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IRP-IOT MEETING
Thursday, May 10, 2018 – 17:00-18:00

>> BRENDA BREWER: Recording is started David thank you.

>> DAVID McAULEY: Thanks, let me mention now that is recording is started there's a few preliminary comments. We are a small group today and there's officially four and others in attendance but officially four in attendance and we have not reached a quorum to make decisions. Kavouss mentioned we cannot really have a meeting. Bernie explained we can continue without taking decisions and that's the decision I just stated prior to the recording being started, in order to allow us to explore two things. One is going the public comment with Malcolm Hoddie's verbiage with minority statement or public comment or both. And two interim suggestion from Sam Isner to come up an interim set of rules that we might be able to move quickly as well. Hopefully both of those will move quickly. That's my goal to continue this call, create a record. Not so much to make decisions but discuss these and set them up for ourselves and people on the list so we can summarize the call and say here's where we are and here's where we are going and we would like the move fairly quickly. If that's possible.

So, with that being said, I wanted to make that note prior to moving on the agenda.

So that the recording has the background to what we were discussing right where the recording started.

Now let me ask, if anyone on the phone, if there's anyone on the phone who is not in the Internet room zoom.

Not hearing anyone, let me ask if anyone that is here has an interest in making any notes about their statement of interest?

>> David I believe Kavouss' hand is up.

>> DAVID McAULEY: Your hand is up Kavouss go ahead.

>> KAVOUSS ARASTEH: David this is good morning, good night to everybody. In view of the circumstances we can start the meeting, we can discuss at the time we come to place any decision then we see when we have five. Maybe at that time other people will join us. So no problem yourself because we are all on the particular circumstances taking into account the public note of some that need some in the meantime. I have no problem to continue this discussion at the time we come today.

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This is a meeting may see that more people hopefully to get minimum five. So you can kindly go ahead. Thank you.

>> DAVID McAULEY: Thank you. Thank you Kavouss.

And so, I believe Brenda could you go to the agenda or do we have scroll capability? I'm not sure how this works.

In any event we have an agenda and the next item on the agenda after the welcome and SOIs is to ask Sam to speak a bit to the email she put out yesterday with respect to an interim set of supplementary procedures. So Sam, I'd like to ask you to take the floor. And you can correct me if I miss stated anything in setting all this up into what your effort exactly is. So please Sam go ahead.

>> BERNARD TURCOTTE: Sam, if you're speaking I'm not hearing.

And still not hearing.

>> SAM: I'm trying this now can you hear me?

Okay.

All right, apparently I clicked two buttons.

So this is Sam Isner from ICANN legal. I think the way you introduced the document and what we are trying do earlier is recollect. So when we were initially thinking about the two bucket item we were discussing last week   the way we were conceptualizing that last week is can we come up with a bucket of rules that we think we might be able to work with now versus a bucket of things that need more work. To get to what we need to work with now that would also allow us to put in, into place hopefully fairly soon while we're finalizing the rest of the rules a set of supplementary procedures that apply to an IRP if one gets filed we have supplemental procedures with the old buy laws and not current with the new bylaws with enhancement to IRP.

Even if not everything is in there yet   having an interim set based on IOT's work is more preferable than working under the prior version of the procedures. It's an IRP got filed in the near future.

And that we thought that might give better implementation to the intent of the community as well.

So that's why we presented that document.

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In the cover note I mentioned that putting it out for consideration we do have away set of procedures that go into force from ICANN's perspective I would agree and put into writing anywhere having something incorporated into the interim is it by no means should be what is determined in the final set. That means on issues such as the repose or if there's other things not fully captured within the interim set that are not trying to make a recommendation those get put in as an interim so it gets more difficult to put in a different rule in terms of supplemental procedure they are just interim set and whatever the proper verbiage is, and final wording for any of the documents or any of the sections that are in there, we wait the see what we needed in the final set to see if that's the determinative version.

