

LIST OF EXHIBITS

Exhibit No.	Description
C-82	IOT Meeting #45 (13 Dec. 2018), Transcript
C-83	IRP-IOT Meeting #44 (29 Nov. 2019), Transcript
C-84	ICANN, Recommendations to Improve ICANN Staff Accountability, <i>available at</i> https://www.icann.org/public-comments/accountability-recs-2017-11-13-en (last visited 13 Nov. 2019)
C-85	Letter from NDC & Verisign to ICDR (5 Dec. 2018)
C-86	Email from A. de Gramont (Counsel for Afilias) to J. LeVee et al. (Counsel for ICANN) (9 Jan. 2019)
C-87	Email from A. de Gramont (Counsel for Afilias) to J. LeVee et al. (Counsel for ICANN) (10 Jan. 2019)
C-88	Email from J. LeVee (Counsel for ICANN) to A. de Gramont (Counsel for Afilias) (10 Jan. 2019)

EXHIBIT C-82

IOT-IRP MEETING

Thursday, December 13, 2018—19:00-20:00 UTC

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Hello, everybody. This is David McAuley speaking. I think we should go ahead and get started. Before we go further, can I ask that the recording be started?

>>SPEAKER: This meeting is now being recorded.

>>SPEAKER: David: Thank you. Welcome everybody to the IRP Implementation Oversight Team call for 2018. This is probably the last call for the calendar year. Best holiday wishes to all on the call.

I would like to begin by asking if there is anybody that is on the phone who is not showing up in the ADOBE room. Would they kindly speak up and identify themselves now?

>>SPEAKER: Mike: This is Mike R.

>>SPEAKER: David: Thank you, Mike. And is there anyone else? Okay. I would like to ask then -- there's -- in the ADOBE chat there is a phone number that begins "4015" and then ends Inaudible --.

>>SPEAKER: Mike: That should be me. But I can't -- I don't see that I am signed in. I feel like I am having difficulty getting into the room.

>>SPEAKER: David: That is you, Mike?

>>SPEAKER: Mike: Yes.

>>SPEAKER: David: thank you. Now I would like to ask if anybody in the group has a change to their Statement of Interest that they would like to note, please let that be known now.

And I don't see hands and not hearing anything. We'll move past that and get to the agenda item that is next. That is to address the challenge that Malcolm put on the list to ICANN staff participation and a full member in the IOT team. And the way I would like to approach this issue is to follow this process: I would like to begin by asking Malcolm to briefly summarize his point again to set the table on the issue. Then go to Bernie and see if he would kindly review for us -- it has been some time since this started -- the formation of the implementation oversight team. Then thirdly, I will summarize or quote from the by-law that deals with the constitution of the IO T team. Then fourth point is: I will summarize -- I won't read every e-mail -- but some of the e-mail comments that have come on list since December 6th. That's the date that Malcolm put his proposal in writing on the list. So there's no comments before that, as I recall. Then finally we can discuss this.

So to kick that off I would like to ask Malcolm if he would be willing to summarize the point he is making -- I see Sam -- before Malcolm, I see that Sam would like to contribute to the discussion as well. I think the way we are proceeding, until we decide otherwise, is the way that we have already proceeded. You will be able to make comments in the discussion portion, as I have outlined the final portion. But Malcolm, go ahead and remind us of what you said.

>>SPEAKER: -- there's a little bit of feedback. Everybody please mute who is not speaking.

>>SPEAKER: Malcolm: Thank you. Can you hear me? Clearly? Yes? Okay.

>>SPEAKER: David: Yes. I can. Go ahead.

