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CCWG-IRP-IOT MEETING

Thursday, May 24 2018 – 19:00-20:00

>> DAVID McAULEY: Thank you Brenda. Hello everyone everybody welcome it's David McAuley speaking welcome to the IOT call. Bernie thank you very much for letting us know we have enough folks to continue on.

Looking at the agenda I would first like to mention before getting to number 2 on the agenda I want to make a quick request of Liz and Sam she joins by then, I put in an email you but it occurred to me too late. First, admin. Anyone participating on the phone not indicated in the zoom room, make themselves known now.

I don't hear anyone trying to do that. So let me ask if there are any participants here who have a change to indicate to their statement of interest?

I don't hear any and I'm looking now for hands up and I don't see any. Let's press on.

Before we get to number 2, I don't know if Samantha has joined us.

But, Liz, could I ask you please, just if you could comment briefly on whether there's any moment or plans with respect to the establishment of the standing panel. I ask for it to be brief. It's not something the IOT has a formal role in but we have interest in and encourage of course those ourselves who are in the IOT to help our respective supporting organizations or advisory committee as they work towards the establishment of a standing panel on the bylaw. Liz are you able to say anything about that?

>> LIZ LE: Yes, I can. This is Liz Le for the record. So they are having administrative movement on this effort since we visited this, I think in Puerto Rico. We have created a mailing list and, also, a community Wiki page or are in the process of creating a community Wiki page and we intend to port overall of the materials to date that have been created with respect to this effort over there.

We also have created a document that summarizes the outcomes on conversations that we had in Panama City. That is something we will port over and publish on the community Wiki probably next week or so. As well as some questions that were part, came up in the discussion for example relating to a -- the need to seek outside expertise regarding vetting on applicants and what not to invite participants to communicate. With respect to I think the mailing list we have created a mailing list and we intend to reach out to the participants of the Puerto Rico session to see if they want to be a part of

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this mailing list. And we also invite any members of the IRP IOT if they want to be part of had this mailing list to let us know. So what we will do, just following this call within the next couple of days, more likely next week, we will send out elastin is righting the people the opportunity to opt in if they want to be part of the mailing list.

>> DAVID McAULEY: Thank you, Liz Le, sure. I'm happy to hear that we will be part of the mailing list we will be helping each of our respective organizations as working on this. Liz, any plans for ICANN 62?

>> LIZ LE : That was something discussed at the last meeting. Not the last meeting but going into ICANN 61 that was discussed having something at ICANN 62. So I would look to see what your thoughts are about that. But I think it makes sense to have something at ICANN 61. It's at anything, it's a opportunity again for a face-to-face meeting to further discuss this issue.

>> DAVID McAULEY: Thanks Liz. To respond, my personal thoughts are yes, any activity to move this forward. Get it dislodged and moving forward is a good thing. If other members wish to as participants weigh in you are welcome to do so. Raise your hand and be brief and we will move on to the repose language to agenda. I will now look for hands.

I don't see any. So thanks Liz.

And let's move to the next item on the agenda the repose language for public comment.

>> You see my hand?

>> DAVID McAULEY: Sorry, Kavouss I hear your voices but I didn't see you're hand.

>> KAVOUSS ARASTEH: Thank you very much. Question one, do we have quorum?

>> DAVID McAULEY: Is answer to that is yes.

>> KAVOUSS ARASTEH: At least 5 calls in participants attendance whatever you call it do you have 5?

>> DAVID McAULEY: I believe we do.

>> KAVOUSS ARASTEH: I don't know about that, I think ICANN staff is a participant in the group. But there's Avri, Greg, myself, you and Robin. We are definitely at quorum.

>> KAVOUSS ARASTEH: Yes. Malcolm is not there?

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>> DAVID McAULEY: Malcolm, I don't see him. He may join. I'm not an expert with zoom.

>> KAVOUSS ARASTEH: Second question, do we have any reply from SO and AC regarding department?

>> DAVID McAULEY: That would be a question -- thanks Kavouss that is a question better addressed to Liz. ICANN staff is engaged in helping to bring that process on. Liz do you have anything to say?

>> LIZ LE: We have not received any reply to SO and ACs. The last time we discussed this with them they acknowledged they have a lot to think about. This is the first time of cross community effort as they are engaged in or experiencing they need to take it back to their organizations and figure out what is the next step forward. We have not heard back there from them since then. What we are hoping to do as part of this community Wiki and the mailing list is to reinvigorate this discussion and to pose some questions that were thrown out during our meeting. So that there can be a reengagement on this effort.

>> DAVID McAULEY: Thanks Liz, sounds good.

>> KAVOUSS ARASTEH: Excuse me is it possible to send a reminder to all the SOs and ACs that this is a message you have to wrap up if possible at ICANN 62 or at least to those [indiscernible] as far as I know there's no movement in that as far as I know. Maybe I have not followed everything but reminder to the chair to clarify the matter maybe through e-mail also to our next meeting. We would like to know what is the situation as far as [indiscernible] concerned I have not seen any movement.

