
CCWG-IRP-IOT MEETING

Thursday, September 7, 2017 - 19:00 to 20:00

>> DAVID McAULEY: Hello, everyone this is David McAuley. Welcome to the can we get the recording started.

Thank you. Welcome to those on the call we're again a small group such as our lot. We're a small group to begin with based on the way the group was constructed by the CCWG. But pressing forward we do have a quorum and I'd like to do the administrative part. The first item of the agenda. Let me ask, in addition to the people shown in the adobe connect room, is there anyone on the phone and not in adobe. If so, please let yourself be known now. Not hearing any. I'm going to ask the folks on the call if anyone has a change in their statement of interest that they need to mention to the group. Not hearing any there either. Let me just move on. Before we get to agenda item number two, let me just say it is, as you can see from my recent e mail, my hope we can start driving a good number of issues to first reading. There's been a lot of discussion. We've done a lot of chatting about these issues, and I think we're in good shape to move them to first reading after which my hope is getting to second reading would be proforma exercise. It's my intent over the coming weeks to try to continue this process. And I would appreciate any help. If anyone wants to pick up issues from the signup sheet, feel free to do so.

We'll move now to agenda item number two. Simply an update with SO/AC in shape to get functions under the bylaws with respect to nominating a standing panel. Sam has graciously volunteers to let us know where we stand.

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>> SAMANTHA EISNER: Sure. This is Sam from ICANN legal. We've been in coordination with colleagues here to try to stage some communication through that secretary the different SOs and ACs to start getting information out particularly through the leaders SO/AC and making some calls to action including invitations to webinars the likely do some information outreach first so it's clear what it is we're asking people to help us with in terms of getting community input on the places that on the document we share with the IOT where we need community input on how they want that process to go and or how long a process should take within the flow chart we provided, and then that would be moving towards a webinar and we're trying to get a lot of activity on this done before OBIDOB before we start getting the standing panel call of expression of interest out sooner rather than later.

>> DAVID McAULEY: Thanks, Sam. It's David here. Did you say the communication process with the various SO/AC is already under way? It's happening now?

>> SAMANTHA EISNER: So we're we're getting guidance from policy colleagues on what all we've shared a lot of documentation with them. We're getting guidance on which part to share when. We have clear and concise communication and helping us form a call to action we're seeking. So it's pretty clear and laid out for the community leader to bring to their government. It hasn't there has not been outreach yet but we're actively working on that with our policy colleagues and within the next couple of weeks I would hope that we've had outreach to SO/AC if not sooner.

>> DAVID McAULEY: Please be aware that the IOT is willing to assist. I know that we can probably gather up folks that would be willing to assist. I certainly would be if there's any need for something like that. And I also participate in the registry stakeholder group and we have

just been discussing that we started discussing that within that group to bubble up to GNSO. So thank you for that update, Sam. Does anybody have any [Indiscernible] you're welcome. Does anybody have any questions or comments with respect to that agenda item update Sam just gave?

Seeing or hearing none, I'll move on to next agenda. That's joinder issues. You've seen the mail. The brief background is that this is a discussion of joinder issues really in the context of people bringing appeals from expert panel decisions. The discussions in this group will affect what we do with the challenges to consensus policy. I think that point has been made a number of times. When we get challenges consensus policy it should go fairly. In the joinder issue, I described about challenges from expert panels below there's been a series of e mails and discussions in the past and I made a proposal Liz had made comments from the perspective of ICANN legal and organization with concerns about it and sum of all that work in the mail I sent out last Friday I tried I think it was last Friday. I'm losing track. In any event I tried to pull together a proposal for joinder language and it's on the screen and I think you have scrolling capability, and this is my suggestion for where we go, and I'd like to read it just to make sure that everybody gets a grasp of it. So what I'm doing is suggesting only those persons or entity participating in the under lying proceedings receive notice from a claimant, this is the expert panel challenge instance, of the full notice of IRP and the request for IRP including copies of all related file documents. And they receive that contemporaneous with the climate serving the document on ICANN. The second point I'm suggesting all such partying have a right to intervene in the IRP. The timing and aspect intervention shall be managed pursuant to the applicable rule of ICDR except otherwise indicated here. The manner should be up to the procedure officer who may allow such intervention through granting IRP party status or by

