

Raw Caption Notes – IRP-IOT Meeting #44  
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Okay. Thank you all for joining and I appreciate this opportunity to address what we need to do now especially on two fronts finalizing the rules we have and on perhaps reconstituting the IRP, IOT team. Before we get started let me ask if anyone has a change to their statement of interest that they need to mention and I would -- so let me ask that. If anyone has a statement of interest change please note with your hand up in Adobe before the audio.

I don't hear or see any. So let me then ask. Is there anybody who is listening and participating on audio who's not listed -- or who is not in the Adobe room would they please let themselves known. And again I don't hear any. So I think we can proceed and go into -- go into the agenda.

>> Excuse me David, Greg has his hand raised.

>> Good sorry I missed that. Go ahead Greg.

>> Thank you it's Greg Shatan can you hear me.

>> Yes.

>> Great it's been a while since I've been in one of these calls I'm not sure if my statement of interest update was mentioned on this call so I'll mention it again perhaps. And September I became the president of the New York chapter of the Internet Society. Which is -- at large structure also a member of NCUC, as we have others who participate in NCUC -- I'm not associated with that aspect actively but I do represent the group to at large. Thank you.

>> Thanks Greg. Congratulations on that. Malcolm's hand is up so go ahead.

>> Malcolm if you're speaking we're not hearing you.

>> Sorry I can speak. This is a principle so r update. At the public meeting following the board meeting in Barcelona -- calling the about the state -- in community policy processes said that I can -- participate assuming it's an -- participate in community processes but acting supporting law to provide staff advice. From advice from that advice go on as chief executive I believe we need to revisit the vision to include ICANN legal stuff -- participates in the square. [Indiscernible] reclassify and support

full -- participate -- consensus course.

>> Okay. Thank you Malcolm. Before I comment. I see Sam -- Greg I believe that's an old hand or a new hand. Excuse me. Okay.

Thanks. Malcolm, I understand your point but it's -- I mean I don't know what to say. I don't want to stop the meeting because I like to press on and do the things we have on the agenda. Speaking as a personal participant and not as the lead of I OT right now it would be my view that it's almost inconceivable to have a group talk about IRP rules without an ICANN participant in some substitutive. Because ICANN only on this call that would be in every single participant. It's my personal view it's certainly not a company view. having -- I see your hand I'll come to you. Having said that I understand your point and sort of what ask that maybe you make it in writing on the list but I'd like to proceed with the substance of today's call and then with respect to Joan's day I don't believe they are a full participant. Your hand's back up Malcolm go ahead.

>> Yes I believe it's precisely because ICANN special interest but I should -- participate only in support -- that said I was not -- to be clear I was not -- ICANN legal course. The state is about participation to public speaking. I noted that the transcript didn't caption my words clearly if I may repeat more slowly.

>> Just for a second. I appreciate the fact you want to do that I encourage you to do that because when you made the statement initially at least my end a certain small portion of it was gargle I would suggest you repeat the statement and slowly as you suggest and so therefore that's a good idea. Go ahead.

>> Thank you. My request is that ICANN and Jones day be classified so that that a participate in this group as staff supports not as full participating members for this group and as a consequence of that they would not be considered eligible for inclusion in could you remember counts or consensus Courts.

>> Okay. Thank you. So I think that's clear and I hope that that's been captured Bernie and Brenda on maybe you could you know after the call confirm that's been capped or we can go back and listen to the tape but I suspect that that --

>> David -- yes.

>> Yes go ahead.

>> My hand is up when you have a minute.

>> No go ahead I'm asking if you would talk now.

>> Okay. Thank you. I understand mal controlment's point however if we go back to the creation of the I OT, it was clearly stated and meant that ICANN would participate as a full member but that regardless of the number of people representing ICANN it

would only be as one member. So I'm just putting that on the table from historical and factual perspective. Thank you.

>> Thank you Bernie. Excuse my I'm sorry I seem to have this problem with my voice when I get on these calls. Thank you for that. Malcolm has made a request. Here's what I propose the agenda brought up today we are not heavy -- certainly not going to make decisions. It is -- it has been my intent and I hope I express some what clearly. What I hope as lead -- we can do between now and the end of January is finish work on the rules of procedure. We have interim rule that the board's approve and there was some disagreement at ICANN 6 # about that. I think everyone was expressing themselves in good faith but there was some disagreement. We can sort of take that issue off the table by finalizing the rule and not having Rules any more. My role is this group should get this done by the end of January in the following manner. In this meeting and meeting I hope we can hold on December 13th and on the list first the rest Rule four the time or finding rule. Review the public comment. We're not going to read them as they were written. Bernie and I will read parts of them and put on the table and discuss them both in this call and on the call on the 13th. That will be the rule for the time of filing then move on to the other rules. I think there's one other that might not be fully done and that's on intervention joining. My hope is that will be done by the end of the January. Greg I see your hand up.

This this group some focus finish the rule. I also think as you know that we could go to the SOs and ACs around the time we finish them -- we can go to them now so they can get started to add new members to IRT and envision your work because we have a chain to do. There's no reason to continue with this pace. I think we should have a meeting small discrete one hour meeting reorganize get into substance and move forward wrap them up as efficiently and well as we can. I don't believe we're going to make a decision in this call. Therefore I believe we can proceed malcolm's point is noted. I would ask malco will, m to come and repeat what he said assuming he does make this a formal discussion. I appreciate what you said Bernie. A appreciate your point. It's not fair to garner our arguments right now because it's not something we prepared to do. So any way that would be what I suggest. I'm open to what people think. Greg's hand is up I'm going to call on Greg right now.

>> Greg Shatan for the regular and I don't have malcolm's worlds in front of me I just wanted to point out we're implementation over sight team and not working group and that implementation is hybrid tasks of staff and community so whatever -- speaking to I would be very hesitant on applying it for all seasons in particular in IRT context we need to look at exactly what's going on here. So -- and on related point I think we

should consider you know calling out to members and asking they either step up or replace themselves or ask for new members if we -- if our problems go in qualm in -- and we have to look at that qualm issue. I don't know that we have a qualm issue but the -- add hear we're close to business to any new members is exam baiting that issue. My point as an IRT we are a different bird and whatever discussion there is of roles needs to be taken in that context and not in the working group or kind of generic structure context. Thank.

>> Thank you Greg. Before I go on to malcolm I do believe we have a qualm we've been working under the motors five working member for the equal of qualm I believe we have that even irrespective of ICANN's participation. I do have thoughts by the way on asking to add new members and asking members that are currently members to step up. And I plan to discuss that starting this call and again on December 13th assuming we can meet them on list. I just want to make sure before I ask anybody to be on the list that that's proper. I don't know to do anything that's improper. I think that it would be fair at some point to say to people on the list please step up or get off the list but we have to find out how we can do that and whether we're authorize to do that. Secondly with respect to adding new members I think as I recall this group was formed as a pose group during CCWG but when this team was sort of adopted by the bylaws in October 2016 bylaws 4.3 does say the IOT will be established in consultation with the SOs and A Cs and so I think we now have the opportunity to go to SO and A Cs and and say we're looking for new members. That's something I'm going to put on the table and hope to discuss. I think those are good ideas. Greg you and I are thinking a like. Now I'll turn to Malcolm.