>> DAVID McAULEY: Kavouss this is David McAuley speaking again. I'll let Liz comment in a second. I participate in CC and SO and GNSO through registry stakeholder group. That's one thing I'm encouraging us to do. I've been active in making the organizations active in this and help them get organized to work on this. So what you're saying with respect to GAC is my hope, my personal hope not as leader on if this group is that Kavouss you will work with Man a I. And make sure the GAC is aware this is coming and make sure they are aware to plow the road forward to get the staff moving. Liz any comment on that?

>> LIZ LE: I think once we get this mailing list going, it will help with the movement. Of -- and a reminder to everyone that this is something that should be a priority.

>> DAVID McAULEY: Thank you Liz. And Kavouss -- sorry go ahead.

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>> KAVOUSS ARASTEH: Liz, if you send a reminder to them, are we make any necessary follow up actions? If you repeat the reminder to them or re-forward what you sent before, I will take it with Manal and the GAC leadership to declare something. Because now we are preparing the agenda for GAC 62 or ICANN 62 and please put in the agenda that we should have a reply on that or whatever process we have to take. Not complete reply but initiations are actually. Thank you.

>> DAVID McAULEY: Thank you Kavouss. It's David speaking again. And Liz I hope you can look into that. Let's move to the issue of repose language for public comment. This is -- that issue that deals with a couple of calling a Sam indicated that ICANN agreed that may be the best way forward here on rule four, time for filing is to put the revised rule as per Malcolm's iteration of it. After public comment. Because it was such a material change from the procedures, the supplementary procedure that were originally drafted and put out for comment.

So what I did and Brenda has it on the screen now is to offer to take a stab at the number of the language. Obviously there's introductory language about you know public comments and, etc. What this is Bernie. It will help get us wrapped -- get that wrapped up. This would be sort of the operative language of a public comment. I put this out on the e-mail list you saw the language in front of you and on the email list. And malt come who is not on the call as I see, had a concern his concern was with -- let me read it from -- I'm having a hard time with the screen here. Let me read it from my print out here.

What I had written was, in the language, it's about halfway down. I said it appeared to the IRP, IOT while there was qualified support expressed for this kind of time limitation there was more criticism of it as unfair and unduly restrictive that's the original time for filing rule. Malcolm was concerned with that language I had drafted and said, it's didn't fairly characterize it. And he would use verbiage like it was overwhelming. The people that were critical of this were overwhelming.

And I thought it was a fair point he made but I would sort of reply back and say, speaking as participant now that the word overwhelming is sort of a miss characterization.

So my instruction here is that I should take out that language, I used trying to qualify the level of support, or none support, etc. and simply make it a factual statement. Something along the lines: There's X number of implants among those Y number of comments is that criticized the time for filing that we originally drafted, here's links to those statements here's one Z comment supportive of that time for filing. Here's what that -- here's what that -- here's a link to that statement. So that would be my suggestion here. But I'll open it up and see if people have other ways to try to polish off this

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language to try to come up with something to put out for public comment before people leave for the summer dull drums and yet address Malcolm's concerning I put a qualitative statement in there that he believed was not justified.

Anyone want to make a statement about this? Or a comment? I'm looking for hands.

I'm not most adapt at zoom yet.

>> KAVOUSS ARASTEH: I had the comment you changed the text that was on the screen was different text saying that this time should not be more than the year from the time that the claimant, the [indiscernible] any such action early action.

I give you an example suppose an action or reaction occurs in January 2019 and the a claimant be aware of that on the 31st of December, 2019. So, what is the situation of 45 days to 30 days. What is situation of one year? So because 45 -- within 45 days of the date that the claimant becomes aware of action in effect or times of that action. My example, generally something had happened. The claimant have that same year, that is 12 months. Then how this 25 days or 20 days is counted. And how did one year will be counseled.

This is the most extreme way and most simplistic way. At least we have to discuss that.

Thank you.

>> DAVID McAULEY: Thank you Kavouss. I guess I'm not sure that we need to discuss that. Part of the struggle I'm having is with the zoom screen and I can't see all of the language at once. What the language I came up with is meant to say is this, to the people looking at it for public comment, it's along these lines, we as an IOT originally drafted a time for filing rule that said someone 1450 file a claim within 45 days or but in no event no later than 12 months there whenever we said. And I say to the folks, that's what we drafted, here's a lining link to it you can go see it for yourself.

Then I go on and say, but it appeared to us as a team, and after our discussions that that was an after public comment, that there was a great deal of criticism on if this. So we took a new look like and as a consequence there's now a proposal to change the time for filing rule. That change would be the language that Malcolm proposed. Basically that language is that we are suggesting is no out for new public comment that a independent review should be commenced when a claimant file a dispute and the claimant should good that no more than 120 days when they become aware or ought to be aware of the effect. That's it. That's all.

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So we really don't get into that discussion you were mentioning. And so I think it's just sort of a straight explanation to the folks, we had a rule there was a lot of criticism to it, we are moving to the new rule. What do you think of the new rule. Please exercise your comment and we will consider. That's what we are.

Malcolm's objection was to my characterization was public comments had qualified credit I meant of the old one. He thought that was an under statement and he thought it should be overwhelming. I think his criticism is fair but overwhelming is not. So hopefully that's what I'm intending to do. Your hand Kavouss.

>> KAVOUSS ARASTEH: Yeah I agree with the 45 days. But I still have some concern, some, about open-ended process.

