CCWG- IRP-IOT SUBGROUP
Thursday, July 27, 2017 - 19:00 to 20:00

>> MR. MCAULEY: Hi everyone, it's David McAuley speaking. Could I please ask that the recording start.

>> Yes, David, please stand by one second while I finish uploading.

>> MR. MCAULEY: Sure.

>> Thank you so much. Here we go.

>> MR. MCAULEY: Thank you.

Hello everyone and welcome to the IRP IOT call of the Thursday July 27th. It is again a small group. We had to cancel the last call for lack of a quorum. And we're well into the dog days of summer, so it's probably not surprising. We struggle to get a decent group even at the best of times, but I would like to thank those that are here for the call. And it may be truncated because we are a small group but let's press on and cover what we can.

Let's begin with the agenda item number 1, which is the attendance. If there is anybody who is on the call by audio only, and not showing up in the Adobe room, would they please make themselves known at this time.

Hearing none, I will ask the folks that are here if anyone has an update to their statement of interest that they want to mention?

And seeing or hearing none, let's proceed.

Let's go right down through the agenda. I just want to say hello to Anna Loup and I'll ask her to speak up when we get to item four. She's new to the group and we'll get to that shortly.

First let's look at the signup sheet and talk about that briefly.

And while Brenda is bringing that up, this, the signup sheet that Bernie kindly created is a listing of the issues that we have under discussion for the, for the supplemental rules, but in addition, there are some additional things at the bottom under the second yellow break. And even though it appears light, it appears light with what we're doing, I actually think we've had a lot of discussion surrounding almost all of the supplemental procedures in one form or another, whether it's been on the list or discussion. So I have a feeling we can really hit our stride over the next couple of weeks to move things to first and second reading. And I believe that we can get the supplemental rules out for the second public comment in fairly decent shape; hopefully within a month or two.

The additional matters at the bottom which are the CCEP process, the procedures where I can, where ICANN fails to reply to a claim, rules for appeals and the process for recalling standard panel members, those rules I think we can move on as a subsequent stage, a stage once we get the next set of updated supplementary procedures out or public comment.

So that's the goal. And I would invite folks to look at, especially the ones between the top yellow break and the second yellow break, the rules that we're looking at, there are still a few available for someone to take the lead on commenting. Please give it some thought, and if you feel that you can't, please just be sure and read the emails that will be coming and we'll try and move these forward.

I see Greg is just joined us. Thank you, Greg.

That's the status of the signup sheet. Again my hope is that we'll get the updated supplementary procedure down and fairly decent order and get them out for public comment an get those in a shape where they can be done and useful, then we can move on to the additional materials, additional matters.

Does anybody have anything they would like to say about the signup sheet the issues under discussion, or that, you know, that has a way of looking at moving forward?

Um, seeing or hearing, seeing no hands and hearing none, let's move on to agenda item number 3, which deals with the process flow that Liz kindly sent to the list on July 11th.

This is that document that deals with the SO and ACs and ICANN moving forward with establishing a standing panel. And I believe that we would have a role of assistance in this but it's not a formalized role under the Bylaws. And so, I would like to ask Liz if she could step us through this and then highlight the questions that they posed in that mail of July 11th, and then we could discuss that as best we can.

So, Liz, if you don't mind, I'll ask you to comment on this.

>> Thanks, David.

So, what we did as we mentioned before, ICANN under took the action to sketch out the road map for the establishment of the standing panel as provided under Article 4 Section 4.3JII. And that's what we set forth here. And we put out, we built into the road map instances where it

would be ICANN organization's role SO and AC roles and in some instances that includes where the IOT also plays with respect to the role of the community.

As I explained in the email to the group circulating, there are some, as we went through this, there are some areas that the Bylaws is silent on and did not provide details, where we would like to seek input from the IOT as to building this process out a little bit more. And I think that area relates to step 2 section 3, which is the initial review embedding and vetting of the applicant.

So, I'll take us back, and I just, I highlight that so you can focus on that as we get to it, but I'll take us back to the first step which is step one is the tender process. Now, we don't think this is applicable at this time because the, it's a tender process to provide admin support for the IOT provider, since we already have an IOT provider in place an they already have their own admin support, we don't think this is applicable at this time.

The next step is the call for expression of interest and the initial evaluation. So, the development for the call, the EOI is something that we've already completed and we worked with the IOT on. And following that, is the identification of solicitation of the application.

We put here, the expected time frame is 45 days, because that's normally when we have a call, call for any expression of interest normally open for 45 days.

As you can see in the break down, we've explained what ICANN's role would be in terms of publishing the call, for expression of interest, call with the boards, and SO and AC in terms of how to get the best qualified candidates that includes social media to promote the EOI. And also revisiting what further steps if we end up getting a low turnout for EOIs.

Along those lines, we have what the SOs and AC role is to circulate the EOI among their membership and provide input into ICANN or if the return is low.

I think the next step as I indicated is where we really need input from the IOT and that's the initial review and vetting of applications. Here we put the expected time frame, our estimate of 30 days, but we put brackets around I, because that's where we would like additional guidance from the IOT in terms of how long this would take.

And I think, one of the steps that goes here is to develop certain standards for how we would evaluate the applicant.

>> David, we saw your hand up and it went down, did you have a question that you wanted us to address now or should we keep going?

>> MR. MCAULEY: Well, thanks, Sam. I had my hand up as a participant, not as a leader. And it had to do with that section, the first section on identification and solicitation of applications. But I'm happy to wait if Liz would prefer to do this, you know, with one go and then go back and get questions. So I'll leave it up to you guys.

