

IRP-IOT Meeting #37

3 May 2018 @ 19:00 UTC

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>> DAVID McAULEY: Hello this is David McAuley speaking welcome to the IRP call I think we have enough people to get started. So can I ask for the recording to start. N the recording is started David thanks.

>> DAVID McAULEY: Thanks. Welcome everybody to the IRP call for this afternoon. The agenda is on the screen. I would like to ask if there's anybody who is on the phone bridge who is not shown in the participants list in zoom, would they kindly let themselves be known now?

>> This is Samuri I'm going to be joining the zoom in a minute.

>> KAVOUSS ARASTEH: Hello.

>> DAVID McAULEY: Yes Kavouss.

>> KAVOUSS ARASTEH: I'm connected by phone I'm on the VIC [indiscernible] I don't know. This is the first time I have [indiscernible] Which one I have to use to go through the [indiscernible] so I see our agenda. I don't know where I have to go.

>> DAVID McAULEY: Kavouss, thank you. As far as raising hands, there's a little raise hand button at the bottom of the participant list. You can access the participant list at the bottom of the zoom screen. But I also should mention when you just spoke your voice was clear at some points but not so clear as others. So please speak close to the microphone on the phone.

>> KAVOUSS ARASTEH: Yes.

>> DAVID McAULEY: If you are having a problem getting in the queue, mention you would like to get in the queue. So thank you.

>> KAVOUSS ARASTEH: Okay.

>> DAVID McAULEY: Sorry go ahead Kavouss.

>> KAVOUSS ARASTEH: Yes, it is better now or not?

>> DAVID McAULEY: That's very good.

>> KAVOUSS ARASTEH: Thank you very much.

>> DAVID McAULEY: Thank you. Anyone else on the phone bridge that is not showing up in the participants list? Okay, thank you next question, statements of interest. Does anyone have an update or change to the statements of interest they would like to mention? Hear any so we will proceed on. And I would like to welcome everybody to the call. Welcome also to our okay server cheer even. Let's go to item number 2 which is discussion of the two bucket approach. I'm going to ask Sam if she

would speak about this. I'll set it up by saying this is that approach we have spoken about once or twice before where we would go to the acidly law firm to get help of language with respect to rules we have agreed on. And it's obvious from the emails that we have not agreed on everything. And so, we would pick those that we have agreed and go to Sidly. We have money in the budget in this current fiscal year to do that. We would ask acidly to help us in this respect and be judicious in their time. I don't think it's a difficult challenge. If we do go down this road is take the draft report we have seen in the past and change it to show that we are just asking about those rules we have agreed on. Having said all if that, Sam are you able to people speak of this idea.

>> S AM: One of the things we have done David and we are actually getting prepared to release the document hopefully by the end of the day tomorrow by to the IO team we looked at it a little bit differently. So understanding that there's going to be -- we are going the need to spend time and effort in getting to the final set of rules, we took a look at the document that was posted for public comment, the status of the CCW -- or the status of the INT conversation and where there seemed to be clear indication of a path we actually put those into a proposed interim set of rules so the bucket would be things -- the bucket idea are things we think are in good enough form and have enough clarification around them to go into the interim set of goals to put in place very quickly in the event we had an IRP file while we are still getting to the final version of the rules that we think will take more time. And then of course we also identified there are -- there's at least one issue and I think from our effort we may have identified another effort that we think may need further comments or at least further work within the IOT. So those -- we know the further comment issue is on the reposed. Because we have already identified, even if we go forward with removing any time period for repose that's something that work via public comment. So when we were developing the interim rules we thought one of the principles we were trying to follow internally were to not incorporate anything that would actually need to be done for public comment if it would be in final version. So on the repose issue we took kind of a path of least harm to put in 120 day rule. This is just forecasting what you will see for IOT consideration. So we are proposing put in 120 day rule because that's a clear indication from IOT. But keeping in the 12 month period that was in from public comments, or from the initial version, and then if we see that something needs to change we get to the the final version we can change it. But it's a lot harder to go from no restriction to imposing some restriction than it is to go from a more narrow rule to a -- to a broader rule. Then something like that, you know clearly there's no sort of prejudice to the IOT or to the community if something ends up in the interim rule it has to be in place for the subsequent. We also saw during the effort, we spent a significant amount of time talking and coming up with principles around the ideas of intervention and gender. And we were trying to see -- joinedder and we shall trying to include those in the interim rules and you will see we have a recommendation not do