And so, you know, in doing it, I think we identified a couple of areas where we thought we needed more precision around a language. It might not have identified earlier. So in my cover note you see I identified a couple of areas where we thought that, we would recommend that until they start working on language now. So we could go and in that parallel track effort. Wouldn't want to use a lot of IOT time focusing on interim rules. We thing the IOT time, you know, we still have a significant of work to get to a final set of rules. So we think if we had a supplementary or interim set we thought we could put in place earlier to allow IRPs to move somewhat smoothly and we written in there, whatever came in the final rules should, you know come into force. So there wouldn't be a lot of questions to probe priority of the applicability of the updated rules if they happen if something is initiated under the interim rules. We see this as step on the path and it's a step kind of in my own words a step of least harm. I think we look on a progression of things, it would be preferrable to have IRPs under procedures more aligned with the bylaws we have today than under the bylaws we took out of force the and we think that in terms of interim that we made no steps that would be difficult to undo, if the rule -- the final set of updated supplementary procedures comes out differently. So we didn't want to take big steps that we would have to then pull back. Because that's where you would see issues as prejudice to participants and, etc. And trying to implement a new set IRP.

So with that, if you have any questions, we can discuss them here or if you want the leave some of the detail to the list however you want to do that. David, I'm here and ready for the whole hour.

Eisner.

>> DAVID McAULEY: I raised my hand as participant and Kavouss was up before me, Kavouss you have the floor.

>> DAVID McAULEY: Kavouss, if you are speaking we can't hear you. Or I can't hear you.

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>> KAVOUSS ARASTEH: Do you hear me now please?

>> DAVID McAULEY: I hear you now.

>> KAVOUSS ARASTEH: I repeat, I said thanks to some, she proposed or she put in motion and then a content of the motion so have to decide on the motion. And they agree that happen the supplementary procedures. Supplementary rules. I for one repeat and I support that they have to first ask the question, that now they have at least 5 participants that whether there is any addition to this motion. If there's no boxes and if there's consensus of that, then you go to the detail of the motion. Or content of the motion. So I suggest these two are separate procedures. Thank you.

>> DAVID McAULEY: Thanks Kavouss. Before we go to -- well I'm actually next in the cue. I take your point. I think we can put this out for comment on the list as well. But I think it's worth while to press on and get additional detail on the phone as well. To help us inform ourselves some. Like you, I have no objection to a set of interim procedures I don't think if I listen to more of the discussion about it.

I have questions Sam.

Let me ask you this, the first question I have is would an interim set of procedures be subject to board of approval in your view?

>> SAM EISNER: Can you hear me?

>> DAVID McAULEY: Yes.

>> SAM EISNER: Good. Yes. I think the bylaws make clear that there has to be board of approval on any set of procedures that go into force.

>> DAVID McAULEY: Thank you. And you mentioned, we would want to get Sidley working on intervention and joinder section and translation. Could you mention just a little bit in more detail what you envision there? In other words, we discussed those and we have come largely to a solution. But are you talking about them taking what we discussed and putting language on it or what? Maybe I just am not sure what you mean there.

>> SAM EISNER: Yeah so I think the two sections raised different concerns for me. Let's handle intervention and joinder first. When   with looked at the language that we developed, I think we actually developed more principles as IRP as opposed to language that can actually be placed into the rules. If you take a look to see how we tried to put them in, they are in brackets in there. There's -- it's

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not clear how the language that we have used is tied into the defined terms that we have. And I don't think that it's -- it's an insurmountable issue. But I think we do need thought about how we carefully pit it in so we are not creating one standard of intervention that may be unintentionally broader or for joinder as well, that may be unintentionally broader for interim than it would be for a final set. Once you saw it in had place, based on the principles that IOT had identified, they really didn't fit nicely. And they raised many more questions than they answered. I think for that, they were probably too vague for implementation right now.

But I think that the principles that the IOT developed, can be very nicely translated into language that I know that the IOT would like for Sidley to take the first step at. That's the other reap we didn't really try to modify the principles into language. So we could again focus on a set of rules we felt were ready for now verses what we need for the final procedures.

