

IRP-IOT MEETING

Thursday, October 11, 2018 – 19:00-20:00

>> DAVID MCAULEY: Thank you for that. And welcome to Kavouss who just joined us. We are a light group again but I believe we have enough the more forward. This is two calls in quick succession. I'm grateful to the folks that have been able to make it. And let me restate, in just a second, what I hope to -- that we can pursue in the call. First, even though the time is short between calls, let me ask if anybody has any statement of interest change that they want to note.

Not hearing anything or seeing any hands we can press on.

A brief agenda to -- for this call, I think would go the lines of that Bernie and I would continue reading the interim rules just as we were doing the other day. So that we have within the two calls a complete reading on if what the interim rules state. And then after that, to address suggested tweaks that we mentioned in the call on Tuesday. And addressing any that might come up today.

3, to then talk about how to start approaching the issue of repose. It's my assumption that what we will do with the interim rules is we won't be able to finish them on this call because of tweaks and allowing several days or such for people that are not on the call to way in.

But, taking into account that they already have some time. And so to finish those on list and perhaps to given the issue of repose, at least in respect of how to address it. How we plan to address going forward and finally any administrative matters.

So unless anyone wants to make a comment or have a question in the interim, we are going to get started with the reading of the rules.

And I will take advantage of Bernie's kind offer from the other day, which is continuing and mention that we are up to rule 10. And ask Bernie to go ahead and take rule 10 then I'll read and he and I will alternate.

>> BERNARD TURCOTTE: Glad to help out David.

All right.

>> DAVID MCAULEY: Thank you.

>> BERNARD TURCOTTE: All right let's fines ourselves where we are.

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Interim measures of protection. Rule 10.

A claimant may request interim relief from IRP panel or if an IRP panel is not yet in place from the standing panel. Interim relief may include perspective relief interlocutrice relief of declaratory and injunctive relief and may include a stay of the challenged ICANN action or decision in order to maintain the status quo until such time as the opinion of the IRP panel is considered by ICANN as it's described in ICANN bylaws article 4 section 4.3 oiv.

And emergency panelist shall be selected from the standing panel to adjunct requests for interim relief. ICDR rules relating to appointment of panelists for emergency relief. Interim relief may only be provided if the emergency MANAL panelist determines that the claimant has established all of the following factors 1, harm from which there will be no adequate remedy in the absence of such relief.

2, either A, likelihood of success on the merits or B, systole serious questions related on the merits and B, a balance of hard ships tipping to relief.

Interim relief maybe granted on Ex Parte basis in circumstances that the emergency panelist deems exigent. And any party whose arguments were not considered prior to the granting on of such interim relief may submit any opposition to such interim relief, and the emergency panelist must consider I such agents as soon as reasonably possible David over to you.

>> DAVID McAULEY: Thank you Bernie, so that rule 10 is the floor if anyone has a comment, question, concern, please go ahead and speak up now.

And not seeing any hands or hearing any, let's press on to rule 11 standard of review. Which I will read through. I'm taking one quick look again.

Each -- 11 standard of review. Each IRP panel should conduct an objective de novo examination of dispute. With respect to covered actions the IRP panel shall make finding of fact to determine when covered action constituted an action or I believe action B all business puts shall be divided decided in compliance with ICANN's articles and bylaws.

>> C, for claims arising out of the boards exercise of fiduciary duties the IRP panel shall not replace the board's reasonable judgment with its own.

D, with respect to claims that ICANN has not enforced its contractual rights with the respect to IANA naming function contract, the standard of review shall be naming function contract, where the alleged breach has resulted in material harm to the claimant.

IRPs initiated through mechanism contemplated at article 4, section 4.3 aiv of ICANN's bylaws shall be subject.

End of rule 11.

That is now on the floor. And before I ask for questions or comments, Brenda can I ask if you are having any luck trying to get Kavouss back into the meeting?

Brenda may be off trying to get Kavouss.

