all sure that this works as a solution, but the IOT in consultation with standing panel shall review the rules of procedure after some unit of time to ascertain whether any

improvement or changes are required. All changes would be subject to community review and board approval.

And then after that, the rules of procedure would then be reviewed every some period of time. As I say, which seems a simple solution if there is an IOT. If there isn't an IOT, then I'm still somewhat upon terring even though when I wrote this down I thought I had it, but then I started digging deeper and I'm not sure that I have it. I'll stop and I see at least two hands up. Liz had her hand up.

>> SAMANTHA EISNER: Hi, Avri, this is Sam talking through Liz's phone. I agree with your reading that the IOT isn't an on-going standing body, and I think that the IOT as it's set out in the bylaws has a role, up until the point where the standing panel is stood up and has also looked at the rules along with the IOT, so I think there is still a long period of time for the IOT to be in place, but then the standing panel comes in.

And one of the reasons that the standing panel was selected, and I take your concern the standing panel with sort of sole authority of public comment and rules changes, but part of the purpose of putting in the standing panel is to have a group of people who actually then get into the experience of it and look and say, is this meeting continuing to meet the goals of it, do we think it can be revised?

I think that we also need to recall that there is the ATRT which will happen on every five-year cycle, and it's natural for the ATRT to review the effectiveness of the IRP and the ATRTs could always require a new group to be set up to, to do kind of a more in depth view of it.

I think that there are some other opportunities, even without a lot of detailed work about review being spelled out, that there are be opportunities to review.

Of course, I think that having some sort of expectation written into the procedures that there will be a review period for it and that they will be looked at and they're not to be seen as static, and also requiring that there be public consultation on it and coordination with the ICANN community is I important, so I think that there is probably some room to keep innovating with that.

Hi, this is Avri again. Yeah, so I mean one thing, I was thinking once I thought of it blinking out, I also thought of it being possible to actually blink back in and to be created by the EC, et cetera, you know, when needed. I think adding it to the ATRT is possibly a good solution, though we may need to look at whether we would need to actually say something about that, that it would specifically look at those, because I'm not

sure that it automatically slots into it.

And I also know that from somewhere else, I was saying oh, yes, ATRT is the solution. And I do want to make sure that we don't count too much stuff on to ATRT that makes it much more of a gargantuan task. Yes, David? Did you want to come back?

>> SAMANTHA EISNER: Yeah, sorry one point, the bilaws specify under the ATRT requirements at 4.6 (B) assessing and approving the independent review process is a specified role of the ATRT, so it's already in the bylaws had.

>> AVRI DORIA: Okay. Thanks, I hadn't checked.

>> DAVID MCAULEY: Thanks, Avri, speaking as a participant here, I think that you put your thumb on a good issue, and I think I disagree with Sam a little. I read the bylaws that the IOT would be an on-going -- to my horror, that it would be an on-going institution because 4.3 (n) talks about the IRP implementation oversight team, and once the standing panel is established, the IRP implementation oversight team in consultation with the standing panel, and to me that sort of sounded like open-ended, and I thought that that probably was a good thing for the reason that you mentioned, Avri, that is the standing panel should not have the ability to do this by themselves.

I strongly believe that. I'm with you on that one 100%. But, I think it's unclear, and I think one of the things we could do in our report is make our own comment and request that this be clarified in the bylaws. Somehow that the community keep its ability to have some sway over what happens here.

I agree with Sam that in 4.6 of the bylaws the implementation -- or the IRP, rather, is a subject for ATRT review, but the verb in the overall paragraph is ATRT may assess IRP. It's not mandatory. It's discretionary, and so if they skipped -- if they had a high burden of review and simply skipped IRP in one cycle, that would be a 10-year hiatus between review, so I actually think this is something we might want to comment on ourselves and as a participant, rather, I would suggest that is something that we ought to consider. Thank you.

>> AVRI DORIA: Okay. Thanks, yeah. David, as I indicated, this is Avri again. As I indicated on my first reading, I had read it as you did. It was only when I started picking at it, you know, in grand philosophical style and started looking at all the words and the fact that the bylaws are pretty good at usually telling you how something is reviewed.

One of the problems with keeping the IOTs that I thought

of is that it becomes a body that's not nothing to do. It spends three or four years -- now, we know that bodies that have nothing to do, often find work, and so I think we they'd to be careful if we wanted to recommend that somehow an IOT persists as to what role it gives. Is.

But since the IOT, in a sense, comes out of the, you know, the empowered community, perhaps there was some way of tying it into there actually being a specific review, and one thing that hasn't been talked about yet is monitoring. Monitoring sometimes means data collection for review, and there are no specific mechanisms for doing that and how that would be set up, so if we're talking about a comment, it may need to include that kind of element, too.