>> I just make one quick -- specific point there. Relating to the fact this is a slightly different group started other kinds of working group within ICANN. I spoke to -- [Indiscernible] said at the public meeting what Greg might not be aware. I'd like to share with him. When -- said that it was a question -- it was specifically in relation to this group. But --

>> M, lcolm can I interrupt for a second.

You have been pretty clear up until about a sentence ago. You seem to be cutting out. I think everything you said is clear but if you could repeat the last sentence and get a little closer to your phone.

>> Yeah I just wanted to make one quick Greg to understand -- speaking specifically in relation to this group not about -- not about ICANN community processes in general. So -- that's information but having said that I think we've done on that subject -- do so David -- however I think now we need to think about what comes next and

your proposal we should complete the work on the draft rules before we go out to expand the group. Now I have consulted with some colleagues since you September your proposal to the mailing and the -- said about that there was an -- to expand the group before we complete the rules so I would like to add on the table and ask first you David to say whether you have considered that as a possibility and if so, what your reasons were for proposing that we attempt to complete it before we enlarge the group and hear the group -- on the matter.

>> Thank you Malcolm. A couple points starting at the back end. With respect to why I said what I said. As I see it the group that currently exist is the group that worked on the rules and probably be most efficient and fair to finish the rules on that basis. I never thought about asking that the rule bees thrown up to expanded group just for efficiency purposes. I'm not -- that's -- I mean it's already catching me cold. I haven't had a chance to think about it. I thought that you a-- almost among others would appreciate that fact to get the rules done. I don't think that we should throw open to whom -- to people that are not yet members of I OT how the I OT should run. Anything that you want to propose I think you should propose. What I don't want to do is stop you from proposing anything. Then with respect to your point in response to Greg, I think as I recall that public meeting I think you're right there was a n response to a question you were raising about this. I think it's fair to say at least that question it took -- right there in the moment. I don't know that he was preparing for that. Be as it may if you I don't want to put on the table as you obviously have, it would be a good catalyst to put it on the list and say what you wish. I don't think we can sub at thatty I will address it now. Any more than we already have. If others have thoughts on that, please certainly weigh in. Malcolm I see your hand is up I take it you would like to respond? No.

>> You're [Indiscernible] I consider that a way forward we the close that or move forward.

>> Okay.

Okay. So that is that. In the meantime I would like for us to visit the discussions surrounding Rule 4. In that respect Bernie and I have spoken about that. We'll read parts of the summary. Not the comments itself but parts of summary to remind what the comments were. However having said that I would invite everyone in the group and I OT and if I get on the list everybody in our group to you know the link is there to go and look at the comments. It's interesting when you look at the comments I think they were universally from groups of groups of people not individuals. So they have some added -- for instance you have comments from registers ISSPCP, PC, NCSG -- I

remember, so those comments have -- have merits another look I'm going to take another look myself it's been some time since I read the full extent of the comments. I have read Bernie's summary. I'll take everyone to take a look at full comment as we get into this process. Again it's my hope we can do this sort of with some -- to get the rules done. In any event. Having said that, Bernie and I talked about this I think the best way to proceed we're going to ignore comments with respect to changing the rule of 45 daytime limits to 120 daytime limits or time within someone can bring a claim. That's no longer an issue as I understand it. I believe ICANN is okay with changing 45 to 120 days. It would be no point in reading those. And so what ad like to do is begin going down Bernie's summary. I'll read parts of the first one on changing the other time period limitation. And the first comment is from the business county went city. The business constituency the BC further recommend calculation of any time period should not include the time within the h the party formally agree ICANN account ability mechanism in connection with -- I doubt that will be very a very con ten courthouse aspect of -- of the rules. And then in removing the one year period the BC said current revision update supplementary rule number four. Address these times limitation concerns by extending the 45 day period by time filing to 120. The 12 month limitation been eliminated in the new amendment. The BC supports and not to revert on the essential changes to IRP procedures. Okay. Bernie if you would like to take on the IPC comment.

>> Bernie if you speaking we can't hear. If you're having difficult --

>> Sorry. I was double muted as Malcolm said. Going to IPC year removing oppose. Can you hear me now.

>> Yes.

>> Okay. Excellent. On the removal of the separate 12 month limitation as IPC commented during the previous public comment on the draft supplementary procedure. The would appear to be inconsistent with the constructive knowledge requirement under the ICANN bylaws as confirms in the advice bioside I will law firm. The IPC therefore supports its removal. In the event that the outcome of the public comment and the further deliberation of the IRPIRT do conclude that some overall limitations period is repos is nevertheless required the IPC as zest that there must be reasonable limitation period from the date of ICANN's action or inaction. We believe the 12 month is inadequately and that 24 months or 24 is far more than n line with the analogous statute of limitation. Again any such 24 or 36 month period should not prevent a party from raising a violation of ICANN's articles of incorporation or bylaws when the harm only results from a later implementation of the ICANN. The

starting point must be unambiguous the time for filing period should not start running before the publication of the adopted minutes setting out the reasoning of action or inaction. Whenever action or inaction immediately affects a party or multiple party that can be identified in the action or inaction. ICANN should immediately communicate to the publication of the minutes to the parties concerned and inform them about the possibilities for redress and the timing and procedure for introducing redress. Finally there's also something on other interplay with other accountability mechanisms. Interplay with other accountability mechanism remaining unclear. We and others have previously expressed our strong belief that this is necessary to amend the time for filing. For instance the deadline for filing IRP be told during the time within which the parties are formally engaged in other accountability mechanisms over the views being referred to IRP. In particular, A the cooperative engage process CEP which is voluntary but strongly encourage step prior to the commencement of IRP bylaw 4.3E and B on going reconsideration -- including only bud review which forms a part of that process pursuant to bylaw section 4.2. C a request under ICANN document disclosure policy and D complaint to the only bud man to bylaws article 5. Since complaints to Ombuds generally not subject set time limit we recognize this might give rise to concerns to undue delay. Nevertheless Ombuds are out of the hand of complainant and they should not be penalized for something something which they cannot control an IRP extremely costly and time consuming. It should not be entered lightly. All members deserve the opportunity to attempt to resolve their dispute using the other accountability mechanism in place without the concern that they have to exhaust the limitation period for bringing an IRP.

That's it. Back to you David.

>> Thank you per Bernie. What we're trying to do is create a record along with the comments so people can look at the phone call come back take a look. Illipe I'm going to go ahead and read a comment from noncommercial take sold. Hence we support the following change. Under prior change claimant would have had to file IRP within one year action inaction that's being challenged. Under new text only time requirement has to meet 120 day requirement above. Whether the challenge action inaction happens three months three years, five years prior or month. The NSG under no circumstances access return to previous text IRP critical tool keep accountable and transparent. However we reiterate while the time limit may be appropriate -- knots for consensus use policy. That's the end of that comment and soberly if you want to go ahead and take a stab at the register stakeholder group.

>> Sure. Register stakeholder group would like to thank the IRPI OT for their work

and propose amendment to original update supplementary procedure number four time for filing register stakeholder group agree extending the time for filing a dispute from when the claimant first becomes aware of the action inaction is necessary.

Likewise, having no limitation instead on being able to file a dispute from the date when said action inaction occurred is a sensible idea. Back to you.

