

**IOT Meeting #4 (6 July @ 14:00 UTC)**

# Attendees:

**Sub-group Members:** Amy Stathos, Avri Doria, Becky Burr, David McAuley, Greg Shatan, Kate Wallace, Kavouss Arasteh, Konstantinos Komaitis, Marianne Georgelin, Samantha Eisner, Thomas Rickert, Tom Indelicato

**Legal Counsel:** Edward McNicholas, Holly Gregory

**Staff:** Bernard Turcotte, Brenda Brewer, Yuko Green

**Apologies:** -

*\*\*Please let Brenda know if your name has been left off the list (attendees or apologies).\*\**

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## Transcript

- [CCWG\\_IRP-IOT\\_Meeting\\_4\\_6\\_July\\_2016.doc](#)
- [CCWG\\_IRP-IOT\\_Meeting\\_4\\_6\\_July\\_2016.pdf](#)

## Recording

- The Adobe Connect recording is available here: <https://icann.adobeconnect.com/p2nrkgczk9h/>
- The audio recording is available here: <http://audio.icann.org/accountability/irp-iot-06jul16-en.mp3>

## Notes

Supplementary Procedures for ICANN IRP document to ICDR rules (current IRP procedures)

Becky Burr - we need to modify the current supplementary procedures so they can be made to conform to the new Bylaws. This needs to be a short term deliverable. Next we need to concentrate on the RFP for panelists and then on reviewing the rules.

Becky Burr - Back to Supplementary Procedures - Definitions will have to be reviewed. Scope - needs to be modified to reflect the scope of the covered disputes (actions or failures to act in violation of the Bylaws or AOI or IANA related disputes). Will have to add a section on the independent panel and it may not be in place when things kick off.

Becky Burr - Need discussion on conduct on the ind. review. ICANN has traditionally said that in-person meetings would be exceptional - this seems to have had limited success. The overall goal is to resolve issues electronically in order to keep costs down. This means that witness statements have to be submitted in writing in advance and in-person hearings are only for arguments and not testimony.

KArasteh - status of these supp. rules. BBurr currently active rules.

Amy Stathos - on status - ICDR was instrumental in dev. these supp. procedures vs the new Bylaws (2013) and they require to do this. Becky Burr we need to get any revised rules to them early so they can perform this review.

Amy Stathos - The final hearings have been done in a variety ways based on what the panel requires including in-person hearings (rarest because of cost).

Becky Burr - what kind of hearing is required is finally determined, currently, by the Panel after considering the input from the parties. Do we want to continue with this reality vs trying to stick to the extraordinary (in-person) event? Any comments? No views.

Kavous Arasteh - ICDR can modify rules - do they need ok from the community? Becky Burr - the ICDR would review our proposal for this and could request we consider some aspects as possibly being incoherent with the Bylaws.

Becky Burr - Panel responsible for scheduling - given the objective of 6 months timeline this would have to be modified.

Becky Burr - Written submissions - Limited to 25 pages 12 point font double spaced - this is for arguments only and does not include witness statements. Want to test the page limit with this group, this is usual in US courts but it variable, 25 pages seems to be on the short side but have not seen anything more that 50 pages (some have word limits). Any comments?

David McAuley (RySG): Becky, I think we will want to add a requirement that a claimant certify that the claim is brought in good faith and belief that is qualifies as a legitimate IRP and not for improper purpose

Kavous Arasteh - Last line of section 5 Parties vs party? Becky Burr - ICANN is a party and a claimant is a party and therefore there are always 2 parties. We will also be discussing the possibility of consolidating claims (could end up with 3 or 4 parties).

Becky Burr - no other comments on page limits recognizing participants seem comfortable with the current limit of 25. Summary dismissal - does not meet the requirements or there is a settlement or frivolous or vexatious requests (querulous?).

Kavous Arasteh - Becky Burr need to define the requirements to bring a case. As to standing is a legal construct -materially affected. Could Amy and the other experts on the panel - I would assume the panel would not like references to outside documents.

Becky Burr - any other issues vs summary dismissal? Do we want an expedited review before the panel is formed (required for dismissal)? Any suggestions?

Greg Shatan - Dismissal - I have no view yet.

Holly J. Gregory (Sidley): Agree, that the rules should be revised to reflect the bylaws rather than cross reference

Edward McNicholas, Sidley: Having everything in one self-contained document may increase the accessibility of the process for persons not represented by counsel.

Marianne Georgelin: I agree with this.

