

# [IOT] Suggested issue treatment - Translation and Interpretation

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Dear members of the IRP IOT:

Both here on list and at our next meeting on Oct. 5th (19:00 UTC) I would like us to discuss/address the public comments regarding Translation and Interpretation, among other agenda items.

(See Bernie's Feb. 3rd email<<http://mm.icann.org/pipermail/iot/2017-February/000150.html>> for compilations of all of the comments.)

BACKGROUND:

The governments of Switzerland and Spain (supported by AFNic) urge additional rules treatment:

Spain suggested that:

- \* Interpretation services should be free if requested by claimant;
- \* Documents submitted in English [the IRP's primary working language] should be accompanied by a translation in whole or in part into the language requested by claimant; and
- \* IRP time periods will begin when translated documents are received by claimant.

Switzerland suggested that:

- \* Translations services include interpretation during hearings;
- \* When translation is required, it be granted as default and not rejected;
- \* Similar treatment to documents as suggested by Spain.

The ISPCP also requested beefed up clarity on translation services.

ICANN Bylaw Section 4.3(1) provides: "All IRP proceedings shall be administered in English as the primary working language, with provision of translation services for Claimants if needed."

Rule 5 of the current draft the Updated Supplementary Procedures currently provides, among other things:

It is in the best interests of ICANN and of the ICANN community for IRP matters to be resolved expeditiously and at a reasonably low cost while ensuring fundamental fairness and due process consistent with the PURPOSES OF THE IRP. The IRP PANEL shall consider accessibility, fairness, and efficiency (both as to time and cost) in its conduct of the IRP.

Article 18 of the ICDR Rules of Arbitration provide simply that the language of arbitration shall be as agreed by the parties or, absent agreement, then in the language in which the arbitration clause is stated. Article 18 also says, "The tribunal may order that any documents delivered in another language shall be accompanied by a translation into the language(s) of the arbitration."

It would be useful to hear from ICANN Legal as to how this has been handled at IRP before, albeit recognizing we are bound by Bylaw 4.3(1) at present.

DISCUSSION/RECOMMENDATION (by me as issue-lead):

While Spain urges translation services where a claimant requests it, Switzerland appears instead to ask for provision of the service when required - putting Switzerland in line with the ICANN Bylaw that speaks to need. I believe we should stick to the bylaw "need" standard.

In my opinion, need/requirement does not reach instances where the claimant speaks/understands English even though claimant's primary language is other than English.

In addition, given the practice by ICANN of using the six official UN languages (Arabic, Chinese, English, French, Russian and Spanish) when it provides translation services at ICANN meetings, I suggest these be given primacy, so that when a claimant speaks two languages, and one of them is an official UN language, then that would be the translation service provision. For example, I have an in-law in Manila who speaks fluent Tagalog and Spanish. In her case, translation services for IRP would be in Spanish, not Tagalog.

I also believe that the Bylaw language "if needed" means that if 'claimant' includes more than one person (for instance claimant is a company), then if one of those persons (e.g. an officer of the company) speaks English that would suffice for using English in the IRP.

Thus, my overall suggestion is that we ask Sidley to incorporate these overall suggestions into draft Rule 5 along with language that implementation issues are for the sound discretion of the IRP panel (e.g. whether claimant is sufficiently capable in English language, or how to weigh cost of translation in decision to hold/not hold a hearing).

Please give this your consideration and let's discuss at next meeting.

Meantime, best wishes,

David