130 days yes. How long after 3 years it comes to -- [indiscernible] after 3 years there's no such raising hand what will happen? Still we can take that into account or we put some time limit on that.

Maybe one year was not sufficient. But at least you have to see what would happen. I'm just raising the question. Totally reopen-ended other put some limits.

>> DAVID MCAULEY: I think it's a fair question Kavouss. I think it's for another time. But I have a cue. Liz is next. Liz, go ahead and speak.

>> LIZ LE: For the record on behalf of ICANN organization. This light piggy backs on what Kavouss is saying. As we indicated, ICANN option to not having -- to eliminating a statute of repose all together, which previously as under the version that wouldn't for public commend, that was that you know -- public comment that was a claim has to be filed no more than 12 months of the date or action or inaction. As we indicated we intend to submitting a minority statement sending on record our option objection to the fact there's no outer limit of when a claim should be filed.

>> DAVID MCAULEY: Liz, thanks. I understand that. But I just want -- let me try to clarify something. I believe what Sam said a couple of weeks as is that you, ICANN organization, are prepared for, I'll call it the Malcolm draft for lack of a better term. For that to go out to public comment. So am I correct in that understanding?

>> LIZ LE: In terms of the issue going out for public comment? You're correct. We think it is a substantive material change that should go out for public comment.

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>> DAVID McAULEY: Right, so my understanding is, what you all were saying is, are you're prepared to see it go out for public comment. It will go out for public comment you will append a minority statement or public comment to the issue or at the appropriate time. As Kavouss indicated, other people may consider making a public comment on this.

I know there are others may consider making a public comment on this.

So that's fine. With respect to coming up with the language that would deposit this whole issue into the public comment sphere, are you okay with what I conduct a few moments ago. That is we use the language that I sent to the group in my nail of Tuesday but changing it based on Malcolm's observation of the qualitative language. Changing it so it would read there's X number of public comments this number in support, this number against. Here's links go read them we are asking for your public comment. Are you objecting to that approach.

>> LIZ LE: No David, I'm not acting. I prefer that the way you're proposing to change it, to say there's an overwhelming position one way or the other of public comment, verses for you to now provide the numbering or more or less characterize it in terms of categories as comments received, to me seems more accurate and aligned with the comments that were received.

>> DAVID McAULEY: Okay, thanks Liz, I still have a cue. Greg I believe. Kavouss I don't know the order. I can't tell from zoom. I'll call on Greg since he has not spoken yet.

>> GREG SHATAN: Thanks, at least as I read this, I would not characterize this as an open-ended time period. Because in addition to the actual awareness we have the reasonably to have been aware or what we call scantier in U.S. jurisprudence. So if the complainant should have been aware, of this, and sat on their rights, then their claim is time barred. I realize that's goes into the mind of the -- it doesn't go into the mind, because it's a reasonableness test. The question is whether this was reasonably public or reasonably publicized or should have reasonable blue been known by someone in the situation of the plaintiff. We don't know if the plaintiff was actually aware of unaware but just that they should have been aware. So maybe the -- this is can be an impetus to making sure that in terms of transparency and availability of information, that it's clear that there's a high degree of awareness. Or should be awareness of are actions that could be challenged. By the IRP.

This avoids kind of a submarine claim or avoids being unable to go after something that was unknown to everybody and could not have been known to anybody in the position of the claimant while still maintaining an end period to this or away to have an end. This is not just an on open-ended type of

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thing where a claim can be brought at any time. So I think it's -- it's not quite as neat and clean that saying 12 months, there's essentially statute of limitations that's just based on the ticking of a clock and nothing more. But I don't think it's really accurate to say that it's open-ended either.

Thanks.

>> DAVID McAULEY: Greg, thank you, fair point. I think some of that's points are full the point of the consultation. But, I see Avri comment that Greg got very quiet all the sudden. I didn't experience that that I heard Greg the whole time. Bernie often times has a process point may help shape the process point.

>> KAVOUSS ARASTEH: No problem.

>> DAVID McAULEY: Bernie.

>> BERNARD TURCOTTE: Thank you can you hear me David?

>> DAVID McAULEY: Yes indeed Bernie.

>> BERNARD TURCOTTE: I was less of a process point. But, you know I would think that Malcolm would find your suggestion in response to his comment to be fair but given it's not a lengthy change that once you write it out, Malcolm will give us his response via email rather quickly and I think it would be fair as a process point to put it out and give him 24 hours to respond you should be able do that. Thank you.

>> DAVID McAULEY: Thank you Bernie. I will try to do that. It probably won't be until tomorrow but I'll try to get something out on that. Kavouss you have the floor.

>> KAVOUSS ARASTEH: I was about to type something. I have no problem with that. Provided that in the qualifier or the fall identifying sentence you when you refer that the public comment and everything, this is attached to the public comment you add at the end, the following text: This constants or this procedure implies that asking 21 days from the date becomes developed that know statement will be taken into account.

You make it quite clear for the people.

That they know the consequence of this 120 days.

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I don't think that it is not open-ended. And I don't think that it is totally open-ended. But you have to clarify that. It is [indiscernible] 120 days. Normal more than for any statement if it comes will not be taken into account. Make it clear for the respondent to this public comment. In the qualifying sentence or equal fires. Thank you.