>> No, I think that makes sense for us to handle the questions as we go through each section.

>> MR. MCAULEY: Okay. Well, thank you, Liz. So, under that section called identification and solicitation of applications, you mentioned that it would be open for approximately 45 days and your reasoning for that was pretty good, I thought, because that's fairly standard practice in ICANN and that makes sense.

Having said that, I'm looking, when I read this and I thank you for doing this, it's a good document. But as I read it, I was looking for ways to shorten the process. And so I'm wondering if this period where the expression is open for people to act upon, if it couldn't be 30 days? Could we try and, I'm going to try and make suggestions for snipping time off the process in various places, but that's my question here, could it be 30 days? Is it, in light of the reasoning you gave that usually the practice is 45 days, what if we deviated, would that be a terrible imposition? I'm just curious if anyone has a reaction to my question. So that's the first point.

>> Okay. David this is Sam. So, Liz and I agree, there is no mandate for the length of an expression of interest period. One thing that we consistently see across ICANN, particularly around the time of year that expressions of interest or calls may go out, et cetera, sometimes we see lower response than we would hope to and so we might want to have some sort of break point or place for communication between ICANN and the community about, we've only received X number of applications should we be extending this.

So, I think that we should, there is no problem in setting up an initial period that's shorter than 45 days or taking that down to 30, but I think we need to consider the impact if we don't get enough or if people come in, or if we get contacts from potential apply cans that say they need a couple more weeks to submit something.

So, the reaction is it's not a problem, but we might need to remain open to the fact that it might need to be extended.

>> MR. MCAULEY: Sam let me react to that statement again. That makes sense to me. I would, so I would urge that we make it 30 days. It also, you know, this will be worked on by you all in

light of the comments that we give you back. So it's not going to be released probably in July is my guess. And so, it depends when the EIO comes out. If it comes out if first part of September, then it seems to me the 30 days is reasonable. If it came out in the middle of August, maybe, we would have to be very generous on requests to extend. But I would try, but I would think it would be wise for us to set a Tempo of quickness going into it. And so I appreciate your comments and that would be mine.

So I'll move to the next point that I was going to make. And that is where Liz you mentioned you know that the coordinate with the bored and the SO and AC, there I think the IOT would at least with respect to some members in the IOT note a willingness to volunteer.

Now before I press on, I see Bernie's hand is up. Let me see if Bernie wants to step in now.

>> Just a thought throwing out there. Given we're concerned about the timeline for these, this period of applications, if at some point earlier we do know that we're going to launch on a specific date, it might be worth while using the communications group and issue some public media stating that we will launch that on date X. And that gives you sort of several weeks of people knowing that this thing is going to open on a given day. And that might help you gather more applications.

And the communications group at ICANN is really good at using all the channels for that, so just a suggestion if you find it useful.

>> MR. MCAULEY: Thanks Bernie. Seems good to me. And so thank you for noting that.

So then Liz and Sam, I will move on and say that please note that the IOT would like to assist in any way that's reasonable to try to move this along.

Then I would like to note on the issue of low returns. I think that's a fair concern to have. I'll just tell you what my experience has been as a leader of the group. I have been getting indications from people that are interested in applying. So I know that there will be some applications. In fact, I know there are some people that would really like to apply right now.

So, I have two things to say about that. One is, if we do have low return then we could extend, but two, I think it might make sense, and this is for both, you both as well as this group to indicate in the EOI that at the beginning, the standing panel is going to be capped at 7 members. The Bylaws provide that it has to be a minimum of 7. And so, far in my experience, I would characterize the way things are moving as fairly, fairly slow or deliberative. And I think it would be in everybody's interest to say the standing panel is going to start at 7. And you know, the community, the IOT, the board, can always call for increasing the number, if that becomes an operational necessity. But that would be my suggestion to sort of indicate we're looking for 7 members.

And then the only other thing I would say in this respect, leading up to it much like Bernie was stating, anticipating the release. If there is any interest on your part to do a webinar, or a call with SOAC leaders, either I'm personally or I think some of us in the IOT would be happy to help in that respect; and to sort of explain the Bylaws, explain the process flow, and field questions.

So, those are my comments with respect to this section. Thank you.

>> The thanks David. If there are no other questions on this section, we can move on to the next section, which would be the initial review and vetting of the applications.

And as I said before, here is where the bylaw system does not have much as details on what this process looks like. So this is what, how we have sketched it out is we think this involves developing a standardized template for the valuation of the applicants. And that incoordination with the bored and the SOs and the ACs, that probably would include identifying what constitutes, what a well qualified candidate looks like, and we would work with the board and the SOs and ACs to identify the qualified applicants from the interviews.

I think that we don't necessarily have to wait to receive all the EOIs or even for the posting of the call in order to do this. I think this can be done concurrently and the sooner we start this work the better.

Then, there will be an initial review of the application and then there will be an initial   initial interviews.

I think here is where we know in our footnote and in our email to the group, here is where we would really appreciate input from the group, because in terms of what this looks like, how should it be, does it look like ICANN does the initial interview and then the SOs and ACs do the secondary interviews, or should the, would the SOs and ACs and the bored participate in the initial interview?

So, it's, this is the process where we would appreciate some input from the group on.

>> Just to add onto that, I think I think the types of process that we build in a have an impact on the timing. So if you imagine an initial interview process that requires involvement from large numbers of people from the community, that would take more time to coordinate than having a smaller number of people participate in the initial interview process.