that. We tried to from my stand point trying to fit them in but there's actually significant amount of work to do it to get it legally correct. We need to make sure it synthesizes with the rest of the rules. Where there's some places we are using undefined terms we need to get clear to which terms we are intending to use and as we come in we need to address things like filing fees and other sources of things where we don't have some of the practicalities laid out there that I think makes that issue clearly one that we know we are going to have in the final rules but that's one where we would want to spend time and effort and use the money we have available to work with external council on. That's one of the things that I think we need to spend some time getting right. Another issue that I saw was, we had conversations IOT earlier on inclusion of translation services. And we were attempting to see if we could put it in but we realized there were actually some questions around that. What do we mean by translation serves who is responsible to pay, which types of things will be translated is it only hearings or briefs as well. We have practicalities to work through that seem like the right type of thing to flag for questions that we need to solve when we get to the final version as opposed to something that makes sense in quick interim version. And that's forecast we see and I'd like to hear feedback on it and hoping to see something different.

>> DAVID McAULEY: It's David McAuley speaking. I raised my hand briefly there to see if hands raised are visible. And they are. It's a little bit, I see Kavouss is next in the queue and thenical come. Let me make a comment or two. Much I appreciate what you say. I guess I saw it a little bit more simplistic. That is let's aggregate those rules we are done with. We don't have verbiage on them. Let's give them to Sidly and get the verbiage that we need. We have to recognize that the money we have allocated for Sidly services runs out in June. It's always -- it's always clear that time runs quicker than we do. So I want to give a move on, on this. I take your point about what you're saying. With the respect to the issue of repose I don't think we are ever going to need help from Sidly on the repose. If we have a repose period of some years or one year or some years all we would have to do is take the language in the draft supplementary rules as it exists right now take out one if are or leave it there if that's what we decide take out one or plug in another number if on the other hand we agree as a group there's no feared of repose. If we agree to the position that Malcolm has been implicating. Malcolm has been providing fairly elegant language to capture that. So my -- I suspect that we would not need help on the timing issue. I thought where we would probably hold off on sending a request to S I want dley was issues like timing and issues like type of hearing we where we are probably not yet agreed but with respect to types of hearing I suspect we could come up with language concerning translation stand alone language on translation language that we can bold bolt in where needed finally a listing of elements we have not agreed on that. I take your point and appreciate what you're saying and ask others to speak up and figure out

where we are. And I saw the cue as being Kavouss and Malcolm then you again Sam. Caw vows you take the floor.

>> KAVOUSS ARASTEH: Do you hear me please?

>> DAVID McAULEY: I hear you pretty well.

>> KAVOUSS ARASTEH: Thank you. Good morning, good night, good everything. Let me be quite clear. I'm a very [indiscernible] this IOT, took much, much more than time that needed. There are some people among us raising and raising and raising a question back and forth, back and forth. And they are looking for perfection. I don't think that if we go to what we have discussed we are turning around ourselves for months and months and months. The issue is not as complicated as this. The issue is search. But the problem is that we try to bargain, we try the scrutinize and we try not to be satisfied as we have something is come back and disagreed with what we have agreed. So I don't understand the issue of repose. I don't understand the issue of inkling and we would like to finish this business as soon as possible. This is the first time that we see 16 people. Most of the time we were either four or five. Sometimes with the person or someone from ICANN six only including the repertoire, yourself many so four people. So four people disagreed with each other for months and months. I don't think that actually this is a productive. This is totally counter productive. So you have to be careful spending of the money. And we have to be reasonable and we don't look for any perfection. Let's take whatever language is proposed when it's eloquent or non-eloquent to see what we can agree and we will not postpone this issue forever. Thank you. I'm sorry for being [indiscernible] I apologize to everybody. Thank you.

>> DAVID McAULEY: Excuse me, thank you Kavouss. Sorry. Thank you Kavouss no apology necessary. Malcolm you have the floor.