allowing such partying to file amicus by briefs. An amicus may be subject to applicable cost fees expense subpoenas and deposits provision of the IRP as deemed reasonable by the procedures officer. Number three. No interim relief that would be materially affected an interest of any such amicus to the IRP can be made without allowing such amicus an opportunity to be heard on the request relief in the manner as determined by the procedures officer.

So that was my stab at trying to throw out together the thoughts on joinder. I'm happy to hear comments, challenges, concerns, et cetera, now. And so I would invite anyone to make a comment. And I don't see a rush to the adobe cube or phone, so what I'm going to say is that absent any such thing I'm going to consider that this Sam, I see your hand. I'll get there in a minute. This would get to first reading. And one thing I'll state in the background whatever language we come up with here is not is probably not going to be the language of the rule. Our final report which will have a section on what we think should happen to the rules in light of the public comment it will have another section dealing with recommendation with respect to bylaws the language of the rules will be drawn up by due to the instruction of final report. Anyway, Sam, you have your hand up. So you have the floor.

>> SAMANTHA EISNER: Thanks. So you know I think this does pair back in issues we raised previously. I think there's still one things I reflect on when I read is that I don't anticipate for someone to achieve party status someone must have appropriate standing to assert a claim in an IRP and so I'm wondering if we have that reflected anywhere because otherwise it's it seems to expand the IRP if we allow people to join as party without having a requirement of standing that's important for the initial claimant.

>> DAVID McAULEY: I guess where I'm coming from Sam is is that the value with respect to people who were parties at the expert panel decision. And the bylaw provides for appeals from those decisions. And so

>> SAMANTHA EISNER: Well, the bylaw allows for those to believe that there was a that ICANN violated its bylaw and article in accepting the expert opinion to take that manner to IRP it's not necessarily an appeal.

>> DAVID McAULEY: Okay. I appreciate that distinction. But still it would seem to me that if a person an entity that was a party at the expert panel proceeding felt ICANN was making a mistake by accepting the judgment. I think that's reflected here. I'm open to suggestion of change. The one thing I'd like to say we're at the point anyone has concern can offer specific language not necessarily here in the call in the next day or two. Offer specific language we can look at because the whole point I think we're getting to or I'm wanting to get to is to drive things to a successfully first reading. Get them done and dusted.

And so Sam, the invitation to you I'm sorry.

>> SAMANTHA EISNER: Yeah, we can a proposal around that.

>> DAVID McAULEY: Okay. Please do it pretty quickly. I'd like to get this one done now. Having said that, I would like to ask if anyone else has a comment about any other provision of this, any understanding that my drive is to get this to first reading with a view to considering the language Sam will send forward. I don't see anything Sam, your hand is still up. Is that new?

Okay. Thanks. So then good this one is resolved. With the resolution, here we haven't achieved first reading what we have done is made a point of discussion. Sam has lingering

concerns about standing and she will offer specific language in fairly short order with that language comes in, I will try and incorporate it into what I've proposed or note that I think there's an issue we need to discuss on the next call. If we do if I'm able to get into language, I'll put it to the list and say, okay, here's the latest draft for first reading, and hopefully we would confirm that in the next call and be plenty time on the list to take a look at it. That would be that's the treatment there. And Brenda, if I could ask you to go to the next slide, which would be on the next issue. I believe it's trying to get the first reading on the issue that described as other ongoing monitoring.