In terms of the translation, there was IOT agreement on translation. I think if there's work that needs to happen both within the IOT as well as with getting final language drafted for it, because there's the way the translation is mentioned, it's fairly broad. I think that we need to or I would recommend that we take a look at little bit more of the specifics around that. Are we talking translation only in relation to my appearing participation many the way it's presented now means there might be requirement for all translation of materials. We haven't answered the question of who would pay for translation if requested. There's a few different aspects to that that I think also make it hard to just put into implementation now without having some more conversation about that, without having language clearly drafted to meet the intent of the IOT. Again, we didn't want to replace any suggestions we had in place of the judgment of the IOT. So that's another place where we got more work was done. And I think this one requires both the involvement of the IOT as well as in the final language.

>> DAVID McAULEY: Thanks Sam. I have just one quick question then I'll step out of the cue. That question is, on those two things, would you be willing on list to help tee them up with what sort of what you were just describing?

>> SAM EISNER: Yes. Yeah.

>> DAVID McAULEY: That answers that.

>> SAM EISNER: You want me to start with notes too? Then you and I can talk to you about how to do that if you want.

>> DAVID McAULEY: If you have comments on how to do that, go ahead.

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>> SAM EISNER: Not at the moment but I can look at how I would recommend. What I'm get at is --

>> DAVID McAULEY: What I'm getting at you well explained what you mean by that. I'm hoping on list you are the one to tee it up so we can take I further.

>> SAM EISNER: Sure, not a problem.

>> DAVID McAULEY: Thank you. I may have a question later. But I'll step out now. Malcolm was next but Bernie I want to know if your hand is up for a process question or comment.

>> BERNARD TURCOTTE: I wanted to make clear, Kavouss mentioned earlier we are now five. We are still only four. ICANN legal has three people here but Samantha I think very wisely points out that all the ICANN legal staff just count as one. Unfortunately we are still only at four. Thank you.

>> DAVID McAULEY: Thank you Bernie.

So for the whether we want to pursue an interim procedures, we would have to go to list. But I think we can continue the discussion surrounding how this would work.

On that end Malcolm is next to the cue Malcolm you have the floor Malcolm if you are speaking we cannot here. I have a feeling with zoom there's audio issues. But Malcolm we are not hearing you.

>> MALCOLM: I'm speaking, can you hear me now.I can hear you now.

>> MALCOLM: You can hear me now. This is supposed to speed things up. But I'm worried that it will actually have the effect of slowing things down.

We know that from experience, the interim experience have a habit if not permanent very long lasting. Especially when introduced in response to the fact that the decisions are controversial. And it's hard to get agreement. This could be very long lasting.

And if we focus on this, as Sam says we still have to go through the same procedures as if this was final. That would include the work with Sidley, they would have to double their work. They would have to work on this then they would have to work on the final version. I think that this could distract us and all our efforts would be better expended in trying to conclude our discussions as soon as possible. I think really we could realistically expect to have everything wrapped up and sent off to Sidley to check. I would hope certainly no longer or later than the end of June. Even earlier than that may be.

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So I think we should focus on getting this done. I mean Kavouss has spoken. I know others said this too but Kavouss' articulation of this really springs to mind. We have been on this too long and we need to bring it to a conclusion. And an interim measure invites a lot of debate about content as Kavouss said. We have to discuss the degree of interim set and the content. The continent of what we got is what ICANN thinks is satisfactory. It's not   something that was agreed with everyone else we have to discuss and agree that. We know there's going to be troubles here reposed ICANN in this the reposed treatment in the interim rules and treated the way they wanted to be treated in the final rules, I wouldn't agree with that. That has to be discussion. I think this will derail things and just extend our work.

So I don't think it will brings us to a swifter conclusion.

>> DAVID McAULEY: Next is Sam, I think that's a new hand.

>> SAM EISNER: Thanks David. This is in response to Malcolm. If you look at the language that was presented in the interim rule set, there's very little in there that is original drafting from ICANN. For the most parts it is you know we presented it in red line against what was already posted for public comment which was already done with Sidley. So those were drafted. So we are not trying to present any new information. And we tried to be very careful about the things -- about finding what appeared to require significant drafting so we don't have to go through the effort of drafting it or doing a full drafting exercises over the interim rules as well as on the final rules. I agree, if we had to do both that would be a significant duplication of effort.

