IOS MEETING
Tuesday, October 9, 2018 – 19:00-20:00

>> BERNARD TURNCOTTE: David, we have 5 formal members. That's enough to go ahead.

You have a are hard stop at the top of the hour. I do as well.

>> DAVID McAULEY: Anyone in the group have changes to the SOIs they want to note? I don't see any hands. I don't hear anything. I think we can proceed on.

If you're not speaking mute the phone as well.

Excuse me.

Welcome to this good group of people many I need a sip of water. I'll be a second.

Thank you, excuse me for that.

But, as you saw from the e-mail I sent yesterday to agenda the hope is to get two thing done interim rules of procedure then turn to repose and get those done in fairly quick order so we can present them to the board.

Then as the group returns to the group look at adding more members to the group. The first part is to try to get to interim rules of procedure. So, you saw the materials that Bernie sent around. And with the exception of rule 4, time for filing, these rules are pretty much where we have arrived after all of our work to date, excuse me. In order to go through the call today, I'd like to mention, and this is going to be an important call of record, as will Thursdays, my plan is to actually read the rules. I'll try to do it reasonably quickly. But also noting that our captioning is really the way that we are going the keep a record here in addition to the audio record.

Is to read the rules but I don't read the definitions. I'll simply list the terms that are defined. And I won't be reading footnotes.

With respect to rule 4, when I read that, I'll read it as it appears now, but I will also state my recollection that we have agreed to a safe harbor of sorts. Which I will describe when we get to rule 4.

And when we get to sending language to the list, I will be happy to take on the role of providing that language.

As I read the rules, if anyone has a request of change to any rule, certainly raise your hand and mention it and once the discussion of that is done, I would like to that person to send to the list a sort of written encapsulation of what was agreed showing changes from where we are now on the list or call from Thursday. In that respect, when we get to rules 7 and 8 to joinder and discovery, I myself will have comments which I will be mentioning in my personal capacity, not as leader of the IOT.

So the goal here for the first part of this is to arrive at interim rules we can send to the board. So I plan, in just a few minutes to start reading. I'm going to ask first if anyone has any comments on this approach or anything they want to say as we dive into this.

Also, I want the remind as Bernie put in the chat, this is a 60 minute call the there's a hard stop at the top of the hour for a number of us.

And I see, I'm going to go take a look, I don't see any hands. Okay, let's begin and go through the rules many by the way, I'm reading from what is known as the clean copy.

And just I'll take one second.

Number 1 is definitions. Within that group we have definitions for the following terms: A claimant is defined. Covered actions, disputes, emergency panelist is a defined term. Iana. The international center for dispute regulation. The ICDR, ICANN of course.

Independent review process is a defined term. IRP panel. IRP panel decision. ICDR rules. Procedures officer is a defined term. Purposes of the IRP is a defined term. And standing panel.

I don't see any hands. That's just a compulation of what is there.

Number -- compilation of what is there. Number 2, IDCR will apply the interim supplementary procedures in addition to IDCR rules. In all cases submitted to the IDCR in connection with article 4 section 4.3 of ICANN by I laws after the date the up rules go into effect. In the event there's any inconsistency between the interim supplemental procedures and the IRDC rules these limit supplemental rules will governor. The interim of the any amendment of them should apply in the independent review is commenced IRPs commenced prior to the adoption of implementary procedures the effect of the time such IRPs were commenced. In the event any of the subsequently amended the

rule surrounding the application of those amendments will be defined there in. So, for rule number 2, it's on the floor and open for any comments or concerns.

I'm going go on mutagen just for a second.

Okay, thanks. I don't see any hands.

So we will proceed on.

To rule number 3, composition of independent review panel. The IRP will comprise three panelist selected from the selecting panel unless a standing panel is not in place when the IRP is initiated. The claimant should select one panelist from the standing panel and the two panelists will select a third from the standing panel. The will not take effect unless and until the standing panel signs a notice of standing panel appointment affirming it's able to serve and independent of IRCD rules. In addition to disposing relationships to the parties to the dispute IRP panel members must dispose of material relationships to ICANN or ICANN supporting organization or advisory committee. In event that the relevant IRP is niche rated or in place but does not have capacity due to other IRP commitments the claimant and ICANN should from outside the standing panel and the two panelist should select the thirst panelist in the event the two parties select the panelist cannot agree on the third panelist the IRCD rules should apply to the panelist. In the event the panelist re-sign are incapable of performing the duties of the panelist and it becomes vacant a substitute should be appointed pursuant to section 3 of the interim supplemental procedures. That's now on the floor and open for comment.