>> BERNARD TURCOTTE: I believe if she's not answering, these what she's doing.

>> DAVID McAULEY: Let's hope that works out.

So on rule 11 are there any comments, concerns, questions? And not seeing hands or hearing any, we can go to rule 12 Bernie. Over to you.

>> BERNARD TURCOTTE: All right, rule 12, I were panel decisions. IRP panel decisions should be made by simple majority of IRP panel. If any IRP panel member refuse to sign the panel shall endeavor to provide a written statement for the reason of for absence such signature.

End of rule 12.

>> DAVID McAULEY: Thank you Bernie. Any comments, concerns, questions there? A very short rule.

Brenda are you back? I see you say in chat that Kavouss' line did not pick up. Are you back with us?

>> BRENDA BREWER: Yes I'm here.

>> DAVID McAULEY: Can I ask you to keep trying on a reasonable basis?

>> BRENDA BREWER: Termly.

>> DAVID McAULEY: Thank you for all efforts to get him back to us.

>> BRENDA BREWER: He hasn't joined at all. He had not responded to the invite. But as a courtesy I do try the call out to him, just in case.

>> DAVID MCAULEY: Thank you I saw him in Adobe for a while. That was me dialing out to him. I had to enter his name.

When you see the little green arrow next to someone's telephone, that means they are being dialed out to. But I will try again.

>> DAVID MCAULEY: Thank you very much.

So then we will move on to rule 13.

Form and effect of IRP panel decision. A IRP panel decision shall be made in writing promptly by the IRP panel based on the documentation and supporting materials and arguments submitted by the parties.

C, subject to article 4 section 4.3 of ICANN's bylaws all IRP panel shall remain public and shall reflect the well reasoned application of the how to dispute was resolved in compliance with ICANN's articles and bylaws, as understood by the light and prior to IRP panel and normals of applicable law. Period, end of rule 13.

Comments? Questions? Concerns?

And I see Kavouss is in with a green arrow. So thank you Brenda for continuing to try.

>> BRENDA BREWER: You're welcome.

>> DAVID MCAULEY: Any concerns with that rule? I don't see any hands or hear any comments.

>> BERNARD TURCOTTE: Date Ed David? I have my hand up.

>> DAVID MCAULEY: Sorry, I didn't see it.

>> BERNARD TURCOTTE: No problem. That's because I'm such a small guy in this.

I was thinking when you were reading this, that may be we could address Malcolm's issue from the last meeting about insuring that the decisions are posted in English. Maybe it would be a better place to put that in here?

>> DAVID McAULEY: Thanks Bernie, and yes I forgot to do that tweak. I think I took that on. And I think that's a fair comment unless Malcolm has any concerns. I can add in the here. I'll put it on list. Some language that says, probably under 13 A that it would be in English.

And so, thank you, thank you for that Bernie. By the way, that reminds me that compliments to Bernie for decisions, action items and request from the call. That works very well, that this whole process is working very well. So Bernie if you could mention that whole thing just to remind me.

So we are over to rule 14 then it's up to you Bernie then on rule 14.

>> BERNARD TURCOTTE: Yes sir.

Appeal of IRP panel decisions.

An IRP panel decision maybe appealed to the full standing panel sitting within 60 days of issuance of such a decision. En banc standing panel will be reviewed such appealed IRP panel decision based on a clear error of judgment or application of an incorrect legal standard. And the en banc the procedures officer with the respect of procedures consolidation. End of rule 14.

>> DAVID McAULEY: Thank you Bernie. And same, requests or comments. Please speak up now. I don't see hands and I don't hear anything. So we will read on to rule 15. I'm looking one more time.

Okay, rule 15. Costs.

The IRP panel shall fix costs in its IRP panel decision. Except as otherwise provided in article 4, section 4.3 eii of ICANN's bylaws each party on an IRP proceeding shall bear it's own legal expenses, except with the ICANN shall bear all costs associated with the community IRP and as defined in the article 4 section 4.3 d. The ICANN's bylaws. Including the costs of legal council. And technical experts. And in the event it identifies a losing parties claim or defense as frivolous or abusive. End of rule 15 and that's the end of the reading of the rules right now. Concerns or comments about that particular rule would be entertained now.