>> DAVID McAULEY: Thank you Kavouss when you first started mentioning that I thought you were talking about 21 days after public consultation started. Then I --

>> KAVOUSS ARASTEH: No.

>> DAVID McAULEY: But you're talking about the rule itself.

>> KAVOUSS ARASTEH: I'm talking about the rule itself. When you talk about rules I have no problem. When qualifying that this implies that after this 120 days, any statement in that regard will be ignored or will not be taken into account.

>> DAVID McAULEY: Thanks Kavouss. I think that's a fair point to make in the public consultation. But right now we are limited by two things. One is we have a rule that we originally published that we are deviating from or potentially deviating from. So that rule that was originally published whenever it was published it is what it is and we can't really change it. With respect to the new rule, the Malcolm language as I refer to it, it mentions 120 days, we all come to agreement already that this language could be floated. In other words, if we get back into substantive subject on it we will unduly delay things. So I expect this to be a fair public comment.

The other thing, when we say something will be ignored or language that will take that effect, it would be -- as a rule it would be a direction to the panel. And knows what they will do with that.

All I can say right now is I think we have two bodies of language in front of us that we have to stick with and get out the public comment and make points like you just made in the public comments or when we come back and consider the public comments. But I think if you strongly believed that way you will be wise to make a comment along those lines. Does anyone else have anything to say about that?

I got the look through the list here. I don't see any hands but Kavouss yours is still up.

>> KAVOUSS ARASTEH: Yes I can get 5 people is not sufficient to make this. It's at the point it's a very valid point. If you make it clear for the people that after 120 days if there's any statement that the

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statement would not be taken into account, make it quite clear that -- I don't know why you reject that idea. Thank you.

>> DAVID McAULEY: Thanks Kavouss. Let me address it on the list. I'm not really rejecting it I'm saying does it fit for the public consult but does it fit in the statement in the public consultant. Let me think about it and come to the list shortly and mention it. I won't lose site of your comment. In fact I made a note of it.

So it sounds to me, unless anyone here objects and I'll obviously put this on list. That we found a way -- Greg sorry I see your hand is now up. Go ahead take the floor.

>> GREG SHATAN: No it was a hand --

>> DAVID McAULEY: No Greg Shatan.

>> KAVOUSS ARASTEH: No hand.

>> GREG SHATAN: Greg Shatan for the record. I think Kavouss' I tend to support Kavouss' idea of, you know, clarifying perhaps. Clarifying that you know that the -- at the end of 120 days claim is time barred. I think that would probably -- that would be the way I would phrase it in my jargon.

So just to be clear, that we do have that.

I don't know how much we want to explicate the rule. But it is kind of a two step process to get to a -- the time bar for us to have either the date of actual awareness or the date of constructive awareness. Then you count 120 days from there, then the time bar is effected.

So, I don't know if we need to kind of maybe explain that in maybe plainer language. This is intended to be phrased as a rule and sometimes rules especially when they are phrased moaning other rules make sense. Yet they don't lend themselves to easy comments by those that are not kind of in love with really procedural rules like me.

>> DAVID McAULEY: Thanks Greg. I think I have the same reaction as I did to Kavouss. I think it's a fair point. But the rule, the Malcolm language that I refer to basically says that the statements should be filed with the ICDR, the languages 2340 more than 120 days over a claimant becomes aware of ought reasonably to have become aware. So it seems to me it's clear that this is a time limitation. I take Kavouss' point that we need to be stronger here and say acts bar or what ever it is. What I'm trying do is get us finished with respect to making something out for public comment. And we have had this

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language in front of us for a while. So I think these are fair areas for people to make public comment is what I'm saying.

But I do want to sort of come up with something we can release.

One of the things that is in the back of my mind is, if we release this for public comment on the 1st of jug, people are gone. I think it's in our interest, in IOT and a responsible act on our part, to get something like this out for public comment fairly quickly so people can comment on it.

So that's what I -- why I'm trying to come to an agreement to the number of the language. There's more hands in the cue, let me just take a look and see who is in the cue. Kavouss go ahead.

>> KAVOUSS ARASTEH: Mistake. I know hand before. Yeah.

>> DAVID McAULEY: Greg, is this a new hand.

>> KAVOUSS ARASTEH: No hand.

>> GREG SHATAN: Yeah brief reply I was not suggesting -- at least I was not suggesting changing the actual suggest propose rule, you know that begins with for time for filing that can stay as it is. The question is whether putting this out for public comment typically there's an explanation or background that kind of goes out with the public comment that is posted the public comment page and thing being commented on is reachable through a link although maybe it doesn't need to be if this is the short -- I'm saying in kind of explanatory text that you have here in first couple of bullets is a little -- could be fleshed out a bit to point out that the effect of this rule is that 120 days after the either date the complaint is then barred by time and can no longer be brought by that claim.

>> DAVID McAULEY: Thanks Greg. Excuse me. To be honest with you, I had not anticipated doing a explanation. So I guess I'll two comments in that respect. I'll ask Bernie to comment when I'm done, what his thoughts are on that. Then I'll say secondly, that it was my belief that what I will I would on do is put it out pretty much as it's there on the screen, I think, and as I put in that mail. And it would have links. It would have links to the old rules and to the whatever, to the public comments individually. These are the folks that said yes, this is the folks that said no.