I'm looking at Chad. I see Avri will not be hear for the next meeting. I'm sorry to hear that but Avri please comment on list as you wish. And thank you robin for the information about the SOI. I don't see hands.

Yes go ahead Bernie.

>> BERNARD TURCOTTE: I notice you're having trouble with your voice if you want me to read I can.

>> DAVID McAULEY: Let me do number 5 and you take 5 A, etc.

>> BERNARD TURCOTTE: Just doing this to help out, that's fine.

>> DAVID McAULEY: I'm sorry, Bernie I didn't catch all that what was that?

>> BERNARD TURCOTTE: Yes, perfect.

>> DAVID McAULEY: Okay thanks.

Let me go ahead and read time for filing. Rule number 4 is the next one up. An independent review is commenced with a claimant files a written file of dispute a claimant should file a written statement of dispute no more than 120 days after the claimant becomes materially aware of the effect or in-effect of arise to a dispute. The may not be filed 12 months from the date of such action or inaction in order for an IRP to be deemed to be timely filed all fees should be paid to ICDR within 3 business days as measured by the ICDR in filing with request with ICDR.

I mentioned at the top that I would note that we have discussed and agreed, not the actual words but we agreed to the concept of a safe harbor here and if I'm not mistaken the concept of a safe harbor is while these interim -- while these interim rules are applicable, the second part of this two part timing limitation, that is the 12 month limitation, would note apply so that no ones prejudiced while we are trying to sort out what we call the issue of repose.

And so, that is my understanding of where we are on this rule. And I see Malcolm's hand is up. I'll give the hand to Malcolm and -- so Malcolm please take over.

>> MALCOLM HUTTY: Thank you David. Your handling this meeting in an especially formal manner so I feel it's important I respond accordingly with a formal statement on this point. I'm always on record of having said there's not time for filing is inconsistent with the bylaws we are in dispute about this and decided to adopt the interim procedures in time resolve this dispute without holding what up what ICANN insure us is an urgent need for the bylaws in an interim basis. So I am okay with that. But only on the understanding that I want understood for the record want written into the record that in no way [indiscernible] resolve at all from the disagreement or the dispute as to the compatibility from this clause with the bylaws or it's probe tee. Thank you

>> DAVID McAULEY: Thank you Malcolm. So noted. I'm trying to be formal and I appreciate how you made your statement.

I put my hand up as a participant to note that while I mentioned the one safe harbor we discussed, I would like to ask if we need another safe harbor and I'm particularly interested in the views of other members of this group. And that safe harbor would be that in the public comments. And this would be, I'm speaking now with respect to the 120 day limitation because I believe we will put out an interim rule whether it's a rule that states a 12 month limitation or that would be under a safe harbor. If you go back to 120 day limitation that's not under a safe harbor. I wonder, what do we think in this group about

public comments that say, in measuring that 120 days we should put in some kind of hold while people are pursuing CEP? So, I'm asking that as a question. And hoping that some people resume have views.

And if not, I can -- I would be happy to float language to list that -- that we can look at.

But I'm interested, I see Sam your hand is up. I'll ask you to take the floor.

>> SAM EISNER: Thanks David. That idea of tolling when a CEP is in process, is already part of our current process, so we can try to find the language, I don't know if it's in the CEP documentation. So we already do have language with that. And I think that we you know from the ICANN side, we support that as well.

That that time period, if 120 days, so long as your CET is commenced in the 120 days that the time period to file the IRP is extended we wouldn't have any issues with that from the ICANN side. And we can try to color out the language that we already have on that.