And I'm looking for hands and or listening and I don't hear or see anything.

So, Brenda I take it you're not having any luck getting in touch with Kavouss.

>> BRENDA BREWER: Correct David, thank you.

>> DAVID McAULEY: Thank you, and thank you for trying.

So we have gotten through the rules. We have some tweaks, we have not identified any on this call with the exception of the one Bernie mentioned with putting the language of decision that Malcolm mentioned Tuesday into I think it was section 13 that we justified.

So Bernie if you would note that in the DAIR report, I will take a swot at that.

Then we new move on to, as I mentioned in the agenda too, the suggested tweak coming out of Tuesday's call. Malcolm's hand is up, go ahead Malcolm and take the floor.

>> MEGHAN HEALLY: I was going to offer language now, for the record if you would like for English copy thing, but I don't have to if you don't like.

>> DAVID McAULEY: Please go ahead and Bernie if you would take notes.

>> MALCOLM HUTTY: The decision of the IRP panel should be posted in English. If the decision is translated into other languages, the English language version should be the authoritative text.

>> DAVID McAULEY: Thanks Malcolm. Where would that appear?

>> That appears in article 13 under form of the decision, it's form and effect of the decision is the article tags of article 13. And you pointed out, that's the recommend precise place to put it. 13 D. You subparagraph under that.

>> DAVID McAULEY: Thank you.

So does anyone -- Malcolm, did you want the say something else?

>> I said you're welcome.

>> DAVID McAULEY: Okay thank you. Any concerns or comments with the suggested tweak that Malcolm just offered?

And I don't see any hands. Malcolm I take it that's your old hand. And not hearing any, so Bernie you kindly make a note of that, you can offer that tweak as discussed.

And so, on the moving to tweaked language.

In the interim between Tuesday's call and today's call, we very kindly got a comment from Kate, thank you very much Kate. And then also I sent an email to the list several hours ago about provisions that I said I would take.

And so I'd like to start with mine first because I'd like to go in the order of them as they appear in the rules.

And I offered a safe harbor language with respect to the 12 month time limitation in rule 4 time for filing. I'll read it here and then ask if anyone has any comments.

What I wrote and suggested was the following.

During the dependency of the supplementary procedures as interim supplementary procedures no claimant is time barred are few a written statement due solely to passage of the 12 months period of the second part of the immediately preceding sentence being understood that the IRP implementation of this aspect of such sentence for treatment in the supplementary treatment of the procedures to follow in due course.

Anyone have comments or concerns or questions? Sam your hand is up go ahead.

>> SAM EISNER: Thanks David. So I think we have, I know from ICANN side we have some concern, if you go back to some of the principles we put forth in how the IRP, the interim rules would work, it was to not make major changes to what was posted to public comment if they were still under significant deliberation by the IOT. And so the -- with change that you proposed to caveat that has been proposed that actually makes a significant change.

I think that there's some room to tie back dates for period of time to when the new about bylaws went into effect. What away we don't want to do through this is to create the ability for someone who had a claim that was right before the bylaws went into effect but didn't take advantage of an IRP under the old by laws to now still have the opportunity to come forward. So I think we can do something to time back to possibly account 1st, 2016 for a shored period of time. I think maybe October, and then tether it back to 120 day window.

We've through the footnote that we've offered we identified that if the repose period looks different in the final set of rules ICANN would agree to putting in whatever transitional language would need to be put in to not time our people who could have filed under a of repose.

So we agreed that we are not going to prejudice people who have something that came up under the -- who may have been able to file if the period of time was longer, if there was agreement that the period of time should be longer. That was our commitment, we put it in here, we stand by that.