But I didn't anticipate -- to me it seems clear. And my concern is that if I get into explanatory note it will take us the IOT a long time to agree on a explanatory note. Bernie what do you think? You are sort of

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the expert in process and how public comments go on. You are at least more aware of it than I am. Can I ask you if you have a comment on this.

>> BERNARD TURCOTTE: I think Greg had a good point. The announcement, you have to understand the public comment is two parter. The first part is the announcement, which people -- which exactly as it states, announces the public consultation. And there's? Summary of what is expected, what will be the process once the thing wraps up. Some general background information, useful links. And maybe bit of explanation about why we are holding the public consultation.

So, I guess that there's plenty of opportunity in there to insert some text. And I think that you know the -- what I would say is, simply dropping the text that is on the file right now, as the main document for the public consultation would probably also require a bit of wrapping, just to situate it in the supplementary rules of where it was agreed and where it might end up with just to give the readers a bit of reference. So I'm uncertain when that answers your question.

>> DAVID McaULEY: It does. I'm just concerned with the bit of explanation. Because I don't see us agreeing.

>> KAVOUSS ARASTEH: David. Don't be surprised. You really suggested. And the way that Greg explained that, and the Bernie explained that. Nothing gone if you put in the back grouped that now there's a firm 120 days for the claimant to raise the plot. And the add beyond that, any statement would not be considered in the background. But not in the rule. The rule is separate. In the background it mention that. And nothing prevent from making such explanation or explanatory notes in the background.

I don't see any difficulties for that. Thank you.

>> DAVID McaULEY: Thank you Kavouss in light of those three statements I will take a stab at doing what Bernie just laid on it. I'll look to you for the boiler plate language Bernie you know what I mean. I'll come up with the background and bit of explanation with the suggestion that Kavouss just made. I'll do that on the list, probably come out early next week. Hopefully that will not be controversial.

Anyone disagree that with the idea of getting this out for public comment fairly quickly? This is obviously what is motivating me to push this along. Is there anyone that thinks this is not a good idea?

I actually think it's probably self -- it's probably something that is just obvious. It's in everybody's interest, the community's interest to get this out for public comment quickly.

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Let's do that. I think we can draw a rind in under agenda item number 2. Oops, I see two more hands. At least. Let me look. Okay.

Greg go ahead your hand is up.

>> GREG SHATAN: Thanks, just two things briefly. One, it's not only desirable but necessary to get this out sooner rather than later. secondly I would also say the explanation, the wrapping as Bernie calls it typically in my experience has been drafted by staff. So you may want to ask Bernie to draft the whole thing and not just the boilerplate. That's between you and Bernie. It's not typically something that gets approved on the list orator turd and worried over by the group for weeks on end. It usually appears there. And you know staff is expected to you know role the ball down the middle of the lane and explain it and they do.

So I don't think we should get too exercised about whether the group is going to end up going nuts on this. I'd even suggest that unless you want the group to see it & that's perfectly fine, that this could just be done the usual way. And let staff prepare the wrapping for this.

Thanks.

>> DAVID McAULEY: Thanks Greg. That sounds good to me. I'd be interested in Bernie's observation. I was just struggling with where staff responsibility and the line demarcating -- demarking the differences. But Bernie if you care to comment, please do.

>> GREG SHATAN: I'm helping you with your struggle.

>> DAVID McAULEY: Thanks Greg.

>> BERNARD TURCOTTE: Greg is correct essentially. It's wrapping the language. Staff is charged with that and they produce a draft and person responsible for the public consultation, meaning yourself and in this case David, have a look at it and sign off on it and then we send it off.

>> DAVID McAULEY: That sounds good to me. I will take a stab at that language that was concerned with. He said qualified support said overwhelming there's a difference there and I'll take a stab it's a factual discussion with links supporting what. Now we can draw a line under this issue. I'll look for hands. I don't see any.

And we can move to agenda item -- thanks everybody for your comments on that.

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We can go move to agenda item number 3.

Liz, I have not seen Sam's, but Liz would you like to comment? Let me set that up.

You know this way, Sam and Liz sent to the list, just prior to the last call a document that took the old supplementary procedures and created a Redline version of them, trying to map the changes that we had agreed to. And was saying why don't we use this in order to get to a interim rules that we can get out in use which is a wonderful idea I think. That was the idea that I was approaching in the two bucket thing. What I call the two bucket thing.

Liz, know in the last call you all expressed concern about translation. Joinder. But I have not seen anything on it since. I'm wondering where are we on that? Can you comment on where you think things are with respect to the Redline proposal. I have a question and then we will see if anyone else has a question on it.

>> LIZ LE: Sure David. I'm not sure I need a little clarity in terms of where we are with the Redline proposal. Are you talking with respect to joinder in translation?

>> DAVID McAULEY: Thanks Liz for taking about the entire document. Let me state a little further. In the last call, as I recall, I know I had read through the document and, also, read it again it strikes me as a fair document over all, totally with, with one exception. I'm not saying it's unfair. But Malcolm was wondering about rule number 4. And I just I guess my question would be, I'll pose my question now then ask you to talk about the whole document, especially translation and joinder. The question I have is the approach I had suggested was that we get out the rules we have agreed on and then you and Sam said let's call them interim rules, that's fine.