So that's why we have basically just tailored it to what the IOT has already agreed upon and what the community has already seen.

In terms of being able the present a final set by the end of June, it's already May. We already no that we have to go for public comment on the repose issue.

That already takes us out to the end of June if we were to open up the public comments tomorrow.

And so that means we don't have anything final until at least the end of June. Setting aside all of the other process. So, that -- there are practical timing issues. So I think there's still the fundamental question and you know we will be open to -- I mean, the reason we sent this over to IOT is to get the IOT's reaction to it, to both the sense of, does it make sense as Kavouss said, to even consider this idea of something interim because from our perspective it creates benefits to the community. To have an

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interim set. To have at least something that IRP can be based in while the rest of the process is continuing. And then, move to the final set.

So that's why we presented it. And you know, again, if there's any other questions on the content we are open to talk about that

>> DAVID McAULEY: Thank you Sam it's David again. Bernie your hand is up. Is that a new hand?

>> BERNARD TURNCOTTE: Yes it is, sir. I just wanted to note two things. First, Greg has joined us so we are now a five. Second point, if we are going to public consultation on anything of course it's the 6 week block and usually to get things teed up for that, is at least two weeks if not three weeks.

And we are going to start running into getting things ready for ICANN 62.

So, if you take -- even if you take a minimum set of two or three weeks then 6 weeks, that puts you 9 weeks out from let's say the end of May. So that would put you at the end of July. And usually I will note from experience, it's not really a good time of year to put out public consultations for things you really want people to consider.

July, August are the dog days of summer in the northern hemisphere. No disregard to our fellows from the southern hemisphere but it does tend to significantly impact people's attention and getting comments done within end period.

Thank you.

>> BERNARD TURNCOTTE:

>> DAVID McAULEY: Thanks Bernie. Just before I go to Kavouss, pose this idea. So far, I think, it's possible that what we are going to public comment on is just one issue. And in my view that could be prepared pretty quickly. I think I could write something up on that fairly quickly. Now it depends on ICANN's approach. When I think ICANN will submit a minority statement on that as long with public comment, I'm not exactly sure.

So, let me go to Kavouss. Then I have another question. But Kavouss had his hand up. Kavouss why don't you take the floor.

>> KAVOUSS ARASTEH: Hear me please?

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>> DAVID McAULEY: We hear, thank you Kavouss yes we hear you.

>> KAVOUSS ARASTEH: I had what question to put to motion the view of the colleagues. But before that, how many items are pending that we are obliged to go to the interim for the case that a complaint should come? Do we have many cases? Or do we have very few that we could try whether or not we are in a position to resolve it?

So then if there are few, perhaps you still put the question to the people whether they agree with the motion of entering or in view of the limited number that maybe discussed at two meetings may be last week, then we need not to go to the interim procedure.

So how many items you have? Which pending and push us to the interim procedures? Thank you.

>> DAVID McAULEY: Thanks Kavouss. Sam do you have any information on -- Kavouss, I believe you talked about other cases pending. IRP cases is that right?

>> KAVOUSS ARASTEH: No. No. I mean in the supplementary procedures, why go to the interim? Because there are some issues that has not been resolved. So what is the -- why we go to interim?

>> DAVID McAULEY: And I'll let Sam talk about why going to interim. But let me also pose a related question then ask Sam to comment. The related question I have Sam, couldn't we take your proposal for interim rules and my suggestion. Couldn't we make this one effort? In other words, take your draft, your red line draft, get whatever we need to Sidley to help on translation and intervention and joinder. Have a meeting on list and on phone to address the translation questions that you thought we needed to work on that we don't have a enough for Sidley yet.

And, also, get repose question out for public comment. Couldn't we do this as part of a joint sort of unified effort? Where the interim rules would be bucket one and come into force in some manner while we are getting public comment on repose. So anyway that's my question. And so I'd be interested in what your thoughts are Sam.