And so, not without, I think we can go anyway on it. It's just a matter of what, we're looking to the IOT to help us maybe narrow down what we think would serve the SOand CArole in this process and where the SOs and AC would be available.

As we also note to the extent that not everyone can participate in an initial interview process, for example, we think that there would be, it would be important to make sure we had as much transparency around the process with ICANN have been obligations to provide documentation and keep records, so that it's clear, it's clear where things stand for anyone who is watching the process.

David, we see your hand up?

>> MR. MCAULEY: Yes, I was on mute. Sorry about that. So thank you.

I will make some comments and that I see Bernie's hands is up too. Then I'll call on Bernie.

So, thank you for this. My comments here, initial review and vetting of applications expect the time frame in brackets 30 days.

I would suggest that we say up to 30 days. And my thinking is this. Again I'm sort of looking for ways to shorten the process, deliver on the new IRP more quickly. And let's say we got 20

applications. It seems to me that if there were 20 rather than 50 or a hundred, that the review and vetting would be done relatively quickly; 21 days, 15 days, I don't know.

So I would suggest up to 30 days as needed, or some such language.

Then with respect to interviewing, I think your offer is generous, to do the interview and record them so it's transparent, et cetera. But I would suggest that while that may work, you know, that you take the lead in the interview, you should at least invite the SO, taken ACs to have one representative along on the call, you know. And the difficult part for me is what capacity. Should they be there just listening or can they ask questions?

And I guess there are numerable references we could come up with. For instance we could invite SO and AC to submit the question to IOT and the IOT help in the interview if people are concerned that ICANN should not be doing the interview entirely. ICANN organization, that is.

So, there is ways we can crack this nut, but I would at least invite SOs and ACs they will be given the schedule and invited to have somebody from their council come along. That way, we wouldn't be coordinating schedule for ten people, but we would be allowing ten people perhaps to sit in, in some form or fashion.

I know that needs a little more work, but that's my comment.

So, next tile turn to Bernie.

>> Thank you. Just a comment as you considered the   consider the processes for doing this.

I guess, in a way, for me, this could almost turn out in a very similar fashion to the selection of review item members for some of the reviews under the new rules, which are under the Bylaws.

And I think that we should be informed about how well and some of the challenges that have resulted from the early applications of that; when considering the process for this. Thank you.

>> MR. MCAULEY: Thanks Bernie.

So, back to you Liz.

>> Firsts   this is Sam. First I want to react to Bernie's comment.

I think Bernie, you're exactly right, the issue of how do the SO, ROs and ACs come together to develop a slate, to make these sorts of recommendations? How do they participate in the evaluation of candidates, which is actually almost different, because there is a, the Bylaws suggest that this is a collective and not necessarily an individual SOand AC nomination process.

That's where we really started running into concerns about setting out the time frames and making sure the time frames were realistic. Because the more, the more heavily involved you have SO and AC participants, the longer the process will likely take. And so there has to be work around the definitional roles of what those participants are doing. SOand AC would likely have to identify their process for selecting the people who help represent them in those, in that work. And then we also do need to have some, have some concerns around identification of conflict of interest, particularly at interview stage and making an initial valuation stage, to make sure that the more people are involved in the interview process, the less likely it is that

they might actually be working in a particular interest towards a candidate to move them through, right? It's that kind of independence consideration that you have.

So, that's one of the reasons why we're flagging this for the IOT to get some ideas of how we can present this to the SO and AC in a reasonable way and if you have idea of how you might go fact to your SO and AC and race these issues and get some ideas of how we want to move this forward and solve for the issues instead of making this look like ICANN just mandated a particular process.

So, you know, we could have some people from the MSI team come and talk about the selection process. I know a bit did how that's gone, but it's really, the issue that we're actually trying to solve for is an issue that hasn't yet been solved in the review team process, which is what exactly is a collective responsibility? And so in some ways we're trying to, to cut off some of the issues that happen within the review team selection process, where some SOs and ACs haven't been fully okay with the processes so that we have a more community developed process from the outset and understand how everyone is supposed to interact.

When I see and I see there are reactions back to this on the list. So I'll turn this back to you, David.

>> MR. MCAULEY: Thanks, Sam.

Bernie, that an old hand on new hand?

>> No, it's a new hand. Maybe I'll just repeat a comment that was made to me by someone from the SOs. They were concerned that on this particular process that although it says it's a

community selection, that somehow this would end up for at least the first round just to get through it, would end up looking more like the selection of our team members. And that if you will, completely horrified the person who was making the comment.

>> MR. MCAULEY: Bernie, it's David. David speaking. Could you, I'm not sure I follow. Could you repeat? The first round would be more like our team members?

>> No, more like the selection of review item members for the reviews.

>> MR. MCAULEY: Oh, oh. Okay. Thank you, Bernie.

And I have a reaction to what Sam was saying. And I know that there are, you know, well intentioned, good faith people out there in this process, that are looking for ways to help us make this work sensibly and quickly and result in good panel, good selection, people that meet the selection criteria very well. So that's what I'm really sort of getting after.

So, Sam, you made some good questions. And I think it might help if we could work this out on the list. You know, go through these questions. I personally, you can tell because I mentioned it several times, would sort of like to design a brief webinar or just discussion with SOs and ACs that simply highlights, here's what the Bylaws give you, here's what the organizational issues are, we don't know how to do this. It is a community thing. We want to discuss it. Here are bullet points about the issues involve. The very things we're discussing now. So that we could at least move too ball down the field a little bit.