Becky Burr - there are 2 questions - if the claimant fails to demonstrate they have been harmed or will be and this is obvious in the information provided then should ICANN need to ask to dismissal. Frivolous and vexatious - agree with Greg that the standard needs to be established. It seems the group supports forming the panel and let the panel decide to dismiss.

Becky Burr - Interim Relief - very clear requirements from the CCWG recommendations. Do we want the standing panel to designate an emergency panelist to review and rule on a request for emergency relief?

Becky Burr - any thoughts on the emergency panelist?

Kavouss Arasteh - clarification on this point. Becky Burr re-explanation of the point.

Greg Shatan - Unclear if this is independent from the panel or if it requires a motion? Is this separately argued and if so does it require separate documentation.

Becky Burr - excellent questions - does the party have to ask for interim relief or can a panel decide by itself? Currently set up to go either way and I may go either way also.

Amy Stathos - to date this has only been a request from the moving party. It may be difficult for a panel to make this determination without the arguments from the parties. It has been both in the main submission and in separate submissions.

Greg Shatan - items 6 and 7 need to be viewed together - we need to determine if the panel has the power to do this - which is a philosophical issue vs the panel's power. We need to be consistent across the 2 points and if we are not consistent then we need to explain why. Tend to think the parties should make the requests and not leave this power to the panel to decide on its own (similar view from KA).

Becky Burr - will have to consider this when putting this together. Have no issue supporting GS's approach to this.

Becky Burr - Standard of Review will be significantly changing as stated in the Bylaws. Declaration and Form and Effect of IRP - again the CCWG recommendations require significant changes to this language. Costs - similarly.

I hope we will have a draft for review on our call next week as ICANN legal has been working on this - which could be reviewed by Holly and Ed. Amy, Sam is this timeline reasonable? Sam Eisner - yes.

Avri Doria: thinking slowly today, but i am not sure I agree that the panel shouldn't be able to initiate protection. We want to make this more accessible. insisting that all litigants have the best and most creative of litigants makes it less accessible.? Becky Burr - Fair question - there will be no final decisions in one call.

Greg Shatan - re Avri's point - Judge's in the US system have more discretion. As we consider how to make this accessible - is there a legal aid for complainants that are not represented? this is a two edged sword.....

Becky Burr - Fair question there is language in the proposal for pro-bono support.

David McAuley (RySG): Question for Sam or Amy – do “base” ICDR rules change periodically and how do you track that in case it might impact our work on supplemental rules?

Amy Stathos: David - The ICDR rules are periodically updated. However, it is not frequent and we are notified in advance.

Becky Burr - we are expecting draft language for our meeting next week. These are the supplemental rules and as we go forward we have the opportunity to validate these.

## Documents Presented

- [Supplementary Procedures for ICANN IRP](#)

## Chat Transcript

Brenda Brewer: Good day all and welcome to IRP IOT Meeting #4 on 6 July 2016 @ 14:00 UTC!

Kavouss Arasteh: Hi Brenda,

Kavouss Arasteh: We missed you in Helsinki but the results of your activities was highly appreciated

Brenda Brewer: Hi Kavouss! You are so kind! Thank you.

Kavouss Arasteh: Brenda,

Kavouss Arasteh: Do you dial me up before the meeting pls?

Brenda Brewer: Yes, I can dial out to you in approximately 8 minutes.

Becky Burr: hello everyone

Holly J. Gregory (Sidley):the 5853 phone number listed is me

Marianne Georgelin:Hello!

Bernard Turcotte Staff Support:hi all

Holly J. Gregory (Sidley):Greetings everyone.

Brenda Brewer:Thanks Holly for identifying #

Edward McNicholas, Sidley:Hello to all.

Thomas Rickert:Hi all!

Brenda Brewer:Please identify if your phone number is listed. I will update with name. Thank you!

David McAuley (RySG):Hello all

David McAuley (RySG):Becky, I regret inability to participate other than in chat. Severe bronchial infection - trying to talk causes coughing spasm. Not what this group wants to hear.

Kavouss Arasteh:Hi everybody

Holly J. Gregory (Sidley):David, So sorry to hear it. Please take good care!

David McAuley (RySG):Thanks Holly

Kavouss Arasteh:dAVID

Kavouss Arasteh:sORRY TO HEAR THAT.

Kavouss Arasteh:tAKE CARE

David McAuley (RySG):Thanks Kavouss - these things happen, lucky for me not very often

Kavouss Arasteh:bECKIE

Kavouss Arasteh:wHAT WOULD BE THE STATUS OF SUPPLEMENTARY RULES

David McAuley (RySG):Thanks Becky

Kavouss Arasteh:dOES IT HAVE SIMILAR, IF NOT IDENTICAL , STATUS AS bYLAWS

Kavouss Arasteh:Sorry for Cap

Kavouss Arasteh:Beckie

Kavouss Arasteh:May at appropriate time convenient you kindly advise the status of this Supplementary Rules?