>> Here's comment from register stakeholder. On separate 12 month limitation does not support the new proposal the link. We believe there must be a reasonable -- from the ICANN action or inaction. We believe some -- for allow for predictable for a reliable body precedent. We believe the 12 moss inadequate. Registry group believe the overall limitation group should not include the time in which the IRP is engaged in certain accountability mechanism. We provide alternative either which is acceptable to the registry stakeholder group A a 36 month limitation excluding the time in which the IRP claimant was engaged in CEP or on going reconsideration request process relating to the issue referred to IRP or B, 24 limitation excluding the time in which the IRP claimant was engaged CEP and on going reconsideration request process the first on going only bud man or second on going documentation poll I sire quest relating to the issues being referred to IR P. So that was that -- that's over to you Bernie or ICANN comment.

>> Yes.

>> I will get into that.

You seem to have lost Robin also. Robin if you're around let us know. We can't see you in participant list.

Excuse me.

So the fist -- yes I'm going to go to the full text of the ICANN since we apref crated in the summary ICANN orderty relates to second question T new language posted for comment IRPI OT removes any outer limit for the ICANN action giving rise to IRP to the time of the follow filing of IRP this means IRP could be filed two years five years even ten years after the act being challenge sod long as IRP filed within 120 days when the claimant learn of ICANN act and the alleged harm caused. This removes any finality to ICANN action. Ignore principle support supporting IRP and depletes rather than deploys principle of accountability. Removing outer limit on filing -- changes nature of from holding ICANN accountable to -- for matter that were long thought to be closed. It alts provide ability to raise challenges long past any statues limitation that might be available in court of law. The use of site time limit on potential time limit -- often referred to statute limitation. When the IRP was first introduced in ICANN's bylaws there was no time limit to file. Time limits were



introduced 2012 upon the recommendation of a panel dispute resolution and corporate experts. Bring the IRP more in line -- standards. The time limit then put in place was approximately three months from board ash. Even with a time limit of the t month initially -- IOP the time limit would be approximately 9 months longer than claimants had for the past few years. The IRP is a tool to hold ICANN accountability to the article corporation by laws. The IR approximate. Is a way to identify ICANN violated articles or by laws and hold ICANN accountable for the findings. The IRP cannot result or relief from ICANN. No one in the ICANN community is benefited by long delay lays and identifying ICANNs improper action. Two, facing outer time limit to file upholds purpose of the IR P. Placing outer limit on how long a claimant can challenge and -- under article 4 section 43I7 under the bylaw which is to sewer secure the accessible coherent and just resolution of dispute. Through the enhancing ICANN accountability process the ICANN agree the IRP should be transparent efficient and accessible both financially and from a standing perspective and design to produce consistent coherent result that serve as a guide for future action. One of the purposes the IRP is to reduce this fused going forward by creating precedent to guide and imform ICANN board. Staff supporting organizations SO and advisory ACs and the community in connection with policy development and implementation. Removing any time frame within which one must follow IRP work against these principles the longer takes to challenge ICANN the less consistent coherent review that act will be. Board members organization personal and community members change. Memories fade documentation may no longer be available. Instead of guiding future action the outcome on action faken in m years prior would be back toward looking and raise many questions on how the community move forward. In short a long IRP be brought years after the action in question removes one incentive for the ICANN to be vigilant in raising issues in -- by laws and articles. Two any sense or stability to ICANN's action.

In it's deliberations one of the primary examples that the I OT relied upon to support the remove of the statue pose is the -- addressing content and therefore outside of ICANN mission came out of the GNSO policy development process and approve by the ICANN board. In the example years later a potential registrant impacted by the poly improved by the board and wish to bring IRP this suggestion ICANN should never have finality to decisions is therefore based upon the presumption that all parts of the ICANN community allow out of mission policy to pace through PDP including public comment then the board include out of mission policy further once implement no one came forward to challenge that action format or adheres. The example shoes

eliminating any outside time encould you remembers participants to wait to hold ICANN accountable. This does not serve accountability or the purposes of the IRP and based on complete break down of the multisignal remodel that the IRP is not designed to fix.

Three, removing outer timeline created unprecedance and destabilize ICANN. Removing outer time limit removes any uncertainty for ICANN to enter contracts. It allows people to come forward years later to -- binding agreements. ICANN party already agree to be bound by consensus policy change. And have agree with that level of flexibility in contracting the w ICANN T proposed change would remove any certainty in ICANN's authority to enter each of those agreement and would great I impair ICANN's ability. Each of the 2,500 contract ICANN holds with register industries and register is grounded in the law and -- to you suggest removal of time to file IRP could allow challenge to an ICANN action taken a decade aago on a contract or impair a contract enter into before the IRP procedures went into affect. In either situation even if IRP were filed, to challenge ICANN's action in relation to a contract, ICANN can -- the mere fact the ICANN allow the IRP rules to be modified in a way that would interfere with these contracts could subject to ICANN legal liability under the law. This would create confusion, uncertainty and put ICANN at risk at facing staggering cost. ICANN is not aware of any other organization that allows a challenge to be raised against an action any time. Ment similarly the members I OT pushing for the removal to file IRP not office other examples -- that open their action up to challenge any time. The removal of time limits to -- file an IRP is unprecedented -- that put it is entire ICANN mold at risk.

For time to file an IRP -- possibility someone might declare that act to be outside and by law and allege an act cause material arm. For example if I can board approves policy recommendation and ICANN implements policy that -- the implementation decision say separate act from the policy approval. And has the potential to give rise to new grounds or IR P. Even if that implementation puts years after the approval date. If I can or later takes compliant related to that policy in a way that's alleged outside of the bylaws or the article then m years after the policy approval date that action too is a new act of the organization and that can be challenges through IR P. There is no need to draft a procedural rule that allows challenge on the very first act on an issue no matter when taken or when taken the IRP can be timely used to challenge the specific act alleged to cause the articles or by law's violation. Five outside time time throughout file is consistent with bylaws.

Sub brick comment.

In accordance with obligation of the bylaws. The bylaws supplementary must be filed after claimant must be aware or reasonably aware of the action or inaction given rise to the dispute. The IOT proposal state about the 45 day window from becoming aware or reasonably should have been aware of the harm caused by the action as well as the -- [Indiscernible] accountability deferred the issue of setting the time frame leaving the issue to IOT. It is fully within the IOT's power and in alignment with the bylaws to determine that there is a time period after which it would not be reasonable for claimant to bring an IRP. I will say folks ICANN stands mind and supports accountability measure it is CCWG accountability recommended including the expanded IRP. However each of ICANN's accountability mechanisms need to be viewed in a context to make sure they fit with ICANN's work and support the ICANN community. ICANN's action do not exist in a -- they are actions on community made policy recommend day. Actions that in fact ICANN's contracted parties and business decisions they make and actions that end users registrant and all part of multistake holders realize that. All parts of ICANN rely on ICANN acting upon -- and happen interest in swift action when ICANN is not doing so. IRP does not exist -- rely -- hold ICANN accountability to articles bylaws. It has every need to bring swift challenges when ICANN acted improper.

Removing any outer limit on when that act can be challenged only serves to harm accountability across ICANN.

Over to you David.

>> Thanks Bernie. I'll go ahead and read the comment from the international trademark association.