I've already spoken to a number of SOs in Copenhagen and I think in Johannesburg, and I've done it on the list as well. Sort of surprising people, here's what's coming. But now we're getting to the formative stage where the actual issues are going to be wrestled with.

If there is anyway we could move this quickly on the list, maybe you and myself and Liz an other volunteers from the IOT, sort of move it forward, I would very much think that would be a good idea; hopefully with the idea of having some type of communication with SOs and ACs even in the month of August which everybody dreads, but if there is a week notice and there was a subject put out there and the importance of it, I think we could gather folks and get the thinking started and this could come together fairly quickly. Thank you. Back to you Sam and Liz unless someone else would like to make a comment, but I don't see any other hands. So why don't you guys go ahead.

>> Thanks David. So, Sam and I are in agreement with you that webinar is the vehicle to move this along. It would be a good idea. Whichever mechanism it is, we want to be able to get this done so we can go on, move on with this process of actually establishing, selecting the panel.

The next step once, after the initial review and vetting of applications will be the nomination of the slate. And that comes from the SOs and ACs that nominate the slate.

Here again, we have in brackets, which is an estimate time frame of 30 days. It might be sooner than that. Really depends on the SOs and ACand how they envision the process will be built out.

ICANN role is really to support SOs and ACs as needed, I can it's up to the SOs and ACs and reach a mechanism how they will reach the slate of the nominees. Whether they'll do second interviews, whether they will arrive at the slate itself.

And then, once they provide and communicate the slate to the board, the final step will be for the board to act on the slate and we have the expected time frame would be 30 days and that's based on, we'll schedule a board meeting at the next feasible opportunity once ICANN receives the recommendations, and then the board will be able to act upon the proposed slate at that meeting.

>> MR. MCAULEY: Thanks Liz. It's David again for the record.

Let me just react. I think that all makes sense. I would like to just sort of close my comments with, to repeat one thing I said earlier. Where we say 45 days, let's try to make it 30. Where we say 30 days, let's say up to 30 days, because in all of those instances there may be ways to truncate it. I think the SOs and ACs and ICANN bored should also be made aware of the need to move with dispatch on this thing.

And then, I know there is details we they'd to come up with for engaging those who are going to be chosen to serve on the standing panel. And so I think we need to give some thought or ICANN needs to give, the community needs to give some thought at some point what would a contract look like for service. And it seems to me that the sub taken active rules of service would strictly be those from the Bylaws. In other words ICANN would have no role in how someone fills their role as a standing panel member. You know, the Bylaws provide what those criteria and standards are. But I can will have a role in paying them, determining what are they

paid. So I would suggest the background, ICANN legal and policy may want to discuss this with the ICDR. I don't know how you create these contracts, but theoretically, the IOTwould have some input into that too.

So I would encourage you to sort of be working along those lines too in parallel. And hopefully as we said, we could move some of this forward on the list.

If I could, I would like to give Sam and Liz, you, the sort of the duty of coming up with the first email to move this forward, then we'll move from there. If the that would make sense and would be acceptable to you.

>> Yeah. We can do that, David. This is Sam. And just in terms of the contract, there is also the fact that there is, one of the things around independence, of course ICANN is responsible for paying and everything, but likely because there is ICDR is almost likely on their paper as opposed to an ICANN contract, but I think that there probably is some value in making sure that what goes into a standardized statement of work, that we would expect the ICDR to insert into the contracts be something that we all agree. That what we're actually telling the panel is there being contracted to do is what we all agree they're supposed to do. There is probably some room for working with the community on making sure that everyone is aligned, that that statement of work is appropriately done.

But we'll go and take the first action to flush out a little bit more to an email some of the issues that we think we could raise. We'll probably think about it in terms of you know, how would we kick off a webinar? What would web posting in for questions to get input from the community and try to focus it that way.

>> MR. MCAULEY: Thanks, Sam.

So, I think we're done with this agenda item number 3 unless anybody including Sam and Liz, anybody wants to make further comment.

If so, please note.

Seeing no hands and hearing none, let's move on to the next agenda item, the CEP process.

Let me set up this brief, this will be a very brief discussion. You've seen the emails that went back and forth. Suddenly Ed more wrist left the CCWG for accountability workstream 2. I didn't know that was going to happen. And the co chairs came to me on behalf of the IOT and asked if we would be willing to pick up the CEP process. And then you've seen the letter that was passed around among us and that I sent back to the chairs saying sure, we would love to do this, we would like Anna Loup to join our group, an that has been active in the CEPprocess with Ed. And we would like ECEP come with us and not be a workstream even differ anymore.

Jordan wrote back and said they seem like reasonable questions and they'll Dell with it at the next plenary.

That's where we are. We would welcome to our group Anna Loup. Anna is on the call today, and I'm going to ask Anna if she would if two 30 second bio of hers, and second 30 second segment would be roughly what's going on in CEM that Ed and her have would be working on. I've met Anna, so Anna, I'll give you the floor.

>> Great. Thanks so much, David.

So, again my name is Anna Loup. My first 30 second segment, I'm a PHD student at UCSK (indiscernible). I'm working social, economic and political relation of (indiscernible) my academic spiel through. I look mainly at broad Internet critical infrastructure settings from sore the of bio in my work at IG. From 2014 to 2016 I worked in ICANN DDG position. I was a CCP metrics intern before I became a member of the NCPH, NCSG. I'm currently a Compass Fellow at the Center of the (indiscernible) and Technology. That's my academic work.