>> DAVID McAULEY: Thank you Sam, I need the lower my hand. Thank you Sam, I appreciate that. I don't recall that language and I do recall that we have on our plate, after we get through the rules and repose, we do have a month o amongst other things to come up with CEP rules. So if you can look up the language or put something on list that may mention that I think it would be good the mentions that in the rule.

So, I -- Sam I'm taking that's an old hand or new hand?

>> SAM EISNER: Old hand.

>> DAVID McAULEY: Thank you. Let's move on, Bernie can you go ahead with rule 5? D.

>> BERNARD TURCOTTE: Sure. Rule 5 conduct of in the independent review.

It is in the best interest of ICANN and of the ICANN community for IRP matters to be resolved expeditiously and that reasonably low cost while ensuring fundamental fairness and due process consistent with the purposes of the IRP. The IRP panel should consider accessibility and fairness and efficiency. Both as to time and cost in its conduct of the IRP.

In the event that an emergency panelist has been designated to add adjudicate a request for interim relief pursuant to the bylaws article 4 section 4.3 [p], the emergency panelist shall comply with the rules applicable to IRP panel. With such modifications as appropriate.

And I guess I'm going right -- or not?

>> DAVID McAULEY: Before -- are you going do 5? Before you do that, let's see if there's any comments or concerns with what you read in 5. I don't see hands or hear anyone. So Bernie if you are going to take all of 5, you're welcome to continue. Or if you want to bounce 5 A and B between us let me know. I think I'm okay lights do 5 A. Nature of IRP proceedings. The IRP panel should conduct its proceedings by electronic means to the extent feasible. The hearings should be permitted as set forth in the these terms supplementary procedures. Where necessary, the IRP panel may conduct hearings via telephone or video conference or similar technologies. The IRP panel should conduct its proceedings where the assumption that in-person hearings shall not be permitted. For the purposes of the interim supplementary procedures an in-person hearing is any IRP proceedings held face-to-face with participants physically present in the same location. The presumption against in-person hearings may only be rebutted in varied circumstances. The IRP determines that an in-person hearing has demonstrated that an in-person hearing is necessary for a fair resolution of the claim, 2 that an in-person hearing is necessary to further the purposes of the IRP and 3, considerations of fairness and furtherance of the IRP out weigh the time and financial expense of an in-person hearing. In no circumstances shall in-person agency be permitted for the purpose of producing new arguments or evidence that were not previously presented to the IRP panel. All hearings should be limited to argument only. Unless the IRP panel determines that the party seeking to present witness testimony has demonstrated that such the is 1, necessary for fair resolution of the claim, 2, necessary to further the purposes of the IRP. And 3, considerations of fairness and furtherance of the purposes of the IRP out weigh the time and financial expense of witness testimony and can cross-examination.

All evidence including witness statements must be submitted in writing, 15 days in advance of any hearing.

With due regard to ICANN bylaw article 4 section 4.3 S the IRP panel retains responsibility for determining the timetable for the IRP proceeding. Any violation of the IRP panels timetable may result in the assessment of cost pursuant to section 10 of those in term supplementary procedures. That concludes 5 A David over to you.

>> DAVID McAULEY: Thanks Bernie I put my hand up as a participant here. I have one minor comment in second paragraph in page 5 third line. That sentence rotes reads hearings should be and, etc. and technologies there's a closed parentheses that we need to eliminate there's no open parentheses. I mention I now but for similar changes, where we are just correcting typos and things like that, I don't

think we need the mentions them to phone unless anyone thinks we should. I wanted to make that point by pointing out that one small typo. That's my only comment as participant, thank you Bernie.

And so I don't see anyone else's hands or voices. So Bernie go ahead and press on.

>> BERNARD TURCOTTE: Thank you. 5 B translation. As required by ICANN bylaws article 4 section 4.31 or L, I'm uncertainly all IRP proceedings should be administered in English as the primary working language with provision of translation when needed it shall include written documents and transcripts and interpretation of oral proceedings. IRP panel should have direct discretion to determine 1, when the claimant has a need for translation services, 2 what documents and or hearings that need relates to and 3, what language the document hearing or other matter or event shoe shall be translated into.