But I think that the language that you've offered is -- it opens up far too much for -- to allow people to go back really far and isn't the fact that it's not even tethered to the current form of the bylaws creates some concern for us.

>> DAVID McAULEY: Thanks Sam, it's David speaking. I put my hand up because I'm going to be speaking at a participant and not as the lead. I was -- I should have mentioned that when I started speaking about this. Because I offer that language as a participant, not as a lead. That's the way I was speaking about it on Tuesday's call. Let me make that part clear.

I guess I have two comments. One is I didn't -- you're right, you picked up on the fact there maybe claims from the old by laws, etc. Didn't actually I didn't even think on if of that. Much to the extent that creates an issue, I would suggest that you come to the list with language -- come to the list with language on that.

But then the second point I would make is what I'm trying to do is simply say that is to create a recognition that the IOT is discussing repose. That we have not decided to repose yet. And I thought that I was being consistent with what you had offered, you know whenever you first offered it, that while we were deciding the issue someone wouldn't be prejudiced on the second aspect of the time bar rule.

It strikes me that we will probably finish in my opinion, my estimation, I think, we will probably firm the repose rule insofar as sending something to the board prior to the end of the year. Prior to getting reconstituted or bulked up IRP. I think that's reasonable. We have spoken about it so much that I sort of harken back to the email Malcolm sent in the middle of August. There's three possible ways we can move forward on this. So this may not have any really any impact at all you understand the new bylaws. Having said all that, I would ask you to come to listed with language that sort of builds on are on just completely does away with what I did and make the statement. Actually put words there that we can parse. So that's my comment. Thank you very much. And I will then back as lead, I'll recognize Malcolm. Your hand is up, go ahead.

>> MALCOLM HUTTY: Thank you. I was going to note that Sam just said that ICANN is committed to make sure that people weren't prejudiced by this rule, if the rule is subsequently changed in the final -- in the final rules.

That's great. So why don't we keep it simple and just say that.

Just say that this -- that whether there should be a concept of repose is still under review. And that in the event that it is changed, we will introduce transitional language to insure that nobody was continued to be prejudiced by the temporary adoption of this rule?

>> DAVID MCAULEY: Sorry I was on mute trying to talk through mute.

Thank you Malcolm your Sam your hand is up. First let me make a comment. I wasn't able to look at chat while I was speaking. I think what you're doing is providing language which is fine. But I'll ask you to after the call whatever that language might be put it on list as well.

So anyway, Sam go ahead, your hand is up.

>> SAM EISNER: Thanks David. So just to -- I wanted to level set a bit. Because in the document that were forwarded I don't believe it came up while in what is projected the screen but in the documents that were forwarded you will note that there are very few footnotes in that document but one of the footnotes that suggest persist in the final version is a footnote that I have put the text into the chat on.

And it -- it states that the repose issue was still in effect. And I reflects ICANN's commitment to create transitional language so other people wouldn't be prejudiced.

So the language is already out on the list is can I put it back into the chat. So if the group would be comfortable with that moving forward, you know let us know. But I think it actually, it -- Malcolm was actually basically outlining what this actually says. So I think he noted in chat that it works for him as well. So that might be a way that we can move forward.

>> DAVID MCAULEY: Thanks Sam --

>> DAVID MCAULEY: Thanks Sam when I created the suggested tweak I didn't bring forward the footnotes. Perhaps I should have but I didn't. So you're right to note that.

Malcolm your hand is up. Is that a new hand?

>> MALCOLM HUTTY: Apologies that was the old hand.

>> DAVID McAULEY: So if it works for Sam and it works formal come I think it's going to work for me and I will guess everyone else on the call, unless I see other hands.

I don't. That sounds like a deal.

So if I could, I think it's a deal. I'll have to look at the record. Bernie I'll look to you to sort of capture what is deal was. I've not been able to follow all of the chat while this was going on. So thank you both.

>> BERNARD TURCOTTE: David.

>> DAVID McAULEY: Yes?