Regarding the CEP, it's my only project within the ICANN community due to demands of my academic research and policy work but I'm really excited to continue to aid the community in the development of what I think is an important aspect of the Bylaws and hope to learn a lot from your discussions and expertise.

My work for CEPwas mainly to advise Ed on the collection of discussion data and interviews because I'm not a lawyer. I work with lawyers every day but I'm not one.

So I mainly was the methods person and the data person. I was tasked with note taking, helping re discussion during our calls, PowerPoint development. And I also sat in on many of the informal interviews we conducted in the development of two pager (indiscernible).

Hopefully I can answer any questions you might have. Again we were really in the discovery process, and we at Johannesburg were trying to engage the community more with a few questions to get feedback before we had an actual outcome. So really it was a discovery process. So I think this is a great time to see, the CEP, it is a good point, you know, if it had to move, this is a good point for movement. But I'm glad to be working with all of you and thanks so much, David.

>> MR. MCAULEY: Thank you, Anna. And, we're very happy to have you join us.

We will now, unless anybody has a comment, question, anything they want to say on this agenda item.

If not, we will move on to the next agenda item, which is the joinder issues, issue.

I think what I'll do here is just do a lot of reading. I'll do it very quickly. But roughly speaking we had come to a statement of our proposed program on joinder and Liz and Sam brought up some issues. Good issues to think about as we think about joinder. And so, I think it was this past weekend or Friday I wrote back which suggested a response and I would like to go through that now.

So I'm hoping to move this to near conclusion.

The position that we ridge three came to on joinder was as follows. It's three points. One that all those who participated in the underlying proceeding as a party, and remember we're talking about joinder of people who are coming from expert panel decisions only in this respect; that those people receive notice from the claimant in the IRPs. In IRPs under the bylaw section for the expert panels. That they get notice of the full notice of IRPand request for IRP, including all the documents. And they get that contemporaneously with the employment of serving ICANN.

Two that such parties have take right to intervene the IRP. How the right shall be exercised to the procedures officer. How that could be allowing party stands a or allowing the parties to file amicus briefs. As procedures officer determines in their discretion. No interim relief or

settlement could be paid with the IRP can be made without allowing those given the amicus status as a matter of rights as described herein a chance to file a amicus brief on requested rove leave of the materials of settlement.

3. We (indiscernible) procedures offer, moving links things along with dispatch.

So, then Liz's comments came and I boiled them down to a number, different number of things and I'll read them and my suggested answer. And then I'll invite comment.

So, Liz's points first. There needs to be rules and criteria established as to who can join intervene by right as who may be properly allowed to join, allowed to intervene at the discretion of the panels. My suggestion was intended to allow all parties at the underlying proceeding to have a right of intervention but that the IRP panel through the procedures officer could limit such intervention to being that of an amicus. Not in division to allow nonparties from below or others to join under these provisions. Noting that these provisions deal with parties below. Basically an expert panel hearings.

We're not displacing rule number 7 will consolidation, intervention joinder from the draft supplementary rules were up for comment.

So, that's the end of the first part. Anybody have any comment or concerns or desired out comes? And I particularly interested, Liz, and Sam in what your reaction is.

>> For this, for this portion, I mean it seems fine. I don't, I'm not trying to reopen a bag of worms, or can of worms, whatever that statement is. But this only discusses cases where there

is a challenge to a expert panel or one of the evaluation panels, like that happened in the new detailed program.

So, you I'm not suggesting we need to go further, but I just want to make sure that we have, that we're clear within the IOT, that we're not addressing situations where people might be able toe intervene when, when there is not that kind of underlying procedure that's been, someone was designated a party to.

>> MR. MCAULEY: Thanks, Sam. So I think what that means is on section 7, the joinder session, we need to be, take these comments into account. I think that's fine.

And the second, let me go to the second point. And I will paraphrase here, because I was reading so quickly that the captioning wasn't able to keep up.

Second, clarification and development is needed on the standard of review to be applied by the procedures officer. What should the interested parties have to demonstrate? Harm based on alleged violation by ICANN? What are the appropriate interest that will be supported? What types of briefs and opportunity to be heard are needed in order to allow an interested party to petition? To join in the IRP?

My response, the intervener would not have to allege or show harm. That's the job of the claimant, presumably the person or the party that lost the expert panel below. In that case, the claimant is going to have to allege that the decision by the panel below, if ICANN implemented it would violate the articles or the Bylaws. Here the intervenor would simply need to show that they were a party below. Would have roughly the same kind of information

required in a claim and perhaps an equivalent, or yes an equivalent filing fee. That's a suggestion.

Again, does anyone want to comment on this? And, Sam and Liz, I put you on the spot last time. You don't need to comment, but if you don't, I'll sort of assume that you are okay with the explanation subject to what Sam just said about joinder and other instances.

>> Yeah. I think on this one, we still have some concerns. I mean if you're giving someone a party status to an IRP, IRT is for the demonstration of, for someone to allege that ICANN violated Bylaws or the articles of incorporation. And that that person experienced harm because of it.

And so, if it's about bringing a, bringing someone in to support a briefing, that's one thing. And this is I think where we go to that, our comments around the levels of what does intervention mean, what does joinder mean, what rights are we giving to people? Because, you know, what is the value of adding people to an IRP? Not about adding voices, but adding people to an IRP when those people or entities actually don't have a claim or don't wish to state a claim that they were injured by ICANN's violation or alleged violation of the Bylaws or articles of incorporation.