A claimant not determined to have a need for translation services must submit all materials in English with the exception of the request for translation services if the request includes claimants certification to the IRP panel. That's submitting the request in English would be unduly burdensome some in determining whether a claimant needs translation the IRP should the spoken written and English. And to the extent the claimant is represented in proceeds by an attorney other agent that representatives proficiency in spoken and written English the IRP panel should only consider requests from translation from to English and other 5 official languages of the United Nations. IE French, Russian, or Spanish.

In determining when translation of a document hearing or other matter or event shall be ordered, the IRP panel shall consider the claimants proficiency in English as well as the other requested language from among Arabic, Chinese, French, Russian or Spanish. The IRP panel shall confirm all material proportions of the record of the proceeding are available in English.

In considering requests for translation the IRP panel shall consider the materiality of the particular document hearing or other matter or event requested to be translated as well as the cost and delaying occurred by translation pursuant to ICER article 18 on translation. And the need to insure the medical fairness and translation of ICANN bylaws article 4, 4373 and 4. And otherwise ordered by the IRP panel, cost of need based translation as determined by the IRP panel shall be covered by ICANN as administrative cost and shall be coordinated through ICANN serve could provider. Even with a determination of need based translation if ICANN or the claimant coordinates the translation of any documents to its legal, such legislation of the legal cost and not an administrative cost born by ICANN. And in the event that either the claimant or retains a translator for the hearing or other matter, as such retention is not pursuant to determination need based translation by the IRP panel, the cost of such translation should not be charged as administrative cost to be covered by ICANN. David, over to you.

>> DAVID McAULEY: Thank you Bernie that was quite a lot.

That one is now open and on the floor. So comments? Questions about it are certainly welcome. I see Malcolm hand up please, go ahead.

>> MALCOLM HUTTY: Thank you I had two things. Firstly the authoritative language for the decision. I don't see, this is already new language that the currently not considered I don't see it stated where that the authoritative decisions shall be in English for the purposes of future reference. It says that the English will be the primary working language. But that's not the same as the authoritative text of the decision.

So I think that should be added.

My second is, the final sentence, if ICANN retains translator, even if it hasn't been by the claimant that will be a cost that is not in the administered cost and can be assigned to the claimant, that doesn't seem right.

For example, if ICANN picks a panelist that requires translation, claimants could end up picking up the crux of that. This would be a significant hurdle in the way of per say claimants.

So I would say claimants should only be exposed to the cost of translation if they request it.

>> DAVID McAULEY: Thank you Malcolm. And the third point.

>> MALCOLM HUTTY: Those were my only points.

>> DAVID McAULEY: So with respect to the authoritative decision point, I see -- before I start commenting I see Sam's hand is up. Go ahead Sam.

>> SAM EISNER: This is Sam Eisner for the record. Malcolm if there was a need for translation at the panel level, that would, I think that would be covered by the administrative cost of the hearing. So the cost that we would envision the claimant to be responsible for would be for example, you could say that someone would -- if they wish to control the translation of their briefing document or something because of the way it's translated might be important for the statement of their legal argument. That would be something that the claimant would be responsible for. But other translation for moving the process along would be considered administrative. That's where the administrative cost comes in. Because ICANN there's already a requirement for ICANN to be responsible for administrative costs. So

my sense is we don't need to add anything to cover that. So you can, if you want the read the rules again with that in mind, let me know. And see if you want the add anything else.

>> MALCOLM HUTTY: Can we just have clarification of what you were thinking of a circumstances in which ICANN would retain a translator at its own request, not at the claimants request, at which that would not be considered an administrative cost?

>> SAMANTHA EISNER: So, there could be a possibility that ICANN, separate from the administrative cost in the proceeding, if ICANN needed to provide a translated version of its briefing papers, that because that is a -- because the statement of it, and the way that claims are presented, might be really essential to how ICANN is stating it's case. That would be something that wouldn't be an administrative cost, that would be a legal cost.

>> MALCOLM HUTTY: I don't understand this point. Could you please give me some examples to why this -- give some example that would give some reason as to why a claimants, the circumstances in which a claimant would be properly exposed to a translation that ICANN is doing for its purpose bus not because the claimant asked for it.

>> SAM EISNER: The claimant is responsible for cost if ICANN made the translation?