Which is known IN TA. Commends IRPI OT removal of rule's four ultimate deadline. It's expansion of rule's four files 45 days to 120 days. The next comment is from ISPCP I could have -- read through that Bernie if you're tired of reading.

>> That's fine. They're short now.

>> Removing when you're oppose IPC P. Therefore strongly supports the decision to remove from draft rules the supplementary deadline of one year from the date of I can action or decision T deadline of 120 days that the IOT now proposes is entirely sufficient to insure prompt action and meet the purposes of the IRP set up in bylaws we urge IOT not to revert to this change. Back to you David.

>> Thank you. There's a comment from -- on the one year part. Yes? Did I hear a voice. I'm sorry Malcolm's hand sup.

>> Yeah.

David you just announced Bernie to read ICANN's whole reason input into this even

though it was five pages you now read that really the conclusion from the IRCPC but not it's reasoning. I would ask for one it's rare but once I'm going to asking s formally on behalf of ICPC in the interest of fairness we should similarly reasoning the IRCPC prepared into the record. Unlike the I can or so call input this is actually less than a full page. It won't take very long. May I go ahead.

>> Let me just say yes you can go ahead. The reason for that was a miscommunication between myself and Bernie that was my fault. And so I I didn't -- it caught me a little bit by surprise. Bernie did exactly as we discussed. I just missed the part of the block summary of the ICANN thing that indicated that it would be a full reading. So you raise a fair point you can read the ISPCP now or wait until I finish with fair sin.

>> I'm happy to go now.

>> Go ahead.

>> Okay. I'm happy to admit the page portion on the other issue and read only that portion that relates to propose issue on the discussion. The ISPCP especially criticisms release in previous -- then draft rules could have preinvented certain actions from ever being transferred in IRP in -- consensus. Cut the deadline would have elapse for f full filing a dispute was committed under the rules. The IRCPC would regard that completely unacceptable. As -- bylaws IRP should be available to resolve disputes between material and affective party and ICANN. Claimant should be required to act properly to make -- IRP but the ability to set deadline for filing must not be used to exclude certain claimant for -- dispute entirely.

Under the draft rules, claimant's may only challenge Iman the IRP if they been materially affected ICANN -- this rule must be aligned with the rule deadline for filing. It is therefore entirely correct that the permitted time to file IRP claim must run from the date when the claimant was so effected. The time for tiling cannot be calculated from -- date such as when ICANN took at the -- complaint. May elapse from decision and implementation which could -- considerable period even years. To do so would in some circumstances entirely -- claimant the opportunity to challenge legitimacy of ICANN action regardless -- claimant's act. That cannot be acceptable and entirely outside the proper purpose of the timing rule. We are grateful to those who spotted this in the original proposal in the previous common groupeds and to the I OT to acting to correct it. The IRP strongly supports to remove from the draft rule that quote unquote supplyment deadline of one year from the date of ICANN's action or decision. The deadline is 120 days that the I OT now proposes entirely sufficient to prompt action and meet the purpose IRP set out in the by laws. We urge the I OT not

to revert this change.

That concludes the comment. Thank you.

>> Thank you Malcolm. There's one comment left. It goes as follows. The elimination of a period -- Leon is sounds like a robot. Am I being heard now if I speak slower? Okay. Here's comment the elimination of period of propose require all claims be brought within a period of time from from the date of challenge action or inaction is not consistent with the bylaws. Vera sign propose a proposed period of 24 to 36 month be added back to Rule four. The longer time period would address concerns raise and comments while at the same time fairness and due propose of the Internet community impacted by the challenged action or inaction.

Now let me make a couple comments as the lead chair of the group. We should have a discussion -- we are short of time if you could mute your lines.

But in discussing the comments I would bring to our attention an e-mail Malcolm sent to the list August 14 you can search the archive to see the male. Malcolm in an e-mail that's longer that I'm now going to state basically in his opinion has h three options fist option we had a clear majority express a certain point of view. the secondologist attempts to find a come propose -- reach a come propose and third option report we're unable to reach full consensus instead a faithful representation of the opposing viewpoints and arguments et cetera. Those are three options. If anyone can think of any more I ask you put on the list. We should have this discussion in December 13th. I hope everybody can attend the meeting the 13th setting one later in December is probably not a good idea.

And so that is what I would propose. We can start discussing now in a few minutes but I do want to before we do that at least draw your attention to a couple things that I put in this t agenda. Win we spoke about already that is an attempt to get to finish the rules by the end of January. Malcolm may come to list with other thoughts and will whether that should be impacted by adding new members. We'll wait to see what he suggested and we can discuss that. And secondly I have proposed a letter that would be something that this group would send to the S Os and ACs to start the process for adding members but that's not nothing I can do on my own. It's something I'm looking to I OT to us to discuss and agree. You should see that letter in your e-mail option. We'll put that on the agenda for discussion on the next meeting. Excuse me.

That letter also indicates the remaining work that we have. And so you know you can put your arms around that we can discuss it and also I would be interested in the next meeting what people's thoughts are in having organizational slash sub sta tiff meeting ICANN 64. Having said all that I would open the floor to any discussion of the rules

that Bernie and I -- the comments -- is summary of the comments Bernie and I just read through and see if anybody has comments on that or comments on the three suggestions that Malcolm made or otherwise I don't want to close this discussion today. I want to come back to the list say this is where we are. We should discuss this again on the 13th. We'll see mail from Malcolm on the interim. Would anyone like to venture a comment for time for filing rule. Malcolm your hand is up?

>> Malcolm can I be heard. I'm wondering --

>> We can heard you quite well David.

But I cannot hear Malcolm.

Malcolm -- we can wait a moment or so for him. I would also be interested in anybody's thoughts on the suggested letter to the S Os and ACs I think we should move forward and add members but again something we should discuss and agree. And then secondly I like to say that on list I'll ask folks take comment the purpose of this call to create another record where we indicated what the substance of the comment is so we can get to decision point on this.

Malcolm's hand is down.

In a comment in chat he thinks only his first option is correct. That's his comment. On those options.

I certainly would agree that option number two is not attractive spending more time on attempting to reach a come promise. Option three strikes me as being viable but but to be honest we only have five minutes left. Malcolm is a participant in this discussion his line is dead. I suggest we end call early. I do urge those on this call please try to be available for a follow up call in December.

>> Sorry. That was me reconnecting. My apology for that. I had technical problems.

>> We're just in the process of closing down the call. You're concern I will welcome to make a comment. We're closing down with view of having this snug the next meeting December 13.

>> I just wanted to say in listing those options I would simply be logically complete. I don't consider any way legally valid given the nature of the feedback that's been received. My own view is only the first option is valid and the option of giving up and leaving to the board I consider to be both completely wrong and -- a direction of the charge that this group has been given under the bylaws. So I would rule that out further option completely.

>> Okay. I think we should continue that discussion on the 13th. I thought I saw Avri typing. We're in the process of closing down the call. I appreciate that. Avri if you had a comment. Otherwise I suggest we end the call now and pick it back up on the 13th.

I'll reiterate I hope we can all reassemble on the 13th. We can have other calls in January. We can talk on list. I appreciate the fact we had good discussion discussions recently and look forward to moving forward. Having said that, then I'm going to end the call. Thank you all for being here. I'm very appreciative and --

We can end the recording.