There is no harm with saying, yes, once this job is open, the IOT blinks out of existence, but it may be possible, or it may be within the perview of the empowered community when either requested or alerted or something by the panel that there is a need that it could, therefore, create another one, you know, a new one with people totally other than us except maybe for Sam, that could, you know, that could work with them in the same way that we have worked now. Of course, we're not working with the panel yet because there isn't one, but we allegedly will be at some point, I assume, unless we completely don't overlap.

So, you know, I really don't know scratching more words down in my drive doc and by the way, my drive doc is open to anybody that wants to add words and comments or whatever, if folks want to give me a direction. I'm more comfortable with the empowered community having a continuing role and activating this kind of mechanism when needed, but that's still a -- you know, just a personal preference. Is that a repeat hand, David, or a new hand?

>> DAVID MCAULEY: Just a new hand, as a participant just reacting what you just said, Avri, I agree with you, and I certainly understand the point that having a body existing that doesn't have much work to do is a dangerous thing.

On the other hand, the standing panel is going to be there and they can come up with rules any time they wish, I would think, and I don't blame, I think that's a great idea because they're going to be the ones, you know, at the sharp end of what's going on at these hearings, and they're going to see what needs to be done vis-a-vis the rules, and so maybe the solution here is not to have the IOT continue on as an empty vessel,s but maybe the SO/ACes that stood up in the first place could sort of call an IOT into existence if there is some rules-formulating going on from the panel, but I take your

point. And I think that this issue is a little bit more than I also expected on first reading, and so we need to develop it further. I don't think it's ready for first reading yet, but I think we need to develop it further.

I see Sam's point in the chat that it's not an enumerated power of the empowered community I agree by is may not be too much difference based on what bylaw 4.3 (N) says and may be weary of the panel having unfettered ability to change the rules without something.

>> AVRI DORIA: Yes, I agree with you on that. Yes, Malcolm?

>> MALCOLM HUTTY: Hi, can I ask a question. For clarification of how you got to what you were thinking about, if the bylaws say that the panel must -- this is not an area that I've studied, but if the bylaws say that the standing panel must do something together with the IOT, that strikes me as a pretty strong evidence that it is required that the IOT must exist at the time that the IOT has things to do. Whereas this IOT must blink out of existence at some point, what is the basis for thinking that it would? Where is this -- is there something in the bylaws that you can point me to that said we will blink out of existence? That says we will have a limited lifestyle?

>> AVRI DORIA: Malcolm, it's a possible reading of 4.3 (N) because it only talks about it being established and such. It does not -- there is no clue anywhere of how it continues, of how it persists, so and also in describing the duties, it only talks about developed, clear published rules for IRP, rules of procedure that conform. There is no mention of and after that, participates in the revision of those rules as necessary, so it doesn't say that.

It does not -- you're right that it doesn't preclude it. It doesn't say and when done, it blinks out of existence, obviously, and more bylaws-oriented language, but nor does it give it a continuity. And anything with a continuity needs a continuity process because it's certainly not that the N of us are going to be forever more an IOT, so if there were a continuing IOT, then it needs a whole process for renewal, and there is no documentation anywhere of that, so putting those two together -- those things together in my second, third, and fifth reading, was basically what convinced me that my original thought had been wrong and that really it was meant to blink out.

I've got Greg and then I've got Liz and Sam again. So Greg.

>> Thank you. Greg Shatan for the record. I've been

sitting here reading and rereading 4.3 as this conversation goes on, and I think that looking at 4.3 (N) (3) contrasting with the ladder part of 4.3 (1) it (?) that the IOT is intended to blink out. Because in order to establish the original rules, after the one standing panel is established, the IOT in consultation with the standing panel develops the rules.

But then when it comes to amending the rules, the IOT has been written out of the picture, and that's fine. I mean, I'm reading this the way I think it's meant to be read and not because I agree or disagree with the results.

So, trying to be loyal about it, I guess. So in three, there is no mention of the IOT. It says the standing panel, all by itself, may recommend amendments to set rules of procedure as it be appropriate to fulfill the purposes of the IRP, however no such will be (?) by the board. After a consultation and period of public comment, that's where the common wheel comes in, the empowered community and public comment.

It complies a designated process for a common period within ICANN. For my fact that the IOT is in the first act and not in the third act indicates that we have shuffled off this mortal coil somewhere in between.

>> AVRI DORIA: Thanks. Yes, and that was part of my further reads. Okay. I think I had Liz or Sam next but I just lost my contact to the Adobe Connect room, so I guess it's good I dialed in by phone with all my whining about it. So Liz/Sam?

>> SAMANTHA EISNER: Hi, this is the/Sam, so I agree with Greg's take on it too, but I think really stepping back, the important issue isn't whether or not this is done through an IOT. What I hear being said by those on the call, including from ICANN is that it's appropriate if the rules are going to change in the future to make sure that the community is involved in that rule change and also to make sure that the communities involved in the broader IRP enhancements if they need to happen in the future.