>> MALCOLM: Thank you David. Your explanation to the bucket approach was clear. Simple, straight forward. And practical. We have a buck of things that are done. And then we have another bucket of things that are not done. And as things get done we add to that to this for this list that is done we build it up towards conclusion. The conclusion as Kavouss said we are all dearly looking forward to. I didn't really understand Sam's explanation as to why we would do some things that are not agreed yet but we do them because it would be otherwise -- I didn't really didn't follow Sam's explanation. On the repose we have one thing that we are all agreed on. We are all agreed that 120 days after the date to which the person has suffered the harm should be a deadline. I don't believe there was any disagreement within the group on that subject. The only question is whether that should be an additional deadline. Now, so for that we have agreed we put that in the bucket of things that are done. We say that. Since we have not said that specifically before, we need to send the wording that implements in that I have come up with and you agreed with and to Sidley to check on that particular wording. As for if we ever decide that we also need a second deadline, as Sam has been advocating for, while you know my arguments against that. But if we

do, are we have already got language from the previous draft reports that we can simply add into the done bucket if we ever did that. Much but you know I don't think that would be appropriate. But if we did there will be no difficulty to add that in but it was checked last time around. So I said that they thought the approach was considered bylaws. But here we go. So I think your approach David is the one to be followed. I don't really understand Sam's approach of trying to prepare things that are not agreed putting in the done bucket and taking it out later. That sounds way confusing.

>> DAVID McAULEY: Thank you Malcolm Sam you have the floor.

>> Sam: I think we need to level set a little bit and clarify. So we are -- what we were hoping to achieve through the two bucket approach was clearly there's the identification of work that needs to go to Sidly. But really, we have an issue. We have an issue that we are hoping the IOT can help us solve. That is an IRP can be filed tomorrow and we do not have a form of supplemental procedures that align with the new bylaws. So given the amount of time we have taken to get the to this point we think there's value in having in seeing thissen trains. There's two steps. Interim and final goal we are working towards. I think we have a lot we can get into the interim that we can try to gift in place place fairly quickly based on the agreement we have already reached and what has been put out for public comment. That's the document we are preparing to send to you. It may make more sense once you see it. Now none of this makes -- puts any stop to sending anything over to psi Sidley to get properly set for the final set of rules. As we were discussing we have certain things we know we can send to Sidley today and we should probably start sending it to Sidley today to start getting that work done. There's nothing that keeps us from trying to get make sure that there's efficiency in ICANN if the process gets kicked off soon that we have at least an interim set of rules we can point to the say, this at least meets with fact we have discussions about it. And we wouldn't have an IRP governor end by the old rules which is not at all what this group intended to happen. But we know that in a matter of months, because we still will have to go through public comment at least on the repose issue, which whether or not we need go to Sidley for language, that's not really the stopping point on that. The fact is, if we were to put in the repose issue based on Malcolm's proposal, that requires public comment. We already identified that. So that wouldn't be something we could even put into effect tomorrow. And meet the public comment requirement that couples on the on the of the bylaw. That's where we are seeing the two buckets. So I think our definition of two buckets may be a little different from what David was proposing but clearly there's a need to divide up the work of what needs to go to Sidley and we should the start getting that over to Sidley quickly we are in full agreement. Then there's also the identifying of is there anything in a steady enough state that we can say we think these are appropriate enough to go into an interim set of rules while we are having language developed and we have public comment into public comment so we can have an IRP that runs efficiently. That's what we are trying to atree l chief.

>> DAVID McAULEY: Thanks Sam I see Kavouss have your hand up I ask you to be brief since this is your second mention on this. And I'm happy Sam you are going to draft something I was going to the so that will save me work. I ask you to do it modularly. So when you present us things if we have any dispute what should or shouldn't go we could at least check out those elements that can go. In other words, to do exactly what you were just recommending let's get rules to Sidley right now so you can do it modally so we can if I can preaches 3, 5, 8 whatever let's send them to Sidley right now. Then we can discuss if there's not agreement on other paragraphs is that what you're talking about.