Because that seems to not really be in support of the purposes of the IRP.

Now, if this is about how do we get voices into the IRP, so if someone, if there is a party who says, I fully agree with, claimants position and I want to show that, I want the panel to know that I agree with them and to give some information about that; that's one thing, but we wouldn't then say that they have, that they're then considered a party to the IRP.

So, some of this might be language issues in getting clearer on our language, but also about the intentions and the different levels for which we think people are joining.

>> MR. MCAULEY: Thanks, Sam. I understand your point. And I too have a little bit of concern about party status. On the other hand, the Bylaws give the loser below, an explicit right to an IRP hearing. Basically an appeal of the expert panel below.

And so, I think the desire for party status is a desire for equivalence. And recognizing that the party that's going to? Be intervening is the winner below. Which after all, they won the case, so they have, they shouldn't be relegated to secondary status.

Now, having said that, if they had a full right to be, as you put it, a voice in the hearing, I think that might make sense. But in a later point, you and Liz made the point that someone in amicus status couldn't really upset an settlement, and I think that, if you maintain both positions, that is that the winner below should not be a party but amicus in an appeal, but then the winner below couldn't have an active voice in settlement discussions.

I don't know, I have, I'm just struggling with that. So that would be my comment to your comment. And I think your hand is up, is that new?

>> Yeah. That is new.

So, first, I think we have a much different understanding from the CCWG process of what the, what it means to have included the language around the expert panel decisions into the Bylaws.

So, we agree during the CTWGworkstream one, that it was important for the community to have that specific example of a time when ICANN might have violated its Bylaws or articles of incorporation listed as a time when the community could come, when a claimant could issue an IRP, but is actually not an automatic right of appeal.

The party that wishes to challenge ICANN's conduct in terms of whether or not ICANN's conduct violated the articles or Bylaws in its acceptance of a panel decision like that, has to allege that it is against ICANN's articles or Bylaws. And so there could be multiple places where someone could lose at an evaluation panel and actually not have a claim that ICANN violated its Bylaws in accepting that.

So I think we need to make sure we're not talking about an automatic right of appeal.

Then we have to think about what the out comes of IRP are. Because my reaction to what I was hearing is that, this is, it becomes a redoing of the evaluation process and that's not what the IRP is intended to do. The IRP is intended to look at whether or not ICANN violated its Bylaws in accepting a panel decision. And so, the potential out comes of that, of that IRP review of it are a finding that, yes, ICANN did, or no ICANN didn't. But even a yes, ICANN did doesn't require that the outcome of the panel, the evaluation panel be changed. It could require many different things to happen. It could require the panel evaluation to happen again, or ICANN to deal with rectification its Bylaws violation, but it doesn't automatically displays the loser or the winner with the loser.

So, it's important, I mean, I think it's important, in these situation, around panel decisions, of course, the person who won, or other people who might have also lost, want to do something

to preserve their position if future process needs to happen around the decision after the IRP panel decision. So of course they want to have a voice in it; but it's not clear how, how giving them a party status in an IRP might be necessary if they're not actually saying that they're, that they experienced a violation because of what happened.

>> MR. MCAULEY: Sam, thanks. It's David.

So, I think, I think you're persuading me on the element of party status, but my question was, if some of suggestions for those of us that are the IOT sort of came to your point of view on that, would you still maintain your position that the AMICUS should not have a decision on settlement.

And I'm with you all the way through, an I understand the standard is, you know, for a successful IRP is did, or would ICANN breach its Art calls or its Bylaws. And that's very, it's a very tough and narrow standard, but it's possible that the loser below could come up with an argument that looks convincing, that implementing the expert panel judgment would violate the articles or Bylaws, whereas another party may be able to blunt that argument.

In other words, it's not always black and white. There may be gray cases. And so, what I'm saying is, if we agree with you that there is not a right to party status, but amicus status, wouldn't the people who won bow that are acts as a.m. cuss have some say if settlement broke out. I don't know how settlement discussions are handled if the breach of Bylaws or articles, but that's what's on the table.

>> So, there are situations where someone might file an IR.

P and they file an IRP in good faith, that they believe that there is a violation of ICANN's Bylaws or articles of incorporation, but there could be a really big question as to whether or not that happened and the parties could find that there are other terms that they want to settle their dispute on, and it might not be necessary to reach the question of a relation of bylaws or articles in order to do that.

So, one of the things that I feel very confident in saying today is, let's give the example. If an expert evaluation panel outcome was something that was part of the challenge raised in an IRP, and ICANN's acceptance of that was part of challenge raised in the IRP. ICANN settlement of this dispute with the claimant, if it included ICANN just over turning and changes its position and accepting someone else has the win error modifying the outcome of that evaluation panel action, that would be a problem for ICANN. That in and of itself should be challengeable conduct to ICANN, because the outcomes of the IRP process aren't supposed to be about eventually, of course it's about changing and making sure ICANN is acting in accordance, but ICANN shouldn't be settling claims within an IRP in a way that just totally just changes what happened, only in favor of one party. That in and of itself isn't the outcome.