Okay. Next one. We have an issue about ongoing monitoring I think it was mentioned the issue in public comment. It's a good idea about making sure the community reviews IRP and the standing panel not go off into the sunset on their own. And the background here is that Avri took the lead on this and you can see from my e mail she made a suggestion I'd like to read it quickly. I may snip along the way but basically Avri suggestion was this after the IOT finishes its current work, it will terminate as implied in the bylaw Section 4.3. Two Section 4.3(n) needs to be amended once rules of procedure are approved to remove subsection (i).

Three, a new section should be added in bylaw Section 4.4 on reviews. That would be a Subsection (c) that says in cooperation with a review team chosen by the SO and AC and comprised of the members of the global Internet community the IRP shall periodically review the rules of procedure. They should conduct no less frequently than five years. Based on feasibility determined by the rule. Each five-year cycle computed by the moment of reception by the board from the previous rules of procedure review.

I then came out in an e mail in made just suggested a couple of changes first. I said after the IOT finishes current work, work items terminate as implied and it wasn't we terminate after the after the rules. In any event Section 4.3(n) should be amended to remove Section (i) once IOT terminated and then three review IOP under bylaw Section 4.6BF it's an ATRT review. And different from Avri came back last Friday and said not a dime ditch moment but you speaking to me you switch responsibility from the review to AT to RT from one in cooperation review chosen by SO/AC and comprised of members of the community et cetera.

And Avri said this seems a larger change I think that's a good comment. I tried to take advantage of provision that was existing but I think Avri is right and I'm happy to go with Avri's final suggestion in other words going back to first one. Avri, you have the floor.

>> AVRI DORIA: Thank you. This is Avri and it's funny in thinking about this after I sent my note, you know, in what I said there were two points. One is the ATRT overload, but it looks like it's been assigned to them. You're right when I thought about that more perhaps that's you know, that's kind of done and lye with it. And then but then I would recommend another amendment to that, in addition, the idea of it being mandatory, is that that they should do it in cooperation with the panel or some such wording so that's okay it already belongs to ATRT let them keep it. But you know still include that important element of discussion. Now I think it's fine going back to the original language that I proposed but I came ready to basically find a space in the middle and that's what I had thought of. Thanks.

>> DAVID McAULEY: Thank you, Avri, David here.

Let me just state the parenthetically I mentioned before the also recommendation about the bylaw. This is one of those sections that will be a recommendation about the bylaw become

the Alac comment it should be periodic review it's not a rule of procedure. We're talking about something slip into final report suggesting the board look to amend the bylaws to state something different than they say right now. With that background, I would what I'll do similar to the joinder issue, we'll get new language and I'll do that and I'll send to list, and Avri, I'll try to take advantage of middle ground you suggest. If I have any difficulty doing it, I may go back to original proposal, but I'll put it out in list with a firm desire that we'll close this one out next call at first reading. Not closing out totally, I'm talking about first reading. Sam, you have hand up. Take the floor.

>> SAMANTHA EISNER: Thanks. This is Sam. I just want to ask a question about the IOT conclusion. So really I I don't really have a clear desire on how this goes. I just wanted to flag one things IOT is charged with is if there is a tender for new provider. So I think one of the things we'd want to consider is the f the idea is s from the IOT removed from the bylaws consider if there's anything we would recommend get put in the section on tenders for new providers, and maybe this is something we could also build into that review cycle as it's going on you know also issue the like ongoing training with standing panel maybe that's some of the specific items that's called out in future reviews. I just want to flag IOT mentioned couple places to the extent there might be a for the community in those to take on some of the action in the future that we think about how that is reflected in any proposed changes to the bylaws that would be recommended out of the group. I don't necessarily think it changes spirit of proposal I think it's a drafting flag maybe.