>>SPEAKER: Well when we (Inaudible) this I think we are all in agreement that they would be useful (Inaudible) a practical element most practical experience of what actually happens and so forth. Will be able to answer important (Inaudible) questions for us. But when (Inaudible) the group, you decided that they should be full legal participants in the group rather than (Inaudible) support. Consequent to this is that they could want towards the formation of a quorum and they take a full part of the discussion, including having essentially an opinion rather than just providing factual (Inaudible) information. But actually have take a part in the formation of the group's view of the balance of (Inaudible). And by repeating in the consensus (Inaudible). Actually a full decision making part. For the group. Now I originally said that I thought this was asking a bit too much (Inaudible) while they were very important to contribute to this (Inaudible) actually the function of this group is to establish rules for the of procedure that will help hold them to accounts and (Inaudible) setting of the rules as to how those decisions shall be challenged. (Inaudible) were decided and decided that full part of the group.

Now Part 4 (Inaudible) when I asked (Inaudible) about what (Inaudible) for actually context of taking a view that is strongly (Inaudible) at a variance of (Inaudible) at least (Inaudible) view. And he would like if he were not part of it -- his staff is not considered a part of (Inaudible). That they are take part in the process (Inaudible) group as a staff support and facilitation. That was important to -- clearly unaware that they take a part in the group as full participation. He was very angry that I was suggesting that they were overstepping the grounds (Inaudible) and I was somehow impugning their professionalism by suggesting that they were actually seeking to push their own view rather than merely taking a (Inaudible) this this process. It is clear that that's not normal. (Inaudible) that wasn't -- not be normal in the context of (Inaudible). Including this one. Now I understand that (Inaudible) important (Inaudible) take part in the group in some capacity. And also arguments (Inaudible) take part as full participants in this group perhaps more than any other. There were arguments. (Inaudible) talking about this (Inaudible) in particular. So that was really where I had got to and put forward my (Inaudible) that we go back to this, (Inaudible) to the proprietary of them actually taking a full decision making part in this group. But since then, in the discussions, Beckie contributed a point that I thought was particularly important, that I would actually comment and adopt. Which is that the competition (Inaudible) set out in the by-laws, the by-laws for state that and I (Inaudible) shall be established in consultation (Inaudible) and comprised of members of the global internet community. Now that (Inaudible) states what the compilation of this (Inaudible) should be. Members of the community. And comprised of (Inaudible) ICANN. ICANN staff or (Inaudible) of ICANN (Inaudible) in that community. It will be the (Inaudible) of that community, which clearly stop participation on a decision making basis. The only way to interpret that so as not to be (Inaudible) would be to say that actually the members of staff will consider to be part of the global internet community, which is exactly stated quite clearly. That is not right (Inaudible) support (Inaudible) for those reasons I would like to move that the staff be legal team and (Inaudible) be classified as staff support so they will still have a vital (Inaudible) participating in the discussions. But (Inaudible) will be

sort of practical procedural and interpretive (Inaudible) and not for (Inaudible) of the balance of expediency of competing objectives or the balance of objectives (Inaudible) and they will not be (Inaudible) towards the quorum in the decision making. Thank you.

>>SPEAKER: David: Thank you, Malcolm. David McAuley speaking again. Before I go to Bernie, I see a hand up from Sam.

>>SPEAKER: Sam: Thanks, David. Malcolm, one of the things that I think we should clarify, before I respond to some of your statements, is there is also a suggestion in the e-mail that you sent to the IOT last week on this is those of us participating from ICANN Legal were participating with a deep conflict of interest. I did not hear that in what you just explained, and you were relying on other items to (Inaudible) the participation in this group. I wanted to clarify for the record: Do you still believe we have a conflict of interest with participation or looking more at the definition of the group in a procedural matter?