>> BERNARD TURCOTTE: I guess my understanding of what we have just agreed to is basically that the text in the footnote that is currently in the document covers the concerns and therefore we don't have to change anything versus the draft we have been looking at, is that correct Sam?

>> SAM EISNER: That's my understanding.

>> BERNARD TURCOTTE: Thank you.

>> DAVID McAULEY: I make take it that's what the understanding the footnote would be added back, or never went away, I made a mitt ache in putting the footnotes. That's what you're saying is that right?

>> BERNARD TURCOTTE: That's correct.

>> DAVID McAULEY: Before getting to rule 7 I think Kate's suggested tweak is next. It had to do with rule 6.

And Kate you're welcome to read it if you want. Otherwise I will be happy to read it. I will let you decide.

>> KATE WALLACE: Hi David, thanks. This is Kate for the record. I'm trying to find where I have the language. If you have it in front of you that might be the easiest.

>> DAVID McAULEY: Thank you I have a language in front of me.

So, Kate made a suggestion, this is with respect to the last paragraph in rule number 6.

The title of rule number 6 is written statements. So here's -- I will read through it and I will note when I get to language that Kate has suggested that we add.

For any dispute resulting from a decision of process specific expert panel -- sorry, for -- let me start again.

For any dispute resulting from a decision of a project specific panel that is claimed to be inconsistent with ICANN's articles of bylaws with articles 4.3 B triple IA 3 any purpose entity personally identified within a contention set with the claimant regarding the issue within such expert panel proceeding shall -- and Kate suggests adding the word reasonably after shall.

Shall reasonably notice from ICANN that the reprocess has commenced, ICANN shall. And Kate suggests adding the next four records. ICANN shall under take reasonable efforts to provide notice by two business days calculated at ICANN's principle place of business with notice IRP has commenced period, end of tweak. Do I hear any comments or concerns or questions?

I don't see any hands.

Or hear any.

Thank you Kate. And moving forward then let's move to rule 7.

Consolidated intervention, etc.

And I -- consolidation and intervention., etc. I suggested tweak to this yesterday and I put -- I will read this.

I'm starting with the first paragraph of rule 7. I will skip certainly portions if they are not indicated and mention that. Starting at the first paragraph a procedures officer shall be appointed any request of consolidation intervention and participation as an amicus. And this is where I said verbiage except where otherwise stated here in -- that's the end of my addition and intervention and as amicus as reasonable discretion, etc.

I then moved over to add a paragraph in the section dealing with intervention.

And I added after the paragraph that begins in addition the supporting organizations which developed a consensus policy, etc., etc.

And before the paragraph that begins any person or group or entity that intervenes as a claimant pursuant to this section will become a claimant, etc., etc.

What I added is the following in addition any person group entity should be a claimant that person group entity is significant interest to subjects of independent review process and adjudicating the group or entities absence might impair the person's group and ability to protect such interests or two any question of law or fact similar situated as group or entity is likely to arise in the independent review process.

The next change I made was in the very paragraph after the next one that begins any person, group or entity that intervenes with the pursuant will become an claimant. In the next paragraph I at the next. Pursuant to rule 8 exchange of information below the IRP panel should direct et cetera, et cetera.

Then the other change I made is in rule 8, exchange of information, I'll read them together since they seem to be related to me. Then I'll get to the hands.

Well no, before I get to rule 8, let me recognize the hands that are up. I see Bernie, Malcolm and Sam. Bernie I'll ask you to tell us who was first.

>> BERNARD TURCOTTE: The order looks like Malcolm then Sam.

>> DAVID MCAULEY: Malcolm go ahead.

>> MALCOLM HUTTY: Okay I'm speaking really relation to rule 7. Thank you for these suggestions David. I support them. In relation to rule 8 I have a view on that thank you.

>> DAVID MCAULEY: Thank you. Sam?

>> SAM EISNER: Thanks David. This is Sam Eisner for the record. So the places where you interlined small additions we are fine with those.