>> SAM EISNER: This is Sam. I think that having something like that would be ideal. You know, we know that there's other work that needs to be done. I think it depends on how long you think we need to get other language right for items. But that are included. And I mean I see no reason combining the efforts somewhat. I think that we do need as a group to be ready to understand if there's an IRP filed, how we want to thing to progress. What ideally would be enforce at the time an IRP was filed. But I don't see any issue with combining those efforts as you suggest.

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>> DAVID McAULEY: Thanks Sam.

So before I ask if anyone else has comments. Let me just mention that I think we have here, and I'd be interested in what Malcolm think, I think we have here a way forward. Sort of taking Sam's red line which I think is a very -- sorry, a very good effort.

And moving forward with that. And trying to get it -- trying to move forward with interim rules we could actually use and get the board to approve. While at the same time going for public comment on repose. It may be that as we discuss this, you know we will have to tweak Sam what you did. I don't know. But what I'm interested in, if getting Sidley to work, on what they can work on. That money is going to run out at the end of June anyway. We have to get them moving.

I would like to get the repose issue out to public comments. If we think that's the only one. I think that could be done pretty quickly. That would avoid if we can get that out fairly quickly we would avoid the summer dull drums that Bernie mentioned.

So maybe what I should do is simply come to the list and say do people agree this is the approach. I would need some help. I would be happy the draw up the document that would set up repose for public comment. That would then depend when we agree I set it up right and two, if irk can has a minority statement to append to that.

I'm interested in any way we can expedite that getting interim rules. Sam hats a good point, we ought to get interim rules out there because there could be IRPs and they should have updated rules.

Anyone want to comment on this idea? Or sort of try to make me make more clear what I've been saying right now?

Excuse me.

I don't see any hands in the cue.

Malcolm, what do you think of trying to take Sam's red line approach and joining it in not -- in an effort to get rules out there. Not interim rules but rules out there where we can agree including translation and joinder I hope, and getting repose out for public comment.

What's your reaction to this?

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>> MALCOLM: Well I would like to get this thing done and out to public comment. Now if this -- I mean I have not done a line by line comparison against what Sam has put up. And the other decisions. So we have taken if what stamp has put up, actually reflects all the decision we have taken. Then yeah, this sounds good. If on the other hand, what Sam has done is simply taken the previous draft, the draft we are -- that went out to previous public comment the draft we moved away from. And not incorporated the other decisions that we have taken.

Then, that's more of a problem. Because it doesn't represent -- it wouldn't then represent our agreed approach. It would represent an actual approach we have agreed not to do. So I don't think that would be easier. So I have to ask, does this represent the previous draft we went the public comment? Or does it represent the work we have done in this group since?

>> DAVID McAULEY: Thanks Malcolm. I did go through Sam's red line. I have to admit I went through it fairly quickly. I think it was an honest effort to capture exactly what we have done. You pointed out, there is rule 4 is not quite the way I think you -- excuse me, you would find it.

To your liking.

But rule 4 aside, that's my take on it. Sam do you have any comments about this kind of approach [I? What we try to rush to the finish line and get rules out on the same timeline you were envisioning if not even faster.

>> SAM EISNER: If we can move that quickly, I'd be happy to see that happen.

I think having interim rules could be a benefit. But if we are not able to get to those as quickly as we want, let's move as fast as we can on the final.

And get to that. Malcolm I think if you look through the document, you will see, and I put this in chat too. We really tried hard to reflect the different agreements that the IOT had made. After the public comment, so you will see red lines to that. We have also annotated in the document why changes were made to demonstrated where those agreement came from. So we really did take a good faith efforts to do is that. It's not just a -- the public comment version with other things ICANN wants to see in there. That's not what we did.

>> MALCOLM: Thank you, that's very helpful.

>> DAVID McAULEY: Thank you Sam.

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I don't see any other hands up much I actually feel that we may have come to the end of this call with the exception of AOB.

And what would probably happen, is I should come to the list in the next day or so, maybe over the weekend may be tomorrow, I don't know, probably over the weekend. I have a lot if meetings tomorrow. And sort of capture what we have spoken about here. That is we are going to take Sam's red line and try to push it forward to final rules, setting aside rule four now. We have to figure out how we are going to work on that. That's a legitimate issue.