If we did that, we would release the rules we have agreed on and in your Redline you're also going the release rule 4, time for filing. Which we have not agreed on. That was my question. What do you intend there? I think Malcolm made a point about it in the last call. Second sly I was going to ask you what were are you in translation and joinder. I am personally stating that it's a g great idea we get the first bucket of rules out those we agree on we can show progress and get those behind us and narrows those. Amongst I will switch those we made a fair amount of progress. Thanks Liz.

>> LIZ LE: I think with respect to the rule 4, the current version we have as you see has made notation on there in the comments that this is going, we are anticipating that there's some still some level guidance if needed and there's anticipated that it's going to go out for public comment.

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So -- and that you know, whatever the results will come out of our final decision, that will be -- that final set of rule will be -- it will be incorporated into the final set of rules.

So, I don't know if that answers your question on whether or not we leave this in here, I think what we wanted to do the idea of an interim set of rules that we were putting out were really the procedures step that we have as a group agreed upon and really has been very immaterial changes to what was put out for public comment. And that's know material changes would be -- would expand on the rules that were out for public comment.

That would be the interim rules, right?

With respect to joinder, we I think the first we thought that the issue was resolved when it was discussed on I believe our January 11th, 2018 meeting. And it was again the last call, it was brought up again. But you know, on that -- during that meeting and I believe Malcolm was not there in attendance on that meeting. ICANN put on the record in respect to joinder with essentially -- sorry, not joinder, I believe it would say related to hearings. With respect to hearings, that it shear remain the rule that was set out for public comment. That was the rule previously debated before. I'm not sure where we are, to be honest with you, where translation. And I am not sure -- I think with respect joinder we have it set out in the Redline document that we set up what the proposed joinder language is that I thought we as a group came to agreement on.

>> DAVID McAULEY: So thanks Liz it's David McAuley speaking again. Kavouss' hand is up but before it gentlemen to Kavouss let me react a little bit.

So I'm just a slight about it confused still. I guess with respect to joinder, when I read through what you did, I didn't have any problem with it, but I'll reread it again. With respect to types of hearings, I thought we had reached agreement too. But then Malcolm put a extra man out. Which was perhaps too detailed. It's something I need to do. To try to take Malcolm's document. I have not done this yet. But to try the get out of it the principles. And if there's -- I don't think it's really that different than the rule we agreed.

So, types of hearings, we are not of agreement yet. We can say when we want the put out one bucket of rules. Those we agreed on. It's we have not agreed on types of hearings. I'll look at January 18th meeting that you mentioned and see where we stand. But with respect to translation, I think you and Sam were going to -- I thought we had reached agreement. But I think you and Sam want the do clarification or something? So we are looking to you to send along those thoughts.

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With respect to joinder, I think we may be of agreement. As I said, let me look at your language in the Redline one more time. It instruct me as being fine but let me look again and comment back. But I'm going to invite others to comment too.

And then with respect to the time for filing, your Redline, I'm wondering what the thinking is in putting out a rule four right now when it's going out for public comment. When I said the two bucket rule, two bucket approach, first bucket being those rules we agreed on, you're making a slight variation to that, saying let's put out all of the rules but indicate where there's not agreement, is that a fair reading of what you're doing?

>> LIZ LE: So yeah, David, I think so that's the intent. And you know, that's something that we welcome input from the group on. Is whether or not we should go ahead and put it in with the indication as we have that there's no agreement yet. Or whether, because it's going out for public comment, it should not be included in the interim rule. We would be interested to hear what the group has to say.

Then, with respect to the types of hearing, again, I do want to say that when we discussed it at our -- the meeting in January, we -- the strawman had already, Malcolm straw man had already been circulated on list. So that was the Intel was to discuss that and we did touch upon that in at that hearing. I recognize Malcolm was not there at that hearing. But I know we did put our ICANN position on the record. And looking at the transcript, so did Kavouss.

I will circle back with -- I will circle back with Sam on the translation issue.

>> DAVID McAULEY: Please do and come to the list with what your thoughts are. Let me go to Kavouss his hand has been up for a while and others. I'll ask if others would like the Bay in. Go ahead Kavouss.

>> KAVOUSS ARASTEH: David, this is Kavouss speaking for the record. I think that the nation was given was not quite clear. Many, many words were [indiscernible] that not clear what we were to put as [indiscernible] I don't agree that we put something rules for which we say that among approval inside the group there's not yet agreement.

We must agree ourselves and then waiting for public comments then saying this is it.

So what you want to put on interim rules. I think we be there. I understand that [indiscernible] would be. But it is quite clear. What other rules that we have subbed out about that. You said there's no agreement [indiscernible] no agreement that try do one or two meetings. Sorry to get that agreement of consensus of everything then put all those things interim rule. Interim rule must be at least agreed by

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us, the group. This is not something not the group. It's not an intergroup it's still divergent among the very limited of the people in this group.

Thank you.