>> Bye everyone.

>> Bye bye. >> Thank you David I'm going to hold up one moment to make sure -- hold on I'm getting a note. We're ready. I'll start the recording. >> Okay. Let me know when it's started thank you. Okay. Thank you all for joining and I appreciate this opportunity to address what we need to do now especially on two fronts finalizing the rules we have and on perhaps reconstituting the IRP, I OT team. Before we get started let me ask if anyone has a change to their statement of interest that they need to mention and I would -- so let me ask that. If anyone has a statement of interest change please note with your hand up in adobe bior the audio. I don't hear or see any. So let me then ask. Is there anybody who is listening and participating on audio who's not listed -- or who is not in the adobe room would they please let themselves known. And again I don't hear any. So I think we can proceed and go into -- go into the agenda. >> Excuse me David, Greg has his hand raised. >> Good sorry I missed that. Go ahead Greg. >> Thank you it's Greg Shatan can you hear me. >> Yes. >> Great it's been a while since I've been in one of these calls I'm not sure if my statement of interest update was mentioned on this call so I'll mention it again perhaps. And September I became the president of the New York chapter of the Internet society. Which is -- at large structure also a member of NCUC, as we have others who participate in NCUC - - I'm not associated with that aspect actively but I do represent the group to at large. Thank you. >> Thanks Greg. Congratulations on that. Malcolm's hand is up so go ahead. >> Malcolm if you're speaking we're not hearing you. >> Sorry I can speak. This is a principle so r update. At the public meeting following the board meeting in Barcelona -- calling the about the state -- in community policy processes said that I can -- participate assuming it's an -- participate in community processes but acting supporting law to provide staff advice. From advice from that advice go on as chief executive I believe we need to revisit the vision to include ICANN legal stuff -- participates in the square. [Indiscernible] reclassify and support full -- participate -- consensus course. >> Okay. Thank you Malcolm. Before I comment. I see Sam -- Greg I believe that's an old hand or a new hand. Excuse me. Okay. Thanks. Malcolm, I understand your point but it's -- I mean I don't know what to say. I don't want to stop the meeting because I like to press on and do the things we have on the agenda.

Speaking as a personal participant and not as the lead of IOT right now it would be my view that it's almost inconceivable to have a group talk about IRP rules without an ICANN participant in some substitutive. Because ICANN only on this call that would be in every single participant. It's my personal view it's certainly not a company view. Having -- I see your hand I'll come to you. Having said that I understand your point and sort of what ask that maybe you make it in writing on the list but I'd like to proceed with the substance of today's call and then with respect to Joan's day I don't believe they are a full participant. Your hand's back up Malcolm go ahead. >> Yes I believe it's precisely because ICANN special interest but I should -- participate only in support -- that said I was not -- to be clear I was not -- ICANN legal course. The state is about participation to public speaking. I noted that the transcript didn't caption my words clearly if I may repeat more slowly. >> Just for a second. I appreciate the fact you want to do that I encourage you to do that because when you made the statement initially at least my end a certain small portion of it was gargle I would suggest you repeat the statement and slowly as you suggest and so therefore that's a good idea. Go ahead. >> Thank you. My request is that ICANN and Jones day be classified so that that a participate in this group as staff supports not as full participating members for this group and as a consequence of that they would not be considered eligible for inclusion in could you remember counts or consensus Courts. >> Okay. Thank you. So I think that's clear and I hope that that's been captured Bernie and Brenda on maybe you could you know after the call confirm that's been capped or we can go back and listen to the tape but I suspect that that -- >> David -- yes. >> Yes go ahead. >> My hand is up when you have a minute. >> No go ahead I'm asking if you would talk now. >> Okay. Thank you. I understand mal controlment's point however if we go back to the creation of the IOT, it was clearly stated and meant that ICANN would participate as a full member but that regardless of the number of people representing ICANN it would only be as one member. So I'm just putting that on the table from historical and factual perspective. Thank you. >> Thank you Bernie. Excuse my I'm sorry I seem to have this problem with my voice when I get on these calls. Thank you for that. Malcolm has made a request. Here's what I propose the agenda brought up today we are not heavy -- certainly not going to make decisions. It is -- it has been my intent and I hope I express some what clearly. What I hope as lead -- we can do between now and the end of January is finish work on the rules of procedure. We have interim rule that the board's approve and there was some disagreement at ICANN 6 # about that. I think everyone was expressing themselves in good faith but there was some disagreement. We can sort of take that issue off the table by finalizing the rule



and not having Rules any more. My role is this group should get this done by the end of January in the following manner. In this meeting and meeting I hope we can hold on December 13th and on the list first the rest Rule four the time or finding rule. Review the public comment. We're not going to read them as they were written. Bernie and I will read parts of them and put on the table and discuss them both in this call and on the call on the 13th. That will be the rule for the time of filing then move on to the other rules. I think there's one other that might not be fully done and that's on intervention joining. My hope is that will be done by the end of the January. Greg I see your hand up. This this group some focus finish the rule. I also think as you know that we could go to the SOs and ACs around the time we finish them -- we can go to them now so they can get started to add new members to IRT and envision your work because we have a chain to do. There's no reason to continue with this pace. I think we should have a meeting small discrete one hour meeting reorganize get into substance and move forward wrap them up as efficiently and well as we can. I don't believe we're going to make a decision in this call. Therefore I believe we can proceed malcolm's point is noted. I would ask malco will, m to come and repeat what he said assuming he does make this a formal discussion. I appreciate what you said Bernie. A appreciate your point. It's not fair to garner our arguments right now because it's not something we prepared to do. So any way that would be what I suggest. I'm open to what people think. Greg's hand is up I'm going to call on Greg right now. >> Greg Shatan for the regular and I don't have malcolm's worlds in front of me I just wanted to point out we're implementation over sight team and not working group and that implementation is hybrid tasks of staff and community so whatever -- speaking to I would be very hesitant on applying it for all seasons in particular in IRT context we need to look at exactly what's going on here. So -- and on related point I think we should consider you know calling out to members and asking they either step up or replace themselves or ask for new members if we -- if our problems go in qualm in -- and we have to look at that qualm issue. I don't know that we have a qualm issue but the -- add hear we're close to business to any new members is exam baiting that issue. My point as an IRT we are a different bird and whatever discussion there is of roles needs to be taken in that context and not in the working group or kind of generic structure context. Thank. >> Thank you Greg. Before I go on to malcolm I do believe we have a qualm we've been working under the motors five working member for the equal of qualm I believe we have that even irrespective of ICANN's participation. I do have thoughts by the way on asking to add new members and asking members that are currently members to step up. And I plan to discuss that starting this call and again on