>> Sam: Yes we are actually we are hoping to send a document by tomorrow that might help frame the conversation so that we can actually did just that. We can pick out at least in the things we see are interim what needs to go. But also we will see there are things we know need to go to Sidley that might not ready to go into the rules. So the document that you will see tomorrow is actually a red line from what was posted to public comment with annotation based on the IOT conversation to date including proposed language even where we think may not be appropriate to include the proposed language so you can see why we were making the recommendations we were making. That's the things the IOT can consider if you want the peel any of those off to get over 20th Sidley but I have a list of at least a few things I know today I would recommend as ready to get to Sidley separate from the interim rules issue.

>> DAVID McAULEY: Thank you Sam.

>> That too.

>> DAVID McAULEY: I don't react tomorrow probably until Monday I'll be away. But Kavouss you have the floor next.

>> KAVOUSS ARASTEH: I'm sorry the duration of the speech intervention apply to everybody. Including some. So we should not have long, long discussions. I am not clear what we mean by second deadline. I don't understand why we need to interim rule. I don't understand the status of the interim rule. Whether the interim rule have the same Sebastien or power of the miracle rule. I don't understand if you have the same rules and put it in public comment if you diversity from the interim rules. Whatever Sidley say we say yes. Or you have to discuss it again. We come back. So we first decide when we can do it without going to interim and without giving to Sidley we really appreciate they have helped us a lot but we don't want to bother them anymore. Thank you.

>> DAVID McAULEY: Thank you Kavouss and I hope and believe that the draft we get from Sam will address -- will make some of this clear. So let's, if no one -- if it's okay I would like on go ahead and say yes, let's go ahead and look at Sam's document when I get a chance on Monday to take a locule put a quick deadline on the list to comment so we can move on. That all being said and seeing no further hands, let's move to the next agenda item. And I'll just set this up briefly then turn it over to Malcolm. In the last call I there was some discussion as to whether we had reached

consensus on the second element of timing which we are calling repose. I said I would go back and do a review. Of transcripts and chat and all that kind of stuff. Was much more boring than I thought it would be. But I did it. And I agree with what Malcolm had said. There was a meeting that was called and con silence was announced. I came away from my review with a deep concern I discussed in the list. I'm going on too long I discussed in the history essentially our group is challenged and we have a low participation rate. I'm worried, I'm concerned, I believe that we do not have sufficient support to go out to the community with something like this. I'm not stating it well but I did in my email. Malcolm has strong thoughts what thoughts on this so I want to turn the floor over to Malcolm and anyone else that might have a comment Malcolm?

>> MALCOLM: Okay I must say I'm very disappointed this is being reopened. Like Kavouss I think we need to reach a conclusion not keep going back to things that have been decided. We have decided this. You agreed with me. You declared consensus on this. So I object to this now being characterized by Sam as Malcolm's proposal. This is not Malcolm's proposal this is the proposal that you declared consensus on. Now the timeline of this is quite clear. The first draft report was produced without us even reaching a second reading on having the idea proposed and we rushed out without that without even having the opportunity to have the second reading. The response from the community on the public comment was universally against the idea of pro repose. We discussed this for over a year and eventually with enormous work agreed the consensus on not having repose, on having 120 days from the date of the harm. And Sidley has told us twice that to have repose would be against the bylaws. Would be contrary to the by laws so outside our power anyway. I really don't see how that can be any question of reopening this at this stage. Everything is pointing in favor of just simply saying that we have decided, this is done. We have said there was consensus being declared in the group there's consensus in this group was pushed to achieve because all of the public comments said that we shouldn't have repose. the process is finished and to do anything else would be against the bylaws according to the advice of our independent counselor. If we are going to ignore the independent counselor's advice what is the point of having them at all. What I don't see any argument at all in reopening this in this stage we should say it's done. Like carvoss says going around in this circles is not helping. We need November on.