>> DAVID McAULEY: Thanks. It's David. I have noticed those as well. And there are different things. The tender is one, drawing up rules for drawing up rules for appeals is another, possible conflict additional conflict of interest criteria. There's a fair number salted within

4.3. So that's one reason in when Avri made a proposal and what I envision doing in the future is couching the termination language in terms of when the IOT work is done rather than when the rules are done. Because there's a lot of work. And so I don't envision termination date would be necessarily soon. Although I do agree with discussions we had earlier once the work is the IOT shouldn't simply go on indefinitely. But there is a fair amount of work to do. I agree with you. So I hope that my words the way I worded it took account of that. I'll make sure I look at it as I draft up something new for us. Thank you for that comment.

Does anybody else have anything else they want to say on that issue on monitoring review, et cetera? Hearing and seeing none. Let's move on to the issue of standing. Materially affected. And that's Brenda if you could get us to the next e mail. This deals with an e mail I sent August 15th and on the standing material affected I had a couple of suggestions. First of all, I should note that one public comment Carl Arobec suggested that the material affected was too restrictive and wanted standing to be a much broader I thought his comment was beyond what the bylaws provided for. I didn't hear and don't sense a demand within the IOT to recommend the bylaws be amended to enlarge standing. So there's that was that's how that would be treated but with respect to specific language, the major concern for the comments were the possibility of imminent harm and how would someone be able to make a claim or bring a bring a proceeding to the IRP if there were imminent harm. Imminent harm potential. So I suggested that we revise the definition of claimant in Section 1 of the updated rules. To take into account the strict provisions of the bylaw Section 4.3(p). It deals with imminent harm. If I have that bylaw. (p) says claimant may request interim relief. It may include respective relief or declaratory conjunctive relief.

So the element of imminent harm is contemplated and that's why I suggested revising the definition of claimant in that manner. Two, I said make corresponding change in Section 9 of the updated rules as required. Section 9 of updated rules deals with summary dismissals. And I recommended against changing the rules the rule of Section 11. D of the updated supplementary rules and that dealt with contract claims coming with respect to the naming contract. So that's what I'm suggesting and hoping to get the first reading and I'm opening the floor right now for anyone that has a comment suggestion, et cetera, with respect to dusting off the standing material in this manner.

I don't see any hands or hear anything. I'm going to assume we can get to the first reading. I'll confirm on the list in the next day or so. Bernie?

>> BERNARD TURNCOTTE: Yes, it was a previous point. Just a process note I got my PCST hat on here from a budget point of view. The IOT is covered just to be cleared until the end of June 2018. If there is a thought that you are going to stretch beyond that the budget cycle starts pretty soon planning for next year and so it if this is the case you should work on earlier rather than later to avoid surprises. Thank you.

>> DAVID McAULEY: Thanks. That's a good point. We do have budget left and it is my belief that what we will be doing most immediately seeking some budget impact is a request to take what we come up as a final report on the rules I'm talking about the rule section now. And turn that into revised updated supplementary procedures. And so if and so I do believe we will be at that point hopefully within the next two months. I'm going to drive this to the conclusion in the next two months. And so I have no I don't really have any concern that that element of the budget the rules part the drafting will be done and finished before any concern arises

before exceeding the fiscal year. With respect to the next fiscal year I think we will be in existence. We morph into a bylaws creation under 4.3. As Sam and I were discussing there are additional things to do. I'm not sure what that would involve. I do need to give that thought. If I come up with budget thought I'll bring to IOT. At this point, I'm happy to invite anyone with budget ideas or thoughts for what our work might entail beyond finishing off the rules I certainly welcome some input. But I take your point Bernie. The only thing I ask you to do is when you know is to give us a heads up as to what the timeline is for budget input for going beyond June 2018.

And so moving to the next agenda items, I thought I'd start an initial discussion of an issue we have on signup sheet as described as other payment of fees. And so this stems from comment that Greg was involved with the IPC. I believe Greg submitted this comment for IPC. But I what I want to do is I thought we would be moving fairly quickly. We have 30 minutes left and we may finish early. But I wanted to start you know moving another issue forward. That's why I wanted to have this background. Brenda, if I could ask you to go back to the comment to the one that was on the screen just a minute ago. What I've done is I've just start of cut and pasted some language from the IPC comment. This just as a that part of their comment that deals with the cost. It's not even all of it. I can only say this is in part what they are asking or IPC has suggested. And principally they want to include language within the supplementary rule Section 15. Nothing in the IRP supplementary procedure is intended to supersede ICDR rules Article 20(7) and Article 21(8). Including the right to request an interim order allocating cost arising from a party's failure to avoid unnecessary delay and expense in the arbitration.