What would people do to settle their dispute? Maybe there are other issues and things that are, are at play. At no other place does ICANN, or do we know of, this isn't just about ICANN, that we have people who come in other than in a class action type will situation, where people comment on terms of a settlement. Settlements are often between and amongst people. Settlements, you know, who knows what the terms of the settlements are. They could be for very little. Who knows if the it would be anything of monetary. I have no idea what settlements we're even talking about, but those are not things that you would expect the IRP panel itself to

have a view on, if two parties agreed amongst themselves that they no longer wanted to pursue an IRP? I think it would be really difficult to say if two parties no longer want to purchase sigh an IRP or if a claimant doesn't want to pursue an IRP, and if they, if they come to a point that they think maybe they're not going to win after going through the process a bit; that neither the ICANN community which is funding these, because of the way that the funding has changed, or the claimant should be compelled to because there is someone who is standing on the outside telling them to keep doing it.

So, I think we need to look back some more at the settlement issue.

>> MR. MCAULEY: Hi. It's David again. Fair point. I think you make sense. I'm not fully convinced but let me ask you a question.

I think the points that you're raising go all the way through the first seven points that I listed in my list. I listed them first, second, third, et cetera. I think that they're all sort of wrapped up one through seven in this discussion.

Is there any chance, Sam, that you and Liz could, like within the next week, come out on list and say here is what we're suggest, what the language would look like. Doesn't need to be long, but I think it would be helpful; as a way to move this forward.

>> So, David, you know, I know that you're really trying to kick start some conversation on the IOT list. And I think from our perspective, we would like to hear some other voices, if other voices are willing to come in, to make sure that it's not just two positions. I think that there are, there are some gray area here, where maybe some other people who are listening have some ideas of how to maybe bridge the gap here.

You know, I don't, we could try coming up with language, but I think it wouldn't be a surprise if the language that we came out from today would be something that people might not be fully accepting of. And so, I think we would like to hear some other voices too, because I don't want this to just become a part of ICANN taking too hard a position and the IOT doesn't agree. I think we would like to hear some other voices of disagreement to see if other places that we could innovate and move this forward.

>> MR. MCAULEY: That's okay. I would love, I would love to encourage other people to weigh in. So what maybe your suggestion is a good one. I'll go out to list. This will be my action item, to say I've made a point in the red comments. You all have made the point in your email. We're at logger heads. We really need other voices to weigh in and make other suggestions.

If the they do or they don't, we'll have to move from there in the next call or two calls from now. So, I, that's fine. That makes sense to me, as a matter of fact.

So, let me ask you if, I think what we're discussing is the points one through seven. I still have points 8, 9 and 10. So, let me ask, Sam, if you and Liz had any concern with what we said in that respect.

8 was additional development as needed to ensure that amicus curiae exercises it's right to comment or interim relief does not delay emergency relief. I stated simply sedated the reference to the Bylaws in paragraph 3 of the original proposals intended to address. Just maybe we could beef it up.

Do you, what were your thoughts on that specific point?

>> So, we haven't gotten this far down the list in terms of discussing it together.

>> MR. MCAULEY: Okay.

>> We can take the action on this to come back on the 8th, 9th, 10th and give some reaction. Well be happy to do that.

>> MR. MCAULEY: If you would do that, that would be great.

So, let me ask if anyone has a comment now. Otherwise we're going to move to the next agenda item. So I don't see any hands or hear anybody. Let's move to second reading.

By the way, I think we can get through this fairly quickly, but at the end on AOB, if there is any other business, I want to talk to Bernie about schedule, so we do need a few minutes for AOB.

Anyway on second reading for retro activity. There was a mail that I sent on Monday, June the 5th to the list and it December jibed what we had agreed at first reading. This was with respect to retro activity issues, there were two issues. One dealt with retro activity of the substantive IRP standard and the other dealt with retro activity of the new updated supplementary rules of procedure.

And we decided or we said at first reading, one, with respect to new substantive IRP standard we said no retroactive (indiscernible) to IRP pending on 2016. That's the date the Bylaws became effective.

And 2, with respect to retroactive application of new updated supplementary procedures, once they're adopted, the procedures shall be amended would to allow a party to request the panel

to decide this is a matter of discretion. And we proposed adding a standard for the panel to review these requests, specifically that if all parties did not consent to that, then it would not allow the new rules to apply pending cases, if that action would work a substantial unfairness, or increase in costs to a party, or otherwise be unreasonable in the circumstances.

So, this is the second reading and it's open for people to comment, object, suggest additions, et cetera. And the floor is open for that. I don't see any hands or hear anything. So and I haven't seen anything on list. I think I'll make one last call on list and this will be done.

So that agenda item is now done. The second reading on retro activity.

There is now a slot for further discussion on ongoing monitoring, this is a comment that Avri is leading. I know Avri divided attention on this call, but I also know that she may make a brief comment. Avri do you have anything you would like, your hand is up so the floor is yours.

>> Thanks. This is Avri speaking. Yeah, my other call ended at the hour, but thank you.

So, yeah, what I wanted to say is that I have not really caught up in the writing on this. In fact I most definitely haven't caught up. Since our last conversation where we started extending towards one of the particular choices. So, with apologies, I'll get that done before the next meeting and then hopefully, you know, the proposed way forward will be there for people to comment on. And as soon as I get it done, I'll send it to the list.

>> MR. MCAULEY: Many thanks, Avri. And thank you for hanging in while there were two calls going on. I've done that and it's not the easiest thing to do. So thank you.

Moving on to the next agenda item, discussion first reading for challenges to consensus policy. This mail is one I sent out to the list on may the 9th. The comments roughly were from the noncommercial stakeholder group, I'm sorry that Robin had to drop off the call. And from Kathy Cleiman at the Fletcher Law Group. But it's basically that the comment was, fair is fair. If an SO has labored on a PDP and gotten it into policy, and someone comes and challenges the PDP, then the SO that was involved in developing it should have some say in the matter.