>> DAVID McAULEY: Malcolm thanks this is David McAuley speaking again. You make a strong case no question about it. You did call consensus you led this part of the meeting but I does agree with it. And when I went back I saw there was support for your profession and there was a couple against, Sam was one. Kavouss I believe you were not in favor of an open-ended timeframe. But I did think that from my reading, off reand robin -- Avri and Rob tin supported your position Malcolm. Greg also did but Greg mentioned -- I think he did, but it's worth mentioning that Greg proposed a compromise perpetuities be 21 years after the death of the last person

involved. I'm saying that for a light moment. In any event my concern is amongst the group that we have we have so much inactivity that I'm just struggling as the leader of the group to consider this as do be as you say Malcolm and move on. I want to as well. By the way I sit in one of the contracted party's house. Where I -- my normal -- joy wouldn't it be great if there was no repose or if there was nothing. On the other hand I'm worried about fundamental fairness what the bylaws call for. I'm trying to strike a balance here. I'm going back the review and I can't help with what I think coming out of it. I said in my email I suggest I go the list and insist people take a position or else understand we will call that whatever you want to call it. Abextension. Then perhaps do a tally or otherwise get together and say where are we? What does that do for us? I have not changed my position. I invite other people to comment. I see one hand and I call on Robin. Just one second Robin. I'm checking there's no other. Robin you're the only person in the cue now go ahead kindergarten thank you very much. Can you hear me okay? Kindergarten yeah, you r I agree with a Malcolm and can't really state it much better than what he just did over the concern about trying to withdraw the cone census after the fact. I'm a participant of most of the working groups in the CCWG. Not terribly active but I really try to keep track of what is going on and monitor all of them. And you know really the participation in this one is not is not [indiscernible] other groups where it's actually Equally small if not smaller. And I don't recall anyone ever trying to change the consensus position after the fact because you know there was only a handful of people who were actively participating. I think for many of us we just try to keep sort of our eye a little bit on it. But are not able to get too deeply involved it's only when things sort of start to go off the rails and what not that we tend to speak up. So I don't think you can necessarily presume that just because there isn't enormous active and verbose and continuous dialogue and discussion on things that we are not paying attention that we don't know what is happening. And I think it's just that we are -- you can sort of say we are confident in the direction direction things are moving when we are keeping an eye on it and are not objecting. So you know I'm -- I share Malcolm's concern. We are trying to withdraw the consensus position that was already reached and I don't see any precedent for doing that. And I -- you know I also share the concern that if it's against the bylaws I can't even believe we are even considering it as a possibility. Thanks that's all I wanted to say.

>> DAVID McAULEY: Pardon me. Thank you Robin. You have more experience than I do. If I'm struggling in this group based on its size. This is David McAuley speaking again my concern is a existential whether we have enough here. Shouldn't we go out and confirm what we have? The votes I don't think will change necessarily. If I read people's support or lack of support correctly I doubt they are going to change. Malcolm you mentioned the initial report was rushed. I was I don't know about that. I was not there when it went to the CCWG process I was not the leader of the group at the time. I remember thinking it was a normal process at the time and it wasn't

necessarily rushed. With respect to being universally spoken against, there was? Strong comments against it more than there were supporting it but I don't know if it would be universal statements from public comments. I have two people in the cue, I thought Greg would say first. I'm just checking here. Greg you will be number one in the cue then caw vows. Greg go ahead.

>> GREG SHATAN: Thank you it's Greg Shatan for the record. I find myself largely in agreement with Robin. That to this is not the -- it's basically a coalition of the willing. Those that are showing up. What I would suggest perhaps as a compromise and not one based on the rule against perpetuities is that you just -- it be put out to the list for a short period of time to see if there are objections from those that did not express an opinion. Previously. Rather than withdrawing the consensus or treating the consensus as somehow invalid. Just kind of a last chance for additional objections to be raised by those that haven't already raised them. You know it's just a fact of the matter that sometimes people tend not to participate or they tend, when they think things are going in the right direction, they tend not to weigh in. So, what's important is to distinguish between the two. Whether there are people that are just fine with what's going on and but mano not express themselves about it. And if there are people that actually have objections then it really is incumbent upon them to bring up their opinion and try to express not open their objection but the basis for the objection. Just saying you are against repose isn't persuasive. Of course if all we are doing is counting those as maybe there's no need to try to persuade anybody unless of course there are lot of people objecting then we find we do need to reconsider the consensus. I think we need to just test the consensus by looking briefly on the list for objections. And then move on. Thank you.

>> DAVID McAULEY: Greg thank you. Before dash this is David before I come back the to you Kavouss let me make one or two comments in response to Greg. Bernie or Brenda can you capture any suggestions like that that Greg just made such as a test or compromise position or whatever it is. I'm new to zoom and I used to capture some things from Adobe I'm not doing it now. If you can kindly keep those and send those.