>> DAVID McAULEY: Thanks Kavouss. I think you make a fair point that the interim rule should only be those agreed by the group. I'll give the floor to Liz again in a moment.

But Kavouss, you gave, if I heard you correctly I you gave as an example, rule 4. So I think its rule 4 is the one that is questionable for an interim rule. It seems there's not agreement on that rule. That's why it's going back out for public comment.

And I think so if I heard Liz direct correctly there was concern on Liz's part we not put out as I object rum rule for what I've been referring to as Malcolm language we are putting out for public comment I certainly wouldn't thing think that would go out for a rule. The same I've said for Kavouss' rule it's subject to public comment. Let me know if I'm wrong. Liz you go ahead.

>> LIZ LE: Sorry that was an old hand.

>> DAVID McAULEY: Go ahead Kavouss.

>> KAVOUSS ARASTEH: Yes, if the rule 4 which is going to be public comment would not include the interim rule what else would be excluded from this interim rule? I think you excluded rule 4 for the ground for the reason it is yet to go to public comment. So what else would we in the interim rules?

>> DAVID McAULEY: Well you mean what else would be excluded from the interim rules?

>> KAVOUSS ARASTEH: Yes, what else you excluded? Rule 4 is excluded what else is excluded.

>> DAVID McAULEY: I have a feeling Kavouss we are not yet on agreement of types of hearings and potentially joinder though it looks like those may close quickly and translations we will see what Sam and Liz put on the list soon.

>> KAVOUSS ARASTEH: We are talking about this without any actions. What we have to take serious action about the trans lakes issue and joinder and so forth.

Let's ask one more meeting to already know that. But if we have an agreement of all this if possible, why not?

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>> DAVID McAULEY: No it's a fair point Kavouss we have moved slowly on this.

On the other hand, you know we need some participation and help on this.

I will promise to get out a statement about types of hearings and joinder within a week. I know that Liz and Sam, Liz you're willing to come out very shortly like within the week on the translation issue?

I hope? And then we can get this we can move that along. In the interim we need to also keep our eye on getting a public comment ready for rule 4. Go ahead Liz. Sorry, Greg's hand is next.

>> GREG SHATAN: Thanks Greg Shatan for the record.

In the sense there's a little dilemma here because as Sam notes, currently the rules that are out there are still the old rules. And not anything like the new rules at all.

And so, what Sam is doing here is trying to at least get a better set of or set of rules that are more aligned with the new IRP and out there. If we don't have a rule 4 in the I understand rum rules at all, then it seems to me that the rule that's in the old rules would still apply unless we just left it sigh excellent there was no rule on repose at all which is not something anybody intends.

So none of the choices are perfect. We have a rule that some of us disagree with. Or we have a rule that some of us disagree with and has been at least put out once for public comment. Or we have the old rule that nobody wants. Or we have no rule at all.

None of those are perfect.

So, I guess if you know rule 4 that's in the limit rules is what went out for public comment, you know it's still better to have that out there than no rule at all. I think that what would help me feel much more comfortable with that is that to say when the final rules are adopted, they will be retroactive to the time the interim rules are adopted. So there won't be some awful transitional period, where a different set of rules were in place for two or three months and then if you had a time period that was started during that time you were be barred but if it happens happened three days later you would not be barred. So that at least would make the fact that the interim rules are at odds where the final rules might end up that blunts the concern about kind of having a disturbed, an interim period that might catch people in a catch 22 which is exactly what we are trying to ovoid.

Thank you.

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>> DAVID McAULEY: Thanks Greg, nice suggestion.

Liz your hand is up.

>> LIZ LE: So I appreciate what Greg just said. And I mean I think one of the concerns, and -- that I have, if we don't put anything in it, in interim rules about time for filing, it might become an issue and we might harm the IRP process if we don't. It seems to me that as a group, we have agreed that the at minimum we have agreed to the 120 days. So, for iterum rules, what we have not agreed upon is whether or not there's an outer limit or should be an outer limit. So for I think that the intent here is in writing what we put in the interim rule is the part that we have agreed upon which is the 120 days.

Thank you Liz. Before I go the Kavouss, let me thank Greg, it's a good suggestion that has some promise and thank you Liz, you're right we have agreed on 120 days.

>> GREG SHATAN: It's going to say, Liz didn't respond to my actual suggestion which was to have the final rules apply back to the interim rules. I had not suggested that no rule 4 should be there. My suggestion a should be that rule 4 should be there as Sam put it out. But that it will be -- that interim rules will, when they are replaced, be replaced back to the time the interim rules were adopted. So that's the -- she seemed to think that I said there should be no rule in there at all, that's not the case. Thank you.

>> DAVID McAULEY: Thanks Greg. Thanks Greg. I didn't hear it from Liz that way. Let's ask Liz, did you mean that Liz? Sorry, go ahead and comment if you would to what Greg just said.

>> LIZ LE: Right, so Greg I wasn't implying that you said that. I was simply answering the question of what do we do about rule 4.

And so I was not intending to say that you were implying there should be no rule 4 at all whatsoever, I was expressing what ICANN's concern is, if we opportunity have rule 4 we would have agreement about certain parts of the rule 4.

>> DAVID McAULEY: Thanks Liz. Kavouss your hand up go ahead.