And so to the extent that needs to be reflected somewhere, I think ICANN would be supportive of it, and I -- whether the technicality of if it's done through an IOT or just through a requirement that there be some community -- that there be more than just the community seeing it at the end, you know, I think ICANN would be supportive of whatever view that wound up taking.

>> AVRI DORIA: I don't know -- okay. Somebody else -- call out if somebody else has hands up because I don't see the Adobe Connect at the moment.

>> DAVID MCAULEY: Avri, hi, it's David. I was going to

close the queue after Liz/Sam because it's an open issue and I think we should go to the list. I like your document, and if you could briefly summarize the discussion, describe it as an on-going open discussion, point again to your document, we can have a chance to go at this on the List between now and the next call or next week or two, and that would give us a chance to raise one more issue on this phone call.

>> AVRI DORIA: Okay. That works for me.

>> DAVID MCAULEY: Thanks, Avri. So, let's move to -- let me briefly talk about retroactivity and then raise the consensus policy.

You saw on the agenda that I was hoping we would get to a second reading on retroactivity. I'm going to try to actually do it on the List. I don't want it bring it up now on the phone, but I'll mention that I plan to bring that up and try to get to second reading on the List, please give that some thought and the email was linked in the agenda.

I think it's worth in the remaining 10 minutes to at least raise the issue towards the first reading of challenges be to consensus policy, and I linked to that email as well that I sent out, but there were a couple of comments one from Kathy Climan's lawfirm and one from the non-commercial stakeholder group dealing with consensus policy, and the gist of it was that they were asking notice be given to the supporting organization, to the stakeholder group, the working group chairs and the ICANN community that developed consensus policy that's under review in an IRP, under attack, basically. And as Fletcher put it put a mandatory right to intervene for those who helped to create the consensus policy and those whose interests are represented in or affected by it..it's a pretty broad group of folks.

And also they said limit what the IRP panel can do in overturning consensus policy. The NCSG went along in large part, and under the draft rules, it's not really spelled out that that can be done, so what I suggested, and what I'm throwing out on the table and right now for discussion is, bees that I recommended that we create a mandatory right of intervention for the supporting organization. And I limited it to the SO, whose policy was under challenge, and not the stakeholder group and not the community, you know, more largely, et cetera.

And then I said, we should treat it along the lines we do for joinder, specifically that the SO received notice from the claimant that there is a challenge to the policy that they developed, that the SO have a right to intervene, that would again be up to the procedure's officer as to how that would be



executed. Excuse me. Pretty much along the lines of the joinder, but I suggested that we need include stakeholder groups, working group chair, community member, and those who helped create the consensus policy or whose interested or represented by it.

As far as what the panel could do, I thought that the bylaws were fairly limited, you know, on what they can do, announcing that an action is inconsistent with the bylaws or article, I thought that was a good treatment.

I've spoken enough about that. The I think it's on the table fairly. I think we should look for comments on what I'm suggesting that we do with this consensus policy. So the floor is open.

And I see no hands and I'm not hearing anything, so what I'm going to do is, is try to come to a first reading on this issue on the list, by you know, mentioning that it was the least raised here, but I think people may need another day or so to gather their thoughts or whatever, but let's get to first reading on the list. I'm very happy with the way things are moving along, so I think that issue is now, is now done for the purposes of this call.

We have just a few minutes left, and I had another item called explanation discussion of the process after we conclude the space. In some sense we've already spoken a little bit about it on the discussion we just had that Avri is going to bring back to the list on what's happening with the IOT.

But, there are other things we need to do. I think, you know, we'll need to figure out how we're going to sweep through the comments to make sure that we've picked up all of them. We're going to need to -- and I'll take a lead on writing a report that's going to describe what we're doing with respect to the rules. We'll probably have to consider a second public comment period, and I know that in a May 26, Greg asked a question that I think we need to drais address is a new IRP as it exists in the bylaws capable of enforcement at home and internationally, so these are the things, I think, that we'll have to discuss along with what we'll be discussing under Avri's lead on the on-going monitoring discussion.

So, I throw those out there for as food for thought, and that leads to AOB or comments on anything that we've discussed on the phone call. And so I'm going to open the floor for that and maybe we'll finish a few minutes early, and maybe not, but the floor is open if anybody would like to make any comment about what we've been talking about so far.

I'm hearing none and seeing none, so we might finish a few minutes early. Avri, thanks, I see you're leaving. Thanks

for your comments and your help on this issue of monitoring,  
and thanks everybody for joining the call. We are now done.  
We can stop the recording, and I thank everybody for attending,  
safe travels to ICANN 59 and I'll see you on the List.

(session completed at 2:55 p.m. CST)

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