Kavouss Arasteh:The findings of ICDR are as advice or as mandatory to follow?

Kavouss Arasteh:In other words ,does ICDR have the authority to modify what was agreed by community and included in the SR without referring them back to the community?

Kavouss Arasteh:I raised a question that you may kindly wish to answer

Amy Stathos:The role of the ICDR is to ensure that the Supplementary Procedures are consistent with the Bylaws.

David McAuley (RySG):Good point Amy, but I think we have a role in that as well

Amy Stathos:Of course David. I was not suggesting we did not. The ICDR just has its own internal rules as well.

David McAuley (RySG):OK thanks

Amy Stathos:Thanks for clarification.

Kavouss Arasteh:Tks

Kavouss Arasteh:That is fair enough

David McAuley (RySG):Becky, I think we will want to add a requirement that a claimant certify that the claim is brought in good faith and belief that it qualifies as a legitimate IRP and not for improper purpose

Holly J. Gregory (Sidley): There could be parties who are joined due to similar claims

Kavouss Arasteh:ok

Brenda Brewer:Please identify your name if phone number is listed in Attendees field. Thank you!

Holly J. Gregory (Sidley):We will need to conform the standing requirements to the new bylaw language.

Holly J. Gregory (Sidley):Agree, that the rules should be revised to reflect the bylaws rather than cross reference

Edward McNicholas, Sidley:Having everything in one self-contained document may increase the accessibility of the process for persons not represented by counsel.

Marianne Georgelin:I agree with this.

David McAuley (RySG):Agree with Greg

Marianne Georgelin:(with Edward)

Kavouss Arasteh:Grecv +1

Kavouss Arasteh:Grec1 1

Kavouss Arasteh:Why the verb" MAY" is used. If the Chair of the standing Panel does not take any action ,what happens?

Holly J. Gregory (Sidley):Kavouss, "may" indicates that the Chair has discretion to make the decision whether or not to provide a recommendation. If there is no IRP Panel yet and the Chair takes no action, then no action has been taken.

Holly J. Gregory (Sidley):By no action I mean No recommendation

Kavouss Arasteh:THAT SEEMS LOGICAL

Kavouss Arasteh:Tks ,that seems logical

David McAuley (RySG):should we shape this so that ICDR panelist has some DNS experience?

Kavouss Arasteh:Beckie, in addition to the chief of the standing panel or ICDR, could any of the partzies could request the establishment of emergency panel?

Kavouss Arasteh:David +1

Becky Burr:yes, Kavouss - a party could certainly request interim relief, which would trigger the appointment of an emergency panelist

Kavouss Arasteh:Tks Beckie

Becky Burr:@ David - good idea and consistent with the concept of the standing panel

Greg Shatan:The decision-making power rests with the panel in either case; the question is whether they can act without an initiating request and justification.

Greg Shatan:from the party.

Kavouss Arasteh:Dismissal is exclusively left for the panel ist or the chief panelist and certainly NOT for any of the concerned parties

Greg Shatan:No one ever suggested it was, Kavouss.

Avri Doria:thinking slowly today, but i am not sure i agree that the panel shouldn't be able to inititate protection. We want to make this more accessible. insisting that all litigants have the best and most creative of litigants makes it less accessible.

Holly J. Gregory (Sidley):Kavouss, If the party initiating determines that it no longer ants to pursue a claim, shouldnt it have the ability to dismiss?

Avri Doria:i know, just want to put the stake in the ground, as it were.

Holly J. Gregory (Sidley):ICANN Legal, Please let us know when Sidley will have a document to review so that we can plan?. Thanks

David McAuley (RySG):Question for Sam or Amy – do "base" ICDR rules change periodically and how do you track that in case it might impact our work on supplemental rules?

Kavouss Arasteh:have the points raised by Grec not already been discussed before ?

Amy Stathos:David - The ICDR rules are periodically updated. However, it is not frequent and we are notified in advance.

David McAuley (RySG):thank you Amy

Kavouss Arasteh:Beckie, what ever we come up under supplementary Rules must be remained within the envnvelope of the Bylaws

David McAuley (RySG):Thanks Becky, staff, and all

Avri Doria:bye

Bernard Turcotte Staff Support:bye all

Kavouss Arasteh:Bye Bye

Greg Shatan:Bye all, and apologies for joining late...

Edward McNicholas, Sidley:Bye