December 13th assuming we can meet them on list. I just want to make sure before I ask anybody to be on the list that that's proper. I don't know to do anything that's improper. I think that it would be fair at some point to say to people on the list please step up or get off the list but we have to find out how we can do that and whether we're authorize to do that. Secondly with respect to adding new members I think as I recall this group was formed as a pose group during CCWG but when this team was sort of adopted by the bylaws in October 2016 bylaws 4.3 does say the I OT will be established in consultation with the SOs and A Cs and so I think we now have the opportunity to go to SO and A Cs and and say we're looking for new members. That's something I'm going to put on the table and hope to discuss. I think those are good ideas. Greg you and I are thinking a like. Now I'll turn to Malcolm. >> I just make one quick -- specific point there. Relating to the fact this is a slightly different group started other kinds of working group within ICANN. I spoke to -- [Indiscernible] said at the public meeting what Greg might not be aware. I'd like to share with him. When -- said that it was a question -- it was specifically in relation to this group. But -- >> M, lcolm can I interrupt for a second. You have been pretty clear up until about a sentence ago. You seem to be cutting out. I think everything you said is clear but if you could repeat the last sentence and get a little closer to your phone. >> Yeah I just wanted to make one quick Greg to understand -- speaking specifically in relation to this group not about -- not about ICANN community processes in general. So -- that's information but having said that I think we've done on that subject -- do so David -- however I think now we need to think about what comes next and your proposal we should complete the work on the draft rules before we go out to expand the group. Now I have consulted with some colleagues since you September your proposal to the mailing and the -- said about that there was an -- to expand the group before we complete the rules so I would like to add on the table and ask first you David to say whether you have considered that as a possibility and if so, what your reasons were for proposing that we attempt to complete it before we enlarge the group and hear the group -- on the matter. >> Thank you Malcolm. A couple points starting at the back end. With respect to why I said what I said. As I see it the group that currently exist is the group that worked on the rules and probably be most efficient and fair to finish the rules on that basis. I never thought about asking that the rule bees thrown up to expanded group just for efficiency purposes. I'm not -- that's -- I mean it's already catching me cold. I haven't had a chance to think about it. I thought that you a-- almost among others would appreciate that fact to get the rules done. I don't think that we should throw open to whom -- to people that are not yet members of I OT how the

I OT should run. Anything that you want to propose I think you should propose. What I don't want to do is stop you from proposing anything. Then with respect to your point in response to Greg, I think as I recall that public meeting I think you're right there was a n response to a question you were raising about this. I think it's fair to say at least that question it took -- right there in the moment. I don't know that he was preparing for that. Be as it may if you I don't want to put on the table as you obviously have, it would be a good catalyst to put it on the list and say what you wish. I don't think we can sub at thatty I will address it now. Any more than we already have. If others have thoughts on that, please certainly weigh in. Malcolm I see your hand is up I take it you would like to respond? No. >> You're [Indiscernible] I consider that a way forward we the close that or move forward. >> Okay. Okay. So that is that. In the meantime I would like for us to visit the discussions surrounding Rule 4. In that respect Bernie and I have spoken about that. We'll read parts of the summary. Not the comments itself but parts of summary to remind what the comments were. However having said that I would invite everyone in the group and I OT and if I get on the list everybody in our group to you know the link is there to go and look at the comments. It's interesting when you look at the comments I think they were universally from groups of groups of people not individuals. So they have some added -- for instance you have comments from registers ISSPCP, PC, NCSG -- I remember, so those comments have -- have merits another look I'm going to take another look myself it's been some time since I read the full extent of the comments. I have read Bernie's summary. I'll take everyone to take a look at full comment as we get into this process. Again it's my hope we can do this sort of with some -- to get the rules done. In any event. Having said that, Bernie and I talked about this I think the best way to proceed we're going to ignore comments with respect to changing the rule of 45 daytime limits to 120 daytime limits or time within someone can bring a claim. That's no longer an issue as I understand it. I believe ICANN is okay with changing 45 to 120 days. It would be no point in reading those. And so what ad like to do is begin going down Bernie's summary. I'll read parts of the first one on changing the other time period limitation. And the first comment is from the business conty ewe went city. The business constituency the BC further recommend calculation of any time period should not include the time within the h the party formally agree ICANN account ability mechanism in connection with -- I doubt that will be very a very con ten courthouse aspect of -- of the rules. And then in removing the one year period the BC said current revision update supplementary rule number four. Address these times limitation concerns by extending the 45 day period by time filing to 120. The 12

month limitation been eliminated in the new amendment. The BC supports and not to revert on the essential changes to IRP procedures. Okay. Bernie if you would like to take on the IPC comment. >> Bernie if you speaking we can't hear. If you're having difficult -- >> Sorry. I was double muted as Malcolm said. Going to IPC year removing oppose. Can you hear me now. >> Yes. >> Okay. Excellent. On the removal of the separate 12 month limitation as IPC commented during the previous public comment on the draft supplementary procedure. The would appear to be inconsistent with the constructive knowledge requirement under the ICANN bylaws as confirms in the advice bioside I will law firm. The IPC therefore supports its removal. In the event that the outcome of the public comment and the further deliberation of the IRPIRT do conclude that some overall limitations period is repos is nevertheless required the IPC as zest that there must be reasonable limitation period from the date of ICANN's action or inaction. We believe the 12 month is inadequately and that 24 months or 24 is far more than n line with the analogous statute of limitation. Again any such 24 or 36 month period should not prevent a party from raising a violation of ICANN's articles of incorporation or bylaws when the harm only results from a later implementation of the ICANN. The starting point must be unambiguous the time for tiling period should not start running before the publication of the adopted minutes setting out the are reasoning of action or inaction. Whenever action or inaction immediately affects a party or multiple party that can be identified in the action or inaction. ICANN should immediately communicate to the publication of the minutes to the parties concern and inform them about the possibilitieses for redress and the timing and procedure for introducing redress. Finely there's also something on other interplay with other accountability mechanisms. Interplay with other accountability mechanism remaining unclear. We and others have previously expressed our strong belief that this is necessary to amend the time for filing Ford insure the deadline for filing IRP be told during the time within which the parties are formally engaged in other accountability mechanisms over the views being referred to IR P. In particular, A the cooperative engage process CEP which is voluntary but strongly encourage step prior to the commencement of IRP bylaw 4.3E and B on going reconsideration -- including only bud review which forms a part of that process pursuant to bylaw section 4.2. C a request under ICANN document disclosure policy and D complaint to the only bud man to bylaws article 5. Since complaints to Ombuds generally not student set time limit we recognize this might give rise to concerns to undue delay. Nevertheless bomb Ombuds are out of the hand of complain than and they should not be penalize for something something which they cannot control an IRP extremely

costly and time consuming. It should not be entered lightly. All members deserve the opportunity to attempt to resolve their dispute using the other accountability mechanism in place without the concern that they serve to exhaust the Limardoation period for bringing an IRP. That's it. Back to you David. >> Thank you per Bernie. What we're trying to do is create a record along with the comments so people can look at the phone call come back take a look. Illipe I'm going to go ahead and read a comment from noncommercial take sold. Hence we support the following change. Under prior change claimant would have had to file IRP within one year action inaction that's being challenged. Under new text only time requirement has to meet 120 day requirement above. Whether the challenge action inaction happens three months three years, five years prior or month. The NSG under no circumstances access return to previous text IRP critical tool keep accountable and transparent. However we reiterate while the time limit may be appropriate -- knots for con sen use policy. That's tend of that comment and soberny if you want to go ahead and take a stab at the register stakeholder group. >> Sure. Register stakeholder group would like to thank the IRPI OT for their work and propose amendment to original update supplementary procedure number four time for filing register stakeholder group agree extending the time for filing a dispute from when the claimant first becomes aware of the action inaction is necessary. Likewise, having no limitation instead on being able to file a dispute from the date when said action inaction occurred is a sensible idea. Back to you. >> Here's comment from register stakeholder. On separate 12 month limitation does not support the new proposal the link. We believe there must be a reasonable -- from the ICANN action or inaction. We believe some -- for allow for predictable for a reliable body precedent. We believe the 12 moss inadequate. Registry group believe the overall limitation group should not include the time in which the IRP is engaged in certain accountability mechanism. We provide alternative either which is acceptable to the registry stakeholder group A a 36 month limitation excluding the time in which the IRP claimant was engaged in CEP or on going reconsideration request process relating to the issue referred to IRP or B, 24 limitation excluding the time in which the IRP claimant was engaged CEP and on going reconsideration request process the first on going only bud man or second on going documentation poll I sire quest relating to the issues being referred to IRP. So that was that -- that's over to you Bernie or ICANN comment. >> Yes. >> I will get into that. You seem to have lost Robin also. Robin if you're around let us know. We can't see you in participant list. Excuse me. So the fist -- yes I'm going to go to the full text of the ICANN since we apref crated in the summary ICANN orderty relates to second