And before I go on with the IPC language let me just read article 20(7) from the rules. They are brief. The parties shall make every effort to avoid unnecessary delay and expense in the

arbitration. The arbitral tribunal may allocate costs and draw adverse inferences and take steps necessary to protect the efficiency and integrity of the arbitration. And then moving on to ICDC Rule 21 (8) of course I just lost it. No, there it is.

In resolving any dispute about prehearing exchanges of information, the tribunal requires a requesting party to justify the time and expense the request may involve and make conditions for granting such a request part or all of the cost by the party seeking the information. The tribunal also allocates the cost of providing information among the parties either in an interim order or in an award.

And then at the bottom of the one pager I put that I asked Brenda to put up on the screen the IPC said since IRP15 includes language regarding the treatment of costs of the IRP it would be beneficial no conflict exists in this regard. Additional language to the effect is nothing to supersede would be beneficial in removing any possible doubt. I tend to agree with this personally. And it would be my expectation I've taken this issue on to lead it would be my intent to move this issue forward along the lines as suggested by the IPC, so having said that and having just introduced this issue, I'm happy to open the floor to anyone who has comments about it or any concern and so the floor is open.

I see Bernie your hand is back up.

>> BERNARD TURCOTTE: Whoops.

>> DAVID McAULEY: Sam, you have a hand up?

>> SAMANTHA EISNER: Hi, this is Sam. We haven't really analyzed this yet but I know it looking at this we're going to go back and take a look at this in terms of the cost aspect and the cost

shipping aspect layed out in 4.6 are the bylaws specified the types of cost that are appropriate to be allocated and also look at the more closely the different sections that are called out from the ICDR to make sure that either were comfortable or expect more express more clearly if we're not.

>> DAVID McAULEY: Could I ask if you please do that well before the next call you know like two or three days at least before the next call. The next call by the way is two weeks from now.

>> SAMANTHA EISNER: Yes. Thanks.

>> DAVID McAULEY: Thank you. Do I see or hear anyone else that would like to make a comment along these lines?

Sam, I take it that's an old hand? If no one else has a comment on that, then we can move to AOB and perhaps wrap this particular call up early. Under AOB, the first thing I'll mention one other thing I think I'll come to the list with in the next week or two thoughts on the proper of engagement. The new test we've taken on as the CEP subgroup disband. And so I looked at it and I've got thoughts on it and put them on paper and come out and send something along so we can start that discussion too. I'm sure I'll pick off another issue too. Bernie, could I ask you to just mention what our call schedule is. I think we have two more calls. Just remind us.

>> BERNIE TURCOTTE: Certainly. Let me pull those up.

>> DAVID McAULEY: I'm sorry I think I took

>> BERNIE TURCOTTE: No, not at all. Our next call is Thursday, 21st September 1900, so that's in two weeks and then we have secured a date on Thursday, October 5th 1900. Those are all

the calls I have currently schedule. There is a slot there are a lot of slots available in October currently should there be a need and there is quite a few slots at the end of September also should we feel the need. Thank you.

>> DAVID McAULEY: Thanks, Bernie. So we are well near the end. I want to thank everybody for attending and open the floor for any comments with respect to this work, other work we're facing in the future, or suggestions and if not, I'd invite you all to look at the issues list to see if there's an issue we want to pick up. There's not many left. I'm hoping we can move things fairly quickly the first reading and beyond. So let me thank everyone and say that as far as I can tell, this call is now ended. Thank you for your attendance and we can now stop the recording.