>> BRENDA BREWER: David we are having the call captioned we cannot see that captions. We will have the raw notes when the call is over.

>> DAVID McAULEY: Thanks Greg for that Kavouss go ahead and take the floor.

>> KAVOUSS ARASTEH: Yes I think rather than going, I suggest that the issue -- the notion of the repose and the notion of the interim you put it in the consensus. If you have consensus do that go ahead. I'm not in favor of suggestions of Greg. The issue was closed. If you want to open the issue you have to have again the majority overwhelming majority. So, the issue that raise by Greg, if there's majority to put it to the test we can agree with that. But before doing that, first thing I think putting the further one and the furthest proposal is whether or not we need repose and whether or not we need the interim put that on to the consensus. If it fail then you take the, in

case of Greg. But I think that the discussion was already closed on that and we don't want to retest it. Otherwise everything that has been discussed in the CCWG or ICO or anywhere after some time it will come and reopen it. This is not a good productive way of the work. So please kindly is I'm against to put that anything to the test before making the notion of the repose and the notion of the interim to be consensus within the people we have currently at this meeting. Thank you.

>> DAVID McAULEY: Thank you Kavouss it's David speaking again I'm checking here for hands. I take your point Kavouss. I'm very grateful to Greg for bringing it. Greg I take it you're backing away from the rule of perpetuity solution. You don't need to answer that if you don't want to. I do wanted to -- I noticed -- I'm fighting a cold and I'm going off and doing some coughing in the background. I thought I saw something from Sam. Sam can I ask you to come on line and state what you were saying in chat?

>> Sam: Yeah, I hear a lot of concerns around the procedural and technical issues of how things were decided and whether or not we agree there were consensus or an impasse. I don't think that matters. So I don't want to weigh in on those. But in the end I think there's enough movement in the group that there's clearly a wish among many in the group and that's been documented that there be no period of reposest and that in and of itself is a significant enough change we need to go to public comment. So I think maybe we can -- my recommendation is let's -- if we have other ways that we think we want to mitigate it we can explore those. But in the end we go to public comment on that issue, irk can is prepared to develop a minority statement around it where we have been working on it and we can put it on it. I wonder if that's just a way to move it forward?

>> DAVID McAULEY: Thank you Sam, David McAuley speaking again. Appreciate that. Is there anyone else that wants to weigh in on this particular issue? I'm going to go on mute for just a second. So thank you for that. I personally believe that if we did go with the Malcolm solution it would have to go out to public comment. Is there anyone that thinks that's an incorrect statement? In this group? And obviously we would reiterate this on the list. There's two hands up. I see Avri and Greg. I don't know who was first. Avri hasn't spoken yet and I'm going to take my prerogative thank you it's Avri speaking. I'm looking for a point of clarification. When Samantha was talking. I'm sorry I didn't recently reread our previous thing we sent out for public comment. If I happen understood Samantha the notion of repose wasn't in that document that went out for review. And if I understand Malcolm he's saying that we had consensus on that previously and that was. I know I can go back and reread the document and I will before we talk about it again. But does anyone have the authority? There is this notion of repose, something that was in the document that already went through public comment?

>> SARAH MCGONIGLE: David I can respond.

>> DAVID McAULEY: Sam if you would.

>> Sam: Off rewhat was put out for public comment was a short period for comment chase and then there was a 12 month period of repose in there. So that's why we are suggesting that if we now remove that 12 month outer limit that's a substantial change from what was posted for public comment and would require further public comment so there was repose in there.

>> DAVID McAULEY: Off reis that a -- sufficient? Should I go to Greg or do you follow up? Let's go the Greg. Then.

>> AVRI DORIA: Yeah go to Greg. Unless Malcolm or somebody says otherwise, that answers my question thank you.

>> DAVID McAULEY: Thanks Greg you have the floor.