But we do have -- I have some concerns about the second section that the full paragraph that was added that said in addition any group, person group or entity should have a right as a claimant.

You might want to move to a amicus status.

But one of the things that we had talked about, many times as we were going over this, was the fact that claimant has a very specific definition under the bylaws. And only those people who are not just

impacted by the action but impacted because they allege that ICANN us violated it's article or by bylaws those are the only people that qualify as a claimant. And having just a significant interest related to it, doesn't actually require that someone have an IRP claim against ICANN. It does recognize that they have an interest in what's going on. And I think we don't have any concern with allowing those people to be mart of a proceeding. But giving them claimant status, gives them certain rights under the bylaws that actually opens up the IRP to be used in ways that are not anticipated to if they don't meet the requirement that they are alleging a violation that ICANN violated the bylaws. We could see people that actually support the action that ICANN took. Who would have the interest and would qualify under this paragraph. But they wouldn't meet the status of claimant. So they would be forced to make statements as to what ICANN did in violation of its bylaws but they actually wouldn't believe ICANN violated the bylaws. Let's take the common example right announcement if they were a competing a captain that benefit from ICANN's decision they are actually not going to say ICANN violated the bylaws in taking that decision. Where the claimant is taking that position.

So we are requiring people to take positions that they would not take by this.

So I think we could move that down either to amicus. So I think we put some things into the amicus section that covered this type of interest in a proceeding. And I'd say this is one of the things that we should bookmark and put more attention to before we get to a final set of rules.

If there's a wish to change the scope of who can participate in an IRP.

>> DAVID McAULEY: Thanks -- before I go to you Malcolm Bernie you initially had your hand up, is their something you want to say?

>> BERNARD TURCOTTE: No thank you.

>> DAVID McAULEY: Malcolm you have your hand backup, go ahead.

>> Thank you, Sam makes a fair point. But it's quite limited in its nature. It just points out that some people might not want to be a claimant they might only want to be an am I can cuss that may be a fair point to their claim. This can be easily resolved and better honor your proposal by leaving your proposal intact. But where it says to intervene as a claimant. To say to intervene as an am cuss or claimant in parentheses as appropriate to their position. Close parentheses. And then continue.

That would leave it the options if option to the person to intervene as an amicus and they would also be entitled to intervene as a claimant if they had a claim.

>> DAVID McAULEY: Thanks Malcolm.

So, I didn't put my hand up by I'm speaking now as a participant. As the person that suggested this. I hear you Sam and I would be willing to look at language, it's possible Malcolm just provided it.

But if it was moved to an amicus thing I would like to look at the language you come up with. You can tell between this and rule 8, where I'm coming from is a cot testify situation. Where members of contracted party houses or others who have contracts with ICANN or others that have contracts that effected by ICANN have to be able to prohibit their interest in competitive situations. That use language largely followed U.S. federal rules of board. But those rules are fairly -- I think, at least in common law countries fairly routinely accepted that someone has an interest can defend themselves they can't look pore the defendant to make sure argument for them.

So I think that Malcolm may have just given the language but Sam if you take a swat what you want to do with this, and put it on list, I will certainly take a look at it.

>> SAM EISNER: I have a new hand.

>> DAVID McAULEY: Sorry, go ahead. I didn't see it.

>> SAM EISNER: This is actually an issue that we discussed even as we were developing the bylaws themselves with Sidley. This is where the IP differs from regular litigation because an IRP has a very limited standing rules. The IRP has a very narrow aspect to it.

And so, we can look at the language and we can try to make some recommendations, I understand where Malcolm is coming from with the choice of the amicus versus claimant. I think it's very important that if we have a right for someone to come in as a claimant, language such as significant interest here doesn't align with the standing requirements of the bylaws which require an allegation of material harm.

And so, that's -- that might be where we make some changes to that.