question T new language posted for comment IRPI OT removes any outer limit for the ICANN action giving rise to IRP to the time of the follow filing of IRP this means IRP could be filed two years five years even ten years after the act being challenge sod long as IRP filed within 120 days when the claimant learn of ICANN act and the alleged harm caused. This removes any finality to ICANN action. Ignore principle support supporting IRP and depletes rather than deploys principle of accountability. Removing outer limit on filing -- changes nature of from holding ICANN accountable to -- for matter that were long thought to be closed. It alts provide ability to raise challenges long past any statues limitation that might be available in court of law. The use of site time limit on potential time limit -- often referred to statute limitation. When the IRP was first introduced in ICANN's bylaws there was no time limit to file. Time limits were introduced 2012 upon the recommendation of a panel dispute resolution and corporate experts. Bring the IRP more in line -- standards. The time limit then put in place was approximately three months from board ash. Even with a time limit of the t month initially -- IOP the time limit would be approximately 9 months longer than claimants had for the past few years. The IRP is a tool to hold ICANN accountability to the article corporation by laws. The IR approximate. Is a way to identify ICANN violated articles or by laws and hold ICANN accountable for the findings. The IRP cannot result or relief from ICANN. No one in the ICANN community is benefited by long deploy lays and identifying ICANNs improper action. Two, facing outer time limit to file upholds purpose of the IR P. Placing outer limit on how long a claimant can challenge and -- under article 4 section 43I7 under the bylaw which is to sewer secure the accessible coherent and just resolution of dispute. Through the enhancing ICANN accountability process the ICANN agree the IRP should be transparent efficient and accessible both financially and from a standing perspective and design to produce consistent coherent result that serve as a guide for future action. One of the purposes the IRP is to reduce this fused going forward by creating precedent to guide and imform ICANN board. Staff supporting organizations SO and advisory ACs and the community in connection with policy development and implementation. Removing any time frame within which one must follow IRP work against these principles the longer takes to challenge ICANN the less consistent coherent review that act will be. Board members organization personal and community members change. Memories fade documentation may no longer be available. Instead of guiding future action the outcome on action faken in m years prior would be back toward looking and raise many questions on how the community move forward. In short a long IRP be brought years after the action in question

removes one incentive for the ICANN to be vigilant in raising issues in -- by laws and articles. Two any sense or stability to ICANN's action. In it's deliberations one of the primary examples that the IOT relied upon to support the remove of the statue pose is the -- addressing content and therefore outside of ICANN mission came out of the GNSO policy development process and approve by the ICANN board. In the example years later a potential registrant impacted by the poly improved by the board and wish to bring IRP this suggestion ICANN should never have finality to decisions is therefore based upon the presumption that all parts of the ICANN community allow out of mission policy to pace through PDP including public comment then the board include out of mission policy further once implement no one came forward to challenge that action format or adheres. The example shoes eliminating any outside time encould you remembers participants to wait to hold ICANN accountable. This does not serve accountability or the purposes of the IRP and based on complete break down of the multisignal remodel that the IRP is not designed to fix. Three, removing outer timeline created unprecedance and destabilize ICANN. Removing outer time limit removes any uncertainty for ICANN to enter contracts. It allows people to come forward years later to -- binding agreements. ICANN party already agree to be bound by consensus policy change. And have agree with that level of flexibility in contracting the w ICANN T proposed change would remove any certainty in ICANN's authority to enter each of those agreement and would great I impair ICANN's ability. Each of the 2,500 contract ICANN holds with register industries and register is grounded in the law and -- to you suggest removal of time to file IRP could allow challenge to an ICANN action taken a decade aago on a contract or impair a contract enter into before the IRP procedures went into affect. In either situation even if IRP were filed, to challenge ICANN's action in relation to a contract, ICANN can -- the mere fact the ICANN allow the IRP rules to be modified in a way that would interfere with these contracts could subject to ICANN legal liability under the law. This would create confusion, uncertainty and put ICANN at risk at facing staggering cost. ICANN is not aware of any other organization that allows a challenge to be raised against an action any time.Ment similarly the members IOT pushing for the removal to file IRP not office other examples -- that open their action up to challenge any time. The removal of time limits to -- file an IRP is unprecedented -- that put it is entire ICANN mold at risk. For time to file an IRP -- possibility someone might declare that act to be outside and by law and allege an act cause material arm. For example if I can board approves policy recommendation and ICANN implements policy that -- the implementation decision say separate act from the policy approval.

And has the potential to give rise to new grounds or IR P. Even if that implementation puts years after the approval date. If I can or later takes compliant related to that policy in a way that's alleged outside of the bylaws or the article then m years after the policy approval date that action too is a new act of the organization and that can be challenges through IR P. There is no need to draft a procedural rule that allows challenge on the very first act on an issue no matter when taken or when taken the IRP can be timely used to challenge the specific act alleged to cause the articles or by law's violation. Five outside time time throughout file is consistent with bylaws. Sub brick comment. In accordance with obligation of the bylaws. The bylaws supplementary must be filed after claimant must be ab aware or reasonably aware of the action or inaction given rise to the dispute. The I OT proposal state about the 45 day window from becoming aware or reasonably should have been aware of the harm caused by the action as well as the -- [Indiscernible] accountability deferred the issue of setting the time frame leaving the issue to I OT. It is fully within the I OT's power and in alignment with the bylaws to determine that there is a time period after which it would not be reasonable for claimant to bring an IR P. I will say folks ICANN stands mind and supports accountability measure it is CCWG accountability recommended including the expanded IR P. However each of ICANN's accountability mechanisms need to be viewed in a context to make sure they fit with ICANN's work and support the ICANN community. ICANN's action do not exist in a -- they are actions on community made policy recommend day. Actions that in fact ICANN's contracted parties and business decisions they make and actions that end users registrant and all part of multistake holders realize that. All parts of ICANN rely on ICANN acting upon -- and happen interest in swift action when ICANN is not doing so. IRP does not exist -- relie -- hold ICANN accountability to articles bylaws. It has every need to bring swift challenges when ICANN acted improper. Removing any outer limit on when that act can be challenged only serves to harm accountability across ICANN. Over to you David. >> Thanks Bernie. I'll go ahead and read the comment from the international trademark association. Which is known IN TA. Commends IRPI OT removal of rule's four ultimate deadline. It's expansion of rule's four files 45 days to 120 days. The next comment is from ISPCP I could have -- read through that Bernie if you're tired of reading. >> That's fine. They're short now. >> Removing when you're appose IPC P. Therefore strongly supports the decision to remove from draft rules the supplementary deadline of one year from the date of I can action or decision T deadline of 120 days that the I OT now proposes is entirely sufficient to insure prompt action and meet the purposes of the IRP set up in bylaws we urge I OT not to revert to