>> GREG SHATAN: Thanks Greg Shatan for the record I'm also looking for clarification. Trying to understand if we had consensus, less say, for repose previously, based on the small number of people who objected, I'm now hearing there are a large number of people who have objected and I'm trying to get a handle on the facts. On who has -- who essentially is in the no repose camp that has apparently perhaps flipped the consensus or at least if I voted again might do so. You'll confused. I didn't -- I only thought I heard two names from you David and they were all kind of already well known. So I am just losing the thread on the idea. You know while I did suggest a compromise, my view is that the earlier consensus should be respected unless we really believe that there was a huge infirmity. Thank you.

>> DAVID McAULEY: Thanks Greg it's David speaking. I don't think there was a huge infirmity and I don't know that there were many voices against repose. I don't know who made that comment. My recollection is that Sam certainly was. I thought for a while Kavouss was the. I for a long time was against no repose then I did shift at the end. And part of the problem is there were not many voices, there was Malcolm's, yours, Robin's, automatic re's I don't remember now. If you go off the record often times you see what way people are leaning but they are not that clear. But maybe I read too many comments. Sam may have given us a way forward. I would like to look at the transcript when we are done but we have a way forward. I see hands there are one. Greg wait. Greg you're the only hand go ahead and take the floor.

>> GREG SHATAN: Old hand for me.

>> DAVID McAULEY: Okay thank you. Are there any other comments on this? As I said, I plan to read the transcript rather than just state a conclusion right now. And when I read it I'll pay particular attention to what everyone said in this respect eye appreciate suggestion for compromise and I appreciate Sam's comments. We may have a way forward. But I would like to do that and as I said I'm not going to be available until Monday. Probably Monday, Tuesday timeframe I will assume we have a transcript and I'll take a look at it. And we will try and make some sense of this and come to the list and that's probably a wrap for this discussion for now. But I will invite other people to say they don't think so. And or if they have other comments to please raise their hand. I don't see any. So, I'm looking at the time. We have a few

minutes left. I would like to move on to the types of hearing discussion. Now I recognize in the two bucket discussion I noted it was probable that the types of hearing would not fit in the bucket of things that are ready to go. Much I put in the agenda for this meeting I put links to emails in this respect. One was my email where I suggested there's no real change needed to the draft supplementary procedure that we currently have that best appropriate discussion of the panel. Last meeting I had overlooked Malcolm's email January 3rd which I put in a link right now. My personal assessment of Malcolm's strong man suggestion I was grateful to see it I thought it was very good and beginning with a statement of principles at the beginning I frankly thought that perhaps it got a little too detailed. I actually personally think that you want the make give panels direction as opposed to instructions in detail. And trust their judgment. Malcolm I'll mention a couple of things that caught my eye. One was I thought there was redundancy that the ICANN panel should consider reasons that ICANN gives to reasons give that's a statement of something they would do in my opinion. Maybe they can grant hearings where there's not much interaction between speakers if conducted by telephone. ICANN would provide video conferencing capability for all parties. I was wondering about that. But things like that. I don't need to go on and on. I just thought it was too detailed but I like the idea of a statement of principles. So I would invite anyone else Malcolm or anyone else to comment on that and see if we can at least make some progress on the concept of types of hearings in this phone call. I see first hand up is Kavouss. Excuse me please take the floor.

>> KAVOUSS ARASTEH: Excuse me David. Please kindly first my with respect to the issue on the discussion, are you talking about the physical hearing? Or.

>> DAVID McAULEY: We are talking about hearings -- sorry. Kavouss this is about hearings where people would argue perhaps it would be limited argument or testify or appear in person. It could be done by phone, video conference or in person. It's beyond simply electronic you know paper kind of thing.

>> KAVOUSS ARASTEH: David I am not in favor of the in-person physical hearing because that will influence the panel. You have other international organizations or other [indiscernible] that we have the same sort of thing, the board they will be welcome or they almost welcome any contribution in the written and so on and so forth but not physical hearings. Because that would influence -- could influence the members. So I'm not in favor of physical hearings.

>> DAVID McAULEY: Thank you Kavouss. Is there anyone else that would like to make a statement about this issue? Frankly this issue is going to end up in the second bucket, I believe, so it may not be as pressing on this call as the issue of repose and to come to grips of what that is. If there are no -- [voices overlapping] Sorry there are some hands. Sam and Malcolm I didn't see who was first. Sam go ahead.