But if we have -- I understand on the whole that this is an issue that we need to make more progress on for -- as the IOT before we have a final set of rules. If we are not able to completely satisfy, because I think there's definitely room to put in some language to account for a bit broader of representation than is currently within these rules. I hear that, I see that, I think we can do something quickly on the I went rules to get there.

But will there be a point that we can agree that we could get a set of interim rules in place so that we have something, because from our standpoint, from the ICANN Org side, we are getting very nervous that we are on the precipice of having IRPs filed for which we don't have an adequate set of procedures to meet the bylaws. So we have that pressure. And so your hearing from me kind of -- the dual pressures. I want to work with IOT, I want to help get this right. I want to help these items be reflected appropriately in the rules. But I also think it's essential forever the protection of the organization and everything that this group has worked so hard to do so far to get a set of rules in place quickly. I'm wondering where that balance is. I will come back on list with some proposals of how to integrate some of these ideas into the set of interim rules. But I also would ask that there be some commitment to getting it even more right in a final set of rules. If we can move to that.

>> DAVID McAULEY: Thanks Sam, Malcolm you have your hand backup, go ahead.

>> MALCOLM HUTTY: Yes I wanted to get a quick clarification to for Sam so she knows we are not as far apart as maybe she might think we are. I'm not suggesting -- mostly for you David, for me I'm not suggesting for a moment that we should allow this language in this paragraph to change who is qualified to be claimant.

All this paragraph is intending to say, is that if you are otherwise qualified to be a claimant. If you additionally satisfy the situation described in this paragraph you should be able to intervene as a claimant as of right. Rather than wait for another case.

Similarly if you -- even if you don't qualify as a claimant, but you satisfy the conditions in this paragraph you should be allowed to intervene as an amicus and it shouldn't be merely discretionary. That's the aim. Not the change the definition of who qualifies as a claimant. That should be untouched by this language.

>> DAVID McAULEY: Thanks Malcolm. And I will also make a comment as a participant, Sam, I think that I can live with what Malcolm has just said. I think he's right in what he's saying and I think it's quite possible that we could crack this nut with amicus status as long as it's not discretionary it is a matter of right and as long as amicus can protect the language in did.

And I notice too Bernie gave us a time check, we are running out of time for this call. That gets to point that I agree with you Sam we have the finish this and get through this.

That's one reason why Bernie and I scheduled two calls for this. Get the interim rules out. We recognize that the time has come the get interim rules out and we have to move to repose, etc. I feel the

pressures myself. So what I'd like to do is discussion on this one and ask you Sam to come back with your amicus language. I would mention to you, that I think I agree with what Malcolm just said I think that would work but I want to look at the language. I would like to move on to rule 8 now unless there's any other comment. Malcolm is that a new hand or old hand?

Must be an old hand.

So if I don't see any other hands, then let's move on to rule 8 I'll mention what I tweak with respect to rule 8 it's in the second paragraph of rule 8 down near the end and this is one sentence incredibly long sentence. I'll read it then I'll mention the parenthetical I suggested added at the end.

On the motion of either party and upon finding by 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 IRP panel that the moving party request documents are electronically stored information in the other parties controlled custody or control that the panel determines a reasonably likely to be relevant to the material of the resolution of the claims or defenses in the dispute and are not subjected to attorney-client privilege, work product doctrine or otherwise protected by disclosure by adequate law this is what I'm suggesting to add including limitation to disclosure of competitors to disclosing group or entity to any competency sensitive information of any kind. Period.

So, the floor is open on that for implants, questions, concerns.

I don't see or hear any.

We are basically coming up to the end of this call. So let me try to wrap things up this way. There's some suggested tweaks identified here that I will ask come to list many but I think by in large we as a group have gone through the rules pretty comprehensively. And we will finish the topic on list I believe. And hopefully we can did that beginning with ICANN 63. I will be back on list early in the week with whatever administrative things I think I need to attend to. And I'll certainly look for your language Sam and take a look at it. I want to thank everybody for being here. Once we get the rules done we will turn to repose and I will encourage everyone to consider the public comments. The only mail I can recall is Malcolm's mail from the middle of August. Three possible ways forward. I suggest reading that again.