this change. Back to you David. >> Thank you. There's a comment from -- on the one year part. Yes? Did I hear a voice. I'm sorry Malcolm's hand sup. >> Yeah. David you just announced Bernie to read ICANN's whole reason input into this even though it was five pages you now read that really the conclusion from the IRCPC but not it's reasoning. I would ask for one it's rare but once I'm going to asking s formally on behalf of ICPC in the interest of fairness we should similarly reasoning the IRCPC prepared into the record. Unlike the I can or so call input this is actually less than a full page. It won't take very long. May I go ahead. >> Let me just say yes you can go ahead. The reason for that was a miscommunication between myself and Bernie that was my fault. And so I I didn't -- it caught me a little bit by surprise. Bernie did exactly as we discussed. I just missed the part of the block summary of the ICANN thing that indicated that it would be a full reading. So you raise a fair point you can read the ISPCP now or wait until I finish with fair sin. >> I'm happy to go now. >> Go ahead. >> Okay. I'm happy to admit the page portion on the other issue and read only that portion that relates to propose issue on the discussion. The ISPCP especially criticisms release in previous -- then draft rules could have preinvented certain actions from ever being transferred in IRP in -- consensus. Cut the deadline would have elapse for f full filing a dispute was committed under the rules. The IRCPC would regard that completely unacceptable. As -- bylaws IRP should be available to resolve disputes between material and affective party and ICANN. Claimant should be required to act properly to make -- IRP but the ability to set deadline for filing must not be used to exclude certain claimant for -- dispute entirely. Under the draft rules, claimant's may only challenge Iman the IRP if they been materially affected ICANN - - this rule must be aligned with the rule deadline for filing. It is therefore entirely correct that the permitted time to file IRP claim must run from the date when the claimant was so effected. The time for tiling cannot be calculated from -- date such as when ICANN took at the -- complaint. May elapse from decision and implementation which could -- considerable period even years. To do so would in some circumstances entirely -- claimant the opportunity to challenge legitimacy of ICANN action regardless -- claimant's act. That cannot be acceptable and entirely outside the proper purpose of the timing rule. We are grateful to those who spotted this in the original proposal in the previous common groupeds and to the I OT to acting to correct it. The IRP strongly supports to remove from the draft rule that quote unquote supplyment deadline of one year from the date of ICANN's action or decision. The deadline is 120 days that the I OT now proposes entirely sufficient to prompt action and meet the purpose IRP set out in the by laws. We urge the I OT not to revert this change. That

concludes the comment. Thank you. >> Thank you Malcolm. There's one comment left. It goes as follows. The elimination of a period -- Leon is sounds like a robot. Am I being heard now if I speak slower? Okay. Here's comment the elimination of period of propose require all claims be brought within a period of time from from the date of challenge action or inaction is not consistent with the bylaws. Vera sign propose a proposed period of 24 to 36 month be added back to Rule four. The longer time period would address concerns raise and comments while at the same time fairness and due propose of the Internet community impacted by the challenged action or inaction. Now let me make a couple comments as the lead chair of the group. We should have a discussion -- we are short of time if you could mute your lines. But in discussing the comments I would bring to our attention an e-mail Malcolm sent to the list August 14 you can search the archive to see the male. Malcolm in an e-mail that's longer that I'm now going to state basically in his opinion has h three options fist option we had a clear majority express a certain point of view. the secondologist attempts to find a come propose -- reach a come propose and third option report we're unable to reach full consensus instead a faithful representation of the opposing viewpoints and arguments et cetera. Those are three options. If anyone can think of any more I ask you put on the list. We should have this discussion in December 13th. I hope everybody can attend the meeting the 13th setting one later in December is probably not a good idea. And so that is what I would propose. We can start discussing now in a few minutes but I do want to before we do that at least draw your attention to a couple things that I put in this t agenda. Win we spoke about already that is an attempt to get to finish the rules by the end of January. Malcolm may come to list with other thoughts and will whether that should be impacted by adding new members. We'll wait to see what he suggested and we can discuss that. And secondly I have proposed a letter that would be something that this group would send to the S Os and ACs to start the process for adding members but that's not nothing I can do on my own. It's something I'm looking to I OT to us to discuss and agree. You should see that letter in your e-mail option. We'll put that on the agenda for discussion on the next meeting. Excuse me. That letter also indicates the remaining work that we have. And so you know you can put your arms around that we can discuss it and also I would be interested in the next meeting what people's thoughts are in having organizational slash sub sta tiff meeting ICANN 64. Having said all that I would open the floor to any discussion of the rules that Bernie and I -- the comments -- is summary of the comments Bernie and I just read through and see if anybody has comments on that or comments on the three suggestions that Malcolm made or otherwise I don't want to

close this discussion today. I want to come back to the list say this is where we are. We should discuss this again on the 13th. We'll see mail from Malcolm on the interim. Would anyone like to venture a comment for time for filing rule. Malcolm your hand is up? >> Malcolm can I be heard. I'm wondering -- >> We can heard you quite well David. But I cannot hear Malcolm. Malcolm -- we can wait a moment or so for him. I would also be interested in anybody's thoughts on the suggested letter to the S Os and ACs I think we should move forward and add members but again something we should discuss and agree. And then secondly I like to say that on list I'll ask folks take comment the purpose of this call to create another record where we indicated what the substance of the comment is so we can get to decision point on this. Malcolm's hand is down. In a comment in chat he thinks only his first option is correct. That's his comment. On those options. I certainly would agree that option number two is not attractive spending more time on attempting to reach a come promise. Option three strikes me as being viable but but to be honest we only have five minutes left. Malcolm is a participant in this discussion his line is dead. I suggest we end call early. I do urge those on this call please try to be available for a follow up call in December. >> Sorry. That was me reconnecting. My apology for that. I had technical problems. >> We're just in the process of closing down the call. You're concern I will welcome to make a comment. We're closing down with view of having this snug the next meeting December 13. >> I just wanted to say in listing those options I would simply be logically complete. I don't consider any way legally valid given the nature of the feedback that's been received. My own view is only the first option is valid and the option of giving up and leaving to the board I consider to be both completely wrong and -- a direction of the charge that this group has been given under the bylaws. So I would rule that out further option completely. >> Okay. I think we should continue that discussion on the 13th. I thought I saw Avri typing. We're in the process of closing down the call. I appreciate that. Avri if you had a comment. Otherwise I suggest we end the call now and pick it back up on the 13th. I'll reiterate I hope we can all reassemble on the 13th. We can have other calls in January. We can talk on list. A appreciate the fact we had good discussion discussions recently and look forward to moving forward. Having said that, then I'm going to end the call. Thank you all for being here. I'm very appreciative and -- We can end the recording. >> Bye everyone. >> Bye bye.