>> Sam: I wanted to know ICANN had contributed significantly to conversation on the hearing issue a couple of months ago maybe. We are trying to find the date of the conversation. If we need to reiterate our points in email we can do that. But I know we

had expressed some concerns around that, the extra man. So we can try to put that back into email but it was on the record in this a call.

>> DAVID McAULEY: Great thank you. That would be appreciated if you can just reiterate them. Malcolm then Greg.

>> MALCOLM: I feel the need to advocate strongly for the extra man I was trying to be helpful that being discussion on less about hearings and whether there auto should ever be a hearing whether there should be a strong suggestion whether it's really hard to have a hearing or absolute prohibition and if it's a strong suggestion what does that mean how strong does it need to be to overcome it. I tried to capture what I thought what people were wanting which is try to make hearings unlikely to happen but make it possible and give the panel some guidance as to how to do that. And I thought that that write-up would at least stimulate something. Maybe it is a bit too wordy but stimulate something that would actually give effect to the discussion we have on the list. But if it doesn't find favor that's okay. I just thought this would help move things along.

>> DAVID McAULEY: Thank you Malcolm Greg you have the floor.

>> GREG SHATAN: Thank you Greg Shatan for the record. My continuing position on this is that there should be an exceptional circumstances, the availability of a public hearing rather of a physical hearing where it can be demonstrated that would asufficient the panel, service the interest of justice. I didn't have to confess I don't recall Malcolm's exact extra man but the concept resonates with me that it shouldn't be unavailable but it should be exceptional. And however, we get there, you know I'm fine with that. I think there are, we can go back and review the reasons why there were thoughts as to when and how there could be valid reasons for an in-person hearing. I hope we don't have to do that. But I think we just kind of need to again maybe test where we stand on the positions we hold or be persuaded otherwise before kind of moving our own positions just because it's time for consensus by exhaustion. Thanks.

>> DAVID McAULEY: Thanks Greg let's give Sam the chance to reiterate the position as she said she would and move forward on this one. We don't have time left but I want to talk belief on the discussion for elements. I wanted to state elements of a claim I thought it would be useful and appropriate use of the rules. I put that out there and fairly simple and Kavouss had a good idea following saying moaningst other things is among element state if you know any other relevant IRP decision or case. So I don't know that we can solve this now, but does anybody have any initial thoughts on the -- this business of almost? And I see two hands up. Greg since you just spoke I'm going to give the floor first to Kavouss. We have just 4 minutes let. Please be brief.

>> KAVOUSS ARASTEH: One minute. I'm in favor of the preposal [indiscernible] adopt on exceptional cases we have in-person hearing perhaps this exceptional cases to be determined by the panel. Thank you.

>> DAVID McAULEY: Thank you Kavouss Greg your hand, is that a new hand.

>> GREG SHATAN: New hand on the elements of the -- I'm in favor of having a guidance on the elements. Being part of the UDRP. Rather URS review right now. And thinking about how those move forward and what guidance is given there. I think that appropriate guidance on elements is helpful. Saves time, focuses folks and is something we should do otherwise there's going to be some frolics and details along the way and ultimately we will probably have to put together the guidance on elements after those messes are cleaned up let's do it now. Thanks.

>> DAVID McAULEY: Thank Greg. David speaking. Detours we don't like. Frolic we can probably get without a detour. I think we are going the wrap this meeting up. But I will since there's a couple of minutes left ask if there's any final comments anyone wants to make. One thing that came out of it that is probably most important when I get back on Monday I'll take a look at the transcript on repose and come to list and see if indeed there's a way forward right now. Excuse me. But anybody have any last minute comments? Greg is that a new hand?

>> GREG SHATAN: No.

>> DAVID McAULEY: Okay. I don't see any so I think we can wrap this up. I think cheer even left I got to last time by you normally accord him the privilege of the chair and ask him if he has any comments and we very much appreciate him being an observer of the group but not being here I say thank you to everyone being on the call more on the list and I'll do my best to exorthe those that not active on the list get active we need people to get active that are not here. The coalition of the willing as Greg describes us that are active I'm very much appreciatedtive for your insights. Thank you very much and good bioeverybody.

>> Everyone let's remember we are meeting again in one week