And then, I have been requested to give some comments along with others at ICANN 63. I sent those slides around, if you have any concerns let us know. Two hands as we wrap up. Sam why don't you go first.

>> SAM EISNER: So I wanted to raise two items. First, I wanted to give a heads up to the group that in anticipation of the IOT being able to complete the set of interim rules we are putting on to the floor's agenda for their meeting at the end of Barcelona the board's consideration of the interim rules to get the rule because there's a step for board approval.

We will coordinate with appropriate committees. And all given that the rules are not yet finalized but the board is waiting to see that.

And I -- on a personal note I wanted to note by thanks for how we have really worked together as a group to get to the interim set of rules. We are really appreciative from the ICANN side, having a set of rules in place I think will be of benefit to everyone and I know we still have more work to do.

In terms of the rules, there was one other action item that I was aware of which Malcolm and I remember charged with going and looking at language on translation. So Malcolm I don't know if you want to report on what we agreed upon. I think we have one change that we agreed we would take out the and ICANN. Or I forget which one but we have a place we agreed that we would take on out some language but otherwise we wouldn't reflect any additional language in there although Malcolm and I agreed that there's a need to continue looking at we are doing the final set of rules to see if there's any caveats we need to include the appropriately reflect the times when ICANN is choosing to make translation available to the community particularly those that aren't used in the IRP, so that there's better understanding around the community and we agree that those are not things that are appropriately charged to either party as administrative or legal costs and those are things that are really sunk in operational costs with ICANN but we will make sure that concept of a choice to make translations that are really for the benefit of the community and not for essentially for use in the IRP are not things that will be appropriately charged to the parties as IRP related cost.

So Malcolm if you can correct whatever I said that might have been wrong in there, please go ahead.

>> MALCOLM HUTTY: No that was fine other than I thought we agreed to leave the text unchanged with no amendments pending that discussion.

>> SAM EISNER: Better.

>> MALCOLM HUTTY: Essentially David we got to the position where now I think Sam and I are completely on the same pages to what we want this to achieve. And well Sam's view for now is that it may be doesn't need any change at all. And I'm content that we come back to this, to check back and to confirm that when we come to the time rules that need to hold up the emergency rules. Provided we

can come back to that and confirm that. And that the language is actually achieving what I now believe we thought seeking to achieve then I'm happy to defer it now.

>> DAVID McAULEY: Thank you Sam and Malcolm. Is there anything you two think should be written down and put on list so people are aware of it or is it you guys are status quo and we do not need to come to a new -- sorry hold on just a second.

That we may not need to come up with something to put on list.

>> David as a courtesy to those not on the attending the meeting I'd be happy to come out with my own statement and I'm happy to defer this and these are the reasons I'm happy to defer.

>> DAVID McAULEY: You might run it past Sam.

>> Absolutely. It was a point I raised and I'm essentially retracting it for now. So it's probably better, most proper coming from me. But it's that I was concerned to take out my own point.

>> DAVID McAULEY: Thank you both. And it's probably a good idea to let the group know because we are going to if I happen issue this on list. And we will finish it pretty quickly I believe. I think we pretty much gotten through this in pretty good shape. So thanks everyone for your attention on that. I think we can go ahead and wrap up the call. Anyone has any final comments Malcolm you have a hand up, is that old or new.

Old, so if anyone has any comments, please let them make them now. Otherwise what I will say is what I'm going to say in my next email is please pay attention to the list you will see things coming up out, not much but things come out to put it in shape it can be given to board as per what Sam just told us. So my thanks to Bernie for arranging and Brenda for helping us and all attending in the last three days. I'm very appreciative. Having said all that this is the end to the call for those going to Barcelona I'm looking forward to seeing you there. And I'm thankful to all for your contributions. That's all for me. I say goodbye buy.

We can stop the recording.