>> MALCOLM HUTTY: If these are legal costs rather than administrative costs, then the claimants particularly exposed to having the cost shifted on to them vendor.

>> SAM EISNER: , I imagine if they are choosing -- if the claimant for example chose to control the translation of it, as opposed to using the translation service that would be made universally available, then that would be something that the claimant would then assume as a legal cost.

It doesn't mean they have to use their own translation service to do that. But if they wanted to control how the translation was prepared and presented, within the IRP, then that would be their own legal cost. They don't have to do it that way.

>> DAVID McAULEY: Can I interrupt for a second? Malcolm can I make a at the same time? It's David speaking for the record. Malcolm when you stated your concern about this part of the translation you mentioned it stemed from the last sentence.

And the last sentence owns with the words the cost of such translation shall not be charged as administrative costs to be covered by ICANN. Is it possible if that language was simply to expand it and

say the cost of such translation would not be charged as administrative costs to be covered by ICANN if the translation was requested by the claimant and if the translation was requested by ICANN it wouldn't apply under here any way. Something like that. Is that what you're getting at.

>> MALCOLM HUTTY: It's broadly what I'm getting at but it's much simpler and more restrained edit that would achieve it. The sentence begins additionally in the event that either the claimant or ICANN retains a translator. If we delete ICANN, yeah.

Okay.

>> DAVID McAULEY: Uh-huh.

>> MALCOLM HUTTY: Then wouldn't that cover it?

>> DAVID McAULEY: Sam what do you think?

>> SAM EISNER: So there is the ability and the reason it makes sense to remove it now, although I think this is something that we should talk about, do we remove part of this if we are having issues moving it forward? So we can get interim set done. Or do we do more revision of it as we are working on the final set. There's the provision for ICANN to gain cost shifting in the event of, I forget the language in the bylaws in the event of some bad faith from the claimant.

So there's benefit in both ICANN and the claimant understanding which parts of the add man strive costs and which parts are the legal costs that are aligned to the proceeding.

And so, just as a claimant would have a legal cost, if it were to choose to move forward, I think we are understanding each other on that part, there's also the possibility that ICANN would absorb cost that are not truly administrative costs in there. You know if ICANN wanted specific control over how a translation was done, it would be the same as a claimant. So I don't think that we should remove ICANN from that, either.

>> MALCOLM HUTTY: Sam I have no problem with what you just said there.

Yeah.

My only concern is that limited to ICANN incurring translation costs other than, for the benefit of the claimants. If ICANN has other purpose why it needs translation done, that should not form part of the legal costs that is essentially exposed to whether the claimants exposed to ICANN's operating costs.

Only things done for the translation done for the to meet the needs of the claimant should be potentially chargeable to the claimants and should be only chargeable with the claimants consent.

If the claimant requests translation, absolutely for that to be something they are potentially exposed to cost of that, that's perfectly reasonable. I have no objection there.

>> SAM EISNER: I think the legal cost shifting itself is kind of a broader conversation because into bylaws it can go either way. So I think that if there's that need, it's not actually ICANN's operating cost, it's the cost of defense just as there's a cost of the claimant bringing that. So I think you know if there's consent, the consent kind of goes all the way around, I would think. I'm not sure we want go to consent place on that.

>> DAVID McAULEY: Well it's David speaking again, what I'd like to -- what I'm hoping to achieve is to get a rule done. So I think from what I hear but I don't know this I think it's possible you Malcolm and you Sam might actually be largely in agreement.

But, that it would take some work to find the expression of that agreement. So I'm wondering if I can ask you two to work on this offline and come back on list? Is that -- and Malcolm's offered, Malcolm mentioned one possible edit is to simply remove the words "or ICANN" maybe the way that could work Sam is you say that wouldn't work for this reason or that reason. Would you two be willing to work on this offline and present it on Thursday?

>> MALCOLM HUTTY: Absolutely David very happy to.

>> SAM EISNER: Me too.

>> DAVID McAULEY: That's an action item for you guys. I think it sounds to me you might be very closely in agreement, but the expression of it is hard.

With that done, let me ask Malcolm the authoritative decision, the language of that should be specified. If I'm not mistaken that was your other comment. If that is the case my suggestion would be that would be in English.