This is very similar to the joinder discussion that we just had. And I mentioned recommendations in the mail that I just cited saying that we should create a mandatory right of intervention for the supporting organization whose policy was under challenge. And I recommended that we treat it along the lines of the joinder issue so it will be subject somewhat to what we agree in joinder, but still open and under discussion as we just heard.

I recommend that the SO involved receive notice from the claimant of the full package; at the same time they serve it on ICANN. That such SO have a right to intervene in the IRP and that would be treated simply to what we agree on jurisdiction.

I suggested that we not go as far as some had encouraged us, providing notice to stakeholder groups, Working Group chairs and community members, and those who helped create the consensus policy and whose interests are represented and affected by it. I thought those were very broad terms, I mean those who helped create the consensus policy and whose interest are represented.

Seemed to me that a notice to the SO was adequate. And I did not see a need to limit what a panel could do with respect to a judgment, thinking their abilities as described in 4.30 were sufficient.

So, that was what's on the table. And, as I said in the agenda, this is really for first reading, and probably can't even get that far because it's subject to much of what we just discussed on joinder. But substantively it's very similar. So I would like to get out on the discussion now. If there are any objections to or different interests that want to be, people want to state about IRP's dealing with PDP, policy developed as a result of a PDP developed by an SO. So the floor is open for anybody that wants to comment on this issue.

So I see no hands and don't hear any. As I said, this really won't get the first reading because it's going to be wrapped up in the joinder kind of issues, but there is enough here to move this forward to the list and say we're making progress on this. It's going to be treated like joinder. If you have thoughts you better raise them fairly quickly. And that's probably what I will do with this.

So, having said that, we can wrap this up fairly early. We're through everything except AOB. And then on AOB I wanted to talk about schedule.

We're in the dog days of summer it's difficult to get people to teleconference meetings. I'm going to ask Bernie if he could tell us what our current quelled is what's available to us and if anybody has any thoughts, let's discuss them right now. And as Sam said earlier, I'm sort of very interested in moving things on the list.

So, Bernie, can you help us?

>> Yes David. We have staff, are holding Thursday 3 August 1300 UTC for this group. It hasn't been confirmed yet, but there is a hold there. So we   and that is for another 90 minute call. So, that's an option.

If we don't want it on Thursday, we could actually have it on Wednesday, because I believe that slot will be opening up shortly.

And after that, we don't have anything reserved. August is not overly full. There are, if you want to have a meeting at 0500, there is a lot of room there. There is some room at 1500   sorry, 1900, and a bit more room at 1300, if we want to take other dates. September is very sparse. So, basically, most requests for dates in September would be acknowledged at this point.

Just a note. If we want to present something to the plenary before sending it to public comments, there is about nine weeks left between now and presenting something to the plenary, so that we can take it to public comment after the abu dhabi meeting.

Then that also raises more of a practical question, David, we can talk about that. But there is a hard stop on funding at the end of June 2018. So if we want to get done, we sort of have to factor those elements in. Back to you, sir.

>> MR. MCAULEY: Thank you Bernie. Thanks very much. Here's what I would suggest to the group; is that we not meet on August 3rd or even the 2nd. I have some personal interest in this. I like to prepare for these calls and I'm going to be side type up, I'm very tied up between now and next week. And so I would have a very difficult time of preparing.

So I would suggest that we try and find a 1900 time in August. Bernie, can you tell us which 1900 slots are available in August, 1900 UTC.

>> I'll bring that up right now. If you'll give me a second.

August. All right. So, we have just said no to the 3rd. Let me remove that while we're at it.

>> >> MR. MCAULEY: That's my suggestion. I want to see what people say.

>> Okay, I'll leave that in, but as I said it's not confirmed. 1900 slots right now, we have Monday the 7th, Thursday the 10th, Friday the, yes, Thursday the 10th, Friday the 11th. The week of the 14th is rather open except for Tuesday the 15th. The week of the 21st, we only have Friday the 25th at 1900. And the week of the 28th of August, currently we have Monday and Thursday, 1900 slots. The Friday of that week is Friday September 1st, and I doubt you're going to want to book anything there because the Monday after that is Labor Day weekend, so Friday attendance typically on that Friday is absolutely awful.

>> MR. MCAULEY: So, Bernie, is Thursday the 17th, is that a Thursday, the 17th?

>> That is correct, sir, that is open at 1900.

>> MR. MCAULEY: So, my suggestion to this group given that August is the heart of the dog days of summer is that we have one meeting for 90 minutes on Thursday the 17th. Does anybody want to object to that? Or press on with August the 3rd?

Seeing no objections, let's do that, Bernie. We'll take the 17th. If we could try do have a 90 minute session at 1900.

>> Done.

>> MR. MCAULEY: And cancel the 3rd.

I will, let's work on list for the September date. It's just a little bit far out right now, but the one meeting, my hope is to move issues on the list and then maybe just decide another date for September on the list.

>> Very well, sir. Thank you.

>> MR. MCAULEY: If there is nothing else in AOB. Or let me ask, does anyone else have any other comments they want to make?

If not, it's been a long call, but we're short of 90 minutes, which is good. I want to thank everybody for being on. I especially want to thank Anna, Sam and Liz for all of your input. Bernie for helping us with the scheduling. And Brenda with all the stuff I sent her beforehand.

Avri, for you, thank you for hanging in on two calls. I want to thank everybody and that's the end. We'll stop the recording and I'll wish everyone the best and see you on the list.