Kavouss, if you're speaking we are is not hearing.

>> KAVOUSS ARASTEH: I'm not convinced why rule 4, the way it is known agreed by us could be sent for public. Why should not be included in the interim rules. But -- elements. Important element. It should be included in [indiscernible]

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>> DAVID McAULEY: Fair comment Kavouss. I think you're seconding what Greg and Liz were just saying.

>> KAVOUSS ARASTEH: Yes, seconding. Yes.

>> DAVID McAULEY: Thank you, anyone else on this?

And it sounds like a way forward.

Let's hope anyway.

So, then, I need to come to the list on joinder and types of hearing if. Liz and Sam need to come to the list of translation and I will also try to wrap up what we just discussed about Greg's idea which I think is a promising way to go. So one way or the other, we are moving towards getting a document out that would be limit rules. Which is a good thing. So we are moving forward on two front. Getting public comments on the rule 4 and getting interim rules out, which if we follow the Greg proposal would be replaced by final rules that would be retroactive when we finally reach final rules. So any other comments? I see Kavouss is your hand back up or is that acknowledge old hand?

>> KAVOUSS ARASTEH: Yeah, just my country your hand the hand already.

>> DAVID McAULEY: Well maybe the screens are different. It shows on my screen. But thank you very much.

So without further comment then we can move on and see if we can make any progress on elements.

You will see on agenda item number 4 I have elements and types of hearings I was not able to get something out for this meeting on types of hearings. We just discussed what I will do on that respect.

With respect to elements, a while back I said we ought to consider putting out a rule on elements. This is frankly a rule that is completely administrative. And I don't know that it needs the go out for public comment to be honest with you.

But what I did was suggest a rule on elements that would be sort of in conjunction with what the ICDR requests and I put it out then Kavouss on the e-mail list suggested adding something with respect to claims already submitted on IRP. I added that. But I added it to the expect that the claimant is aware of it.

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Excuse me.

So, I want to put this out for comment and see if there's -- if we can agree on a rule for refining elements. I see the first hand in the cue is Kavouss.

Go ahead Kavouss.

>> KAVOUSS ARASTEH: I don't have a hand up.

>> DAVID McAULEY: Sorry.

>> KAVOUSS ARASTEH: No hand up yeah thank you.

>> DAVID McAULEY: Okay. I take it that nobody really objects to this. I think it would be good, in fact the bylaws ask us making a statement about elements. It's pretty straight forward and pretty basic. So I'll go the Liz and say we are going to confirm this will be part of it and see if that draws any objections.

So, that's where we are on that. We can actually perhaps end this meeting early.

That brings us to agenda item number 5. Any other business?

So I'll ask if there's any other business? And one, I'll bring up a item of any other business, it seems.

>> KAVOUSS ARASTEH: I have one. Yeah.

>> DAVID McAULEY: Go ahead Kavouss.

>> KAVOUSS ARASTEH: Next meeting when what element we have discussed. You promised something now having all the situation with the way that I proposes at the beginning to produce forward. Then lead by Greg and [indiscernible] then course of action proposed by Greg we all agree with that. So application. So when this will be ready and when we put this for discussion. Thank you.

>> DAVID McAULEY: Good question Bernie can you talk to us about meetings? I don't know that we will be ready next Thursday but maybe if it's possible we utility to set a meeting for next Thursday and the following Thursday both of them to and a slot available if we need it. And to use one we can most quickly use. Might be two weeks from now might be two weeks. Bernie can you talk to us about the next meeting?

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>> BERNARD TURNCOTTE: Bernie as it turns out our dance card is rather free. Thursday, 31st of May 1900 is available. And Thursday 7 June 1900 is available. And Thursday 14th June 1900 UTC is also available.

>> DAVID McAULEY: My suggestion would be to grab all three. And not, I think the group's understand we are not going to have three calls. We probably won't have three calls, I shouldn't say obviously. Kavouss brings up a good point let's have a meeting agenda on three items and close them down.

That means typically that we would we will decide by next Tuesday whether we wanted the call to be next Thursday. We will do that on list. Anybody else want to speak to meetings or have any other business?

Liz can I mention something to you, in light of the next meeting, I would encourage you on ICANN's behalf and me, for what I've said I'll do to try to get those out not later than Monday, if that's possible.

So, if you want to comment Liz you're welcome to. If not we may wrap the call. I'll go through here. I don't see any hands.

So, I think we can end.

I don't hear anyone or see any hands. So I'll say let's end this call early. I would like to thank everyone for being here. I look forward to our next meeting. I think we are making progress to getting things out to where they need to be. One to public comment and two to I went rim rules to be released.

>> KAVOUSS ARASTEH: David before you ending I have a very, very busy week and week after. Is there possible one hour and not one and a half.

>> DAVID McAULEY: I think that's fair. Bernie can you make the three meetings for 60 minutes?

>> BRENDA BREWER: Yes we will David.

>> DAVID McAULEY: Thanks Brenda.

Perfect, any other hands? Greg Monday is a holiday here in the U.S. I agree.

Let's just see what we can do. And if we can't meet next Thursday we won't. So let's do our best. I'll see you all on list. And I thank everybody for your participation and I'll see you next time. You can stop the recording.

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