>> MALCOLM HUTTY: Yes.

>> DAVID McAULEY: So that's an action item for Bernie could you make a note of that? That I'll take -- that's something I'll take on. But I'm not able to make notes right now. If you would mention that to me.

So if there's no other hands, I see Malcolm and Sam you still have hands up. Unless those are new, I'll move on.

Excuse me.

And so it's my turn to read, we will move on to written statements, number 6 we have 23 more minutes remaining. A claimant's, this is written statement section 6, the dispute claims that give rise to a particular dispute but such claims are independent or alternative claims. The initial written submissions of the parliamentary shall not exceed 25 pages double spaced in 12 font in available evidence of the claimants claims or claims should be part of the initial written submission. The evidence is not included when calculating the page limit. The parties may submit expert evidence in writing and that's one right to reply the IRP panel may request additional from the review, the board the supporting or other parties.

In addition, the IRP partner panel may grant a request for additional who is intervening as a claimant or who is participating as an amicus on the compelling bases for a request. In the event the IRP panel such additional written submissions shall not exceed 15 pages, double spaced in 12 point font any dispute from process decision expert panel that is claimed to be articles of incorporation or bylaws as specified bylaw section 4.3 BIIIB 3 any person or group entity previously identified in contingent set regarding the issue under consideration within such party panel shall receive notice from ICANN the independent review process has commenced. ICANN shall provide notice by electronic notice within two business days calculated at ICANN's personal place of business in receiving notice from IDCR that commenced that's rule 6.

Comments or questions welcome?

And I see Kate Wallace has her hand up.

>> KATE WALLACE: Thanks David this is Kate Wallace from Jones Day for the record. This is thoughts from an observer from the last sentence of the provision about the notice that ICANN shall provide notice by electronic offer for consideration that we reflect on the fact this is mandatory language and in some instances it might be difficult to comply with. Instead perhaps we can consider I suppose it would be more of a reasonableness standard. Something like did he ever to provide notice or under take reasonable efforts to provide notice. By electronic message. Which would allow for circumstances when perhaps notice couldn't be effect waited for reasons of contact information not being perfect or otherwise.

>> DAVID McAULEY: Thank you Kate. Let me react to that as a participant and not as the lead. And that is, two things, one is I would carbon you to send language, suggested language to the list on or before the Thursday call to address that. And I take it that the point that you're making is to address instances where the notice cannot be effect waited. And I think that's fair. But when you use a word liken did he ever and again I'm speaking as a participant, I think it should be noted that but for inability to get done, maybe it's a technical glitch, I don't know. That would be my suggestion. That it be to are given where it's simply impossible to achieve. But if you kindly come up with the language and submit it, would you be willing to do that.

>> KATE WALLACE: Sure I'd be happy to do that.

>> DAVID McAULEY: Okay thank you. Any further comments or questions on rule 7?

Seeing none, and hearing none, let's move on Bernie you're back up with rule 7.

>> BERNARD TURCOTTE: All right, rule 7 consolidation intervention and participation as an amicus.

The procedures officer shall be appointed from the standing panel to consider any requests for a consolidation, intervention and or participation as an amicus. Requests for consolidation and intervention and or participation as an amicus are committed to the reasonable discretion of the properties officer. In the event that no standing panel is in place when the procedure officer must be selected, a panelist maybe appointed by the ICDR pursuant to the national arbitration rules related to the appointment of panels for consolidation.

In the event that requests for consolidation or intervention the restrictions on written states set forth in section 6 shall apply to all claimants collectively for 25 pages exclusive of evidence and not individually unless otherwise modified by the IRB panel and it's discretion consistent with the purposes of the IRP.

Consolidation. Consolidation of disputes may be appropriate when the procedures officer concludes that there's a sufficient common nucleus of operative fact among multiple IRPs such that joint resolution of the disputes would foster a more just and efficient resolution of the disputes than addressing each dispute individually. If disputes are consolidated each existing dispute shall no longer be subject to further subject consideration. The procedures officer may in its discretion order briefing to consider the probe tee of the consolidation of the disputes.