Separately, I could take a stab at teeing up the time for filing document for public comment.

I think it could be fairly brief frankly saying we went to public comment, here's what the rules said. We got a bunch of public comments here's where you can see them. There was a strong feeling among a number of folks we should have no repose much here's the new verbiage, verbiage Malcolm suggests. We are seeking public comment on it. I think that could be done quickly. But in any event it would be unwise to go to public comment if we find ourselves in the position to we need other for final comment too.

So let me take an attempt to try to wrap up where we are now and Sam and Liz I ask you in the background to sort of be preparing to sort of tee up your red line version for moving it forward to Sidley. Getting Sidley's help where we need help translation and joinder. Or let the group here know more in detail what you are suggesting there. So we can move forward on both front quickly. We have to move quickly on the Sidley side or we are out of money. And I think on the public comment side it would be in our interest and ICANN's interest my personal feeling to get the repose question out fairly quickly while people are still here. And I think it's possible.

So if I don't see any other comments I'll move to any other business on the agenda and it will be open the asking if anyone has any other business or any other concerns with what I just suggested.

I don't see any hands.

So it's possible we are done early.

I'll just ask once, one more time. If there's anything anyone wants the raise please do so now. We are going the to wrap this call and come to the list.

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Before I do that, I want to thank Sam and Liz and anyone else that may have helped in putting the red line together. I see your point I think there was a lot of work in it. And it appears to me it was good faith effort. I appreciated it, it. I think I moved this forward and I appreciate last week's call where we discussed about let's go to the list or go for public comment on the repose issue. I think we are coming together and actually getting to a point where we may be able the finish up rules pretty quickly.

So I do see a hand Bernie.

>> BERNARD TURCOTTE: Thank you sir trying to confirm the calls we have. We have a call scheduled for next week 17 May. I heard you mentions earlier that you may not be able to make that. Are we holding to that or not?

>> DAVID McAULEY: Bernie if there's a call on the 17th I have to say for the group I don't time to prepare for the call, I'm not even sure I can be on it many but if this group feels we need a call I'll do my best do be on it and see if I can find someone to help me lead the call.

Do we have a call scheduled for the 24th at we go Bernie.

>> BERNARD TURCOTTE: We don't but we could. I could arrange that now. Maybe wise to just give an attendance has been a bit of a struggle on this call, I might suggest that we just cancel 17 and reschedule for 24.

>> DAVID McAULEY: Does anybody object to that?

We are going the try a do a lot of list between here can there.

Go ahead.

>> I support if we have another call this time next week that's the time you are talking about. I'm afraid I'll be on an airplane at this time.

>> DAVID McAULEY: Thanks Malcolm. Bernie can we also try to schedule a call for the 22nd at this time. So we have a call 22nd and 24th. What I'm looking to do, if people could, we would meet on the 22nd. Just move it up two days then answer cancel the 24th. But have both set now so we can use whatever is best.

>> BERNARD TURCOTTE: Will do. Will you be given you sound like we might have a bit more material, would you like to go for 90 minute call on the 22nd and 24th?

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>> DAVID McAULEY: That's fine with me. Unless -- yes let's try it. It's better to have the time and not need it than the reverse, to have the time --

>> KAVOUSS ARASTEH: What is time of the meeting?

>> DAVID McAULEY: A all of the calls I believe we are trying to start at 1900 UTC.

>> KAVOUSS ARASTEH: Always in the evening not early morning yes?

>> BERNARD TURCOTTE: That is correct.

>> DAVID McAULEY: It is.

>> BERNARD TURCOTTE: All right those are booked David and next week is canceled. We will send out the regular invites. Thank you very much.

>> DAVID McAULEY: Scuses me.

Thank you everybody I'll be coming to the list if not tomorrow than over the winged with sort of a recap what we did today. And looking to move forward. I appreciate everyone's efforts. Thank you so much. And we will see you at the next time and see you on the list.

Goodbye.

>> BERNARD TURCOTTE: Goodbye.