Intervention, any person or entity qualified to be a claimant pursuant to standing requirements set forth in bylaws may in IRP with admissions to the policy after p officer as provided below. The person, group

or entity participated in an you understand lying proceeding an ICANN bylaws section 43 B 3 AI 3 intervention is appropriate to be so the when the perspective participant does not already have pending related dispute and the potential claims of the prospective participants from the common combing louse of operative facts based on such briefing has the procedures officer made order at its discretion. In addition, the supporting organization which developed a consensus policy involved when a dispute challenges a material provision or provisions of an existing consensus policy in hole or in part shall have a right to intervene as a claimant to such challenge. Supporting organizations rights in this respect shall be exercisable through the chair of the supporting objection.

Any person group or entity who intervenes as a claimant pursuant to this sections will become a claimant in the existing process and have all of the rights and responsibilities of the other claimants in that matter and be bound to the outcome to the same extent as any other claimant.

All motions to intervene or for consolidation shall be directed to the IRP panel within 15 days of the initiation of the independent review process. All requests to intervene or for consolidation must contain the same information as the written statement of the dispute and must be companied by the appropriate filing fee.

The IRP panel may accept for review by the procedures officer any motion to intervene or for consolidation after 15 days in cases where it deems that the purposes of the IRP are furthered by accepting such a motion. The IRP panel shall direct that all materials relayed to the dispute be made available to entities that have intervened or had their claims consolidated unless the claimant or ICANN objects that such disclosure will harm such confidentiality, personal data or trade secrets in which case the IRP panel shall rule on objection and provide such information as is consistent with purposes of the IRP and the appropriate preservation of confidentiality as recognized in article 4 of the bylaws.

Participation as an amicus any person or group or entity that has a material interest to the relevant to the dispute but does not satisfy the standing requirements for the claimants set forth in the bylaws may participate as a amicus before the IRP panel. Subject to the limitations set forth below. A person, group or tenant tee that participate paid in an underlying proceeding and process for ICANN bylaws we no that one, shall be deemed to have material interest relevant to the dispute and may participate as an amicus before the IRP panel.

All requests to participate as an amicus must contain the same information as the written statement that out in section 6 specified the interest of the amicus and must be companied by the appropriate filing fee. If the procedures officer determines in his or her discretion that the proposed amicus has a

material interest relevant to dispute, he or she shall allow participation by the amicus curia. Any person participating as a amicus curia may submit to the IRP panel written briefing on the dispute or on such discrete panel questions as the IRP panel may request briefing in the discretion of the IRP panel and subject to such deadlines and page limits and other procedural rules as the IRP panel may specify in its discretion. The IRP panel shall determine in its discretion what materials related to the dispute to make available to a person participating as an amicus curia.

Over to you David.

>> DAVID McAULEY: Bernie you got the short extra when it came to sections to read. So thank you very much for that.

I had my hand up because I want to speak as a participant here.

And I do have concern about this and what I believe is that on joinder intervention, whatever we are going the call it it's essential that a person or entity have a right to join an IRP if they feel that a significant -- if they claim that a significant interest they have relates to the subject of the IRP.

And that adjudicating the IRP in their absence would impair or impede their ability to protect that.

And in addition when there's a question of law or fact that the IRP is going the decide that is common to all that is are similarly situated.

And especially given the finality of these kinds of proceedings it's my view that intervention, whatever term we are using needs to capture that.

So I'm putting that on, I would be happy to provide specific language with respect to this concept tomorrow on list. And we talk about it on Thursday. But that's what I wanted to mention as a participant with respect to this particular rule.

So I'm note you.

>> NIELS TEN OEVER: Go to put my hand down and ask others if they want to comment on what I said or anything else that Bernie read in this rule 7.

>> I just went on mute for a second.

I wanted to ask you to elaborate, as to what about the text, I mean understood the point you were making and I feel I agree with it.

But I wasn't clear what about the text gave rise to a concern that that wasn't be satisfied in the text.

Is it that the role of the procedures officer that you're concerned about? Or what is it?

>> DAVID McAULEY: If you for the question. I didn't think it was clear that that would be a matter of right for someone that makes that claim.

You know the IRP panel can adjudicate it and say okay thank you for your claim but no.

But I think that we have to be clear what we are stating. I didn't think it was clear. And when I thought about this, I mentioned this a couple of months ago I didn't put it in the terms I just did, I just put it much more generally. But when I thought about it I looked at U.S. federal rules of procedure in this respect and those rules are not atypical from rules you will find in a fair number of countries around the world.

So I relied in part on that. So it's just a matter of clarity. So what I would do in language that I would put on the list is I would hope I would be would offer to make it more clear.

So, Malcolm you're welcome to reply or anyone else to the comment on this. If not, Malcolm is your hand still -- do you still want to comment?

>> Sorry, no. I look forward to hearing from you.

>> DAVID McAULEY: So it's my turn to read I go exchange of information rule number 8. I don't see any hands. By the way, it's now 8 minutes before the hour. Let's get through this. And then may be summary dismissal then we will call it quits. But there's by in large we are through the meat of it and there's only several pages left. So on Thursday we may not have a full call but we will discuss some administrative stuff I'll put in email. Reading number 8, exchange of information. IRP panel should be guided by considerations of accessibility and fairness and efficiency a as to both time and cost in its consideration of request for exchange of information on the motion of either party and upon finding of the IRP panel that such exchange of information is necessary to further the purposes of the IRP, the IRP panel may order a party to produce to the other party and to the IRP panel if the moving party requests documents or electronically stored information in the party custody and control that the panels are likely to be relevant to the material to the resolution of claims and or defenses in the dispute and are

not subject to attorney privilege and work product doctrine and otherwise protected from applicable law.

Where such methods or exchange of information are allowed all parties granted the equivalent rights or exchange of information.

Motion or exchange of documents should contain specific document and classes of documents or other information taught to subject of dispute along with a explanation of why documents are likely to be relevant and material to the resolution of dispute. Depositions and interrogatories to dispute will not be permitted. In the party expert opinion such opinion must be provided in writing to the other party must have the right of apply to such opinion with a expert opinion of its own.

So, I will say that concludes the reading of that. I'm going to put my hand up as a participant not as lead and ask if anyone else has comments. I don't see any other. And so I will comment as participant. This is in part related to the joinder I just mentioned. And what I suggest and what I think we need is to tighten the rule to ensure that an IRP panel cannot disclose materials or information amongst joined parties that will compromise competitive confidentiality. I think it's possible to gain the system through intervention. But I think we should tighten up the rule.

Make sure that can't happen.

And again, I'll provide language probably by tomorrow that would clarify this and we can discuss it on Thursday.

Or on list.

Does anyone have any comment to that? Or anything else about rule number 8? Gnat seeing or hearing any, I'll ask you Bernie to go through rule number 9, then we will call it quits.

>> BERNARD TURCOTTE: Yes sir, rule 9, summary dismissal IRP panel may summary dismiss any request for independent review where the claimant has not demonstrated it's been materially effected by a dispute. To be materially effected by a dispute the claimant must suffer injury or harm that is causally connected to the violation an IRP panel may also sum rarely dismiss a request for independent review that lacks substance or is frivolous or review.

>> DAVID McAULEY: So rule number 9 is now open for comments or questions? I don't see any hands or hear anything. Before we finish the call, let me just harken back to one thing that Bernie read under

rule number 7. And it was paragraph, the second paragraph, he read it directly but that paragraph currently reads in the event that requests for consolidation or intervention comma the restrictions on written statements set forth in 6 shall apply. I believe it's missing two words, are granted. I think that the request for consolidation or intervention are granted the unwritten statements shall apply if nobody objectives that we will make a note to that as well. We are getting to wind up the call fairly early. By it's a fair break point after number 9 and before we get into interim measures of protection. Anyone have any comment or question or concern they would like the express at the point?

If not I'd like to say two things, one, thank you all for attending. And please I encourage you all to be on the call on Thursday. I recognize Avri may not be able to be. But I encourage us all to be on the call and, also, on list. And to those going to ICANN 63, I look forward to seeing you all there. Thank you for your participation. I believe we are done. Thank you Bernie. I think we can call it off.