>>SPEAKER: Malcolm: I believe that the original (Inaudible) interest here. Firstly, that the group here is - the purpose of the group is that we are the community coming together to decide how challenges to ICANN as part of the process of holding ICANN accountable should be upheld. There are ICANN subject to that is (Inaudible) and representatives of ICANN have a conflict in that. I note (Inaudible) point that (Inaudible) on the list that characterize anyone other than you as (Inaudible) the (Inaudible) I disagree with that interpretation. Depending on the matter I would be likely to be on supporting ICANN side of an IRP claim, as I would be supporting the claimant's side. Balancing the community is naturally the claimant's side of the bar. I think we are balanced and (Inaudible). But I do think that ICANN is necessarily and definitively the defendant side of the bar. Moreover -- and I am sorry to say this -- moreover I made the point to (Inaudible) but it is very likely in an IRB case that the claim that is being pushed is a direct challenge to the very advice that you Sam and your colleague have given the (Inaudible) given ICANN could normally ICANN would act on a consulting issue or something. (Inaudible). IRB. And so role with this is takes a decision-making role in the challenge with the reaction that you have done or (Inaudible) on yourself could be naught. I see that as a clear conflict.

>>SPEAKER: Sam: Thank you for clarification on that, Malcolm. I think it is really important -- we are going on record right now, stating that ICANN Legal is participating in this group for three years with a conflict of interest raises a serious (Inaudible) integrity of my team. We don't agree with characterization.

>>SPEAKER: Malcolm: To understand what you are saying -- are you using a speakerphone?

>>SPEAKER: Sam: Yes.

>>SPEAKER: Malcolm: There is a real echo. Would it be possible to use a direct microphone or (Inaudible)? The same.

>>SPEAKER: Sam: I am here in a room with Liz with ICANN Legal. We are not able to able to (Inaudible). Are other people having trouble hearing me as well?

>>SPEAKER: David: This is David. I would like to interject. To be honest, I am able to hear Sam very well. But Malcolm, it is not the easiest to here. Maybe you could get closer to your microphone? I hear Sam very well.

>>SPEAKER: Leon: I am having trouble hearing (Inaudible).

>>SPEAKER: David: Leon, David here. Are you having a hard time hearing Sam or Malcolm or both?

>>SPEAKER: Leon: Both.

>>SPEAKER: David: Thank you. So I would ask Malcolm to please get closer. I don't know what to say about Sam. I am hearing it clearly. If others are challenged hearing Sam, like Leon is, we'll have to ask you Sam to pick up the receiver and proceed that way.

>>SPEAKER: Sam: All right. So I'll return to what I was saying. We had some general information that we'll be presenting on. But in terms of the presentation of our participation as a conflict of interest, we think take that as a serious allegation in the legal department and our professional integrity and it also raises a question of what to do next with the rules, if this is a participation about the conflict of interest. That also raises the question of what happens with anyone else that is intended to use the IRP against ICANN or participate as a party in the IRP, how does their participation within an IOT get impacted and what does that do with the three years of rules that we have had in place? It is a normal thing to participate in what procedures will apply to them in the (Inaudible) proceeding.

Let's move on from the conflict of interest portion. I want to make sure that -- I understand that there are senior members of ICANN Org, not from the legal team, that are working on a response to provide to the IOT that will clarify the impact of what Yoren said during the Barcelona meeting. Yoren was not aware of how the ICANN Legal and (Inaudible) came to participate in the team when Malcolm asked the question in the Barcelona meeting. When presented with the same history on the list, Yoren looked at that and said: It sounds like ICANN Org is supporting the community in exactly the way that the community asked them to be supported, through ICANN Legal participation. So from that perspective the view of using Yoren's words to say: Therefore ICANN Legal should be excluded today from a certain level of participation within the IOT is not really what he intended. Given the history of what the community asked us to do and how we have been doing it, we see as ICANN Org taking on the role that was requested. That is a separate issue, whether or not as we look at the IOT as a whole how we are going to work and how community would like to see the group constituted. And if ICANN Legal were not on the call today, we would not have quorum to have this conversation based on the current levels of participation in the group. If Bernie went back over the attendance records for many of the meetings over the past year, would be the similar case.

So clearly there has to be a broader conversation about what to do to bring participants from a qualification and what experience you want to have within the IOT. And if we want to cut off the IOT's ability to do any work now and to conclude the work, then, you know, we can step back. But it still makes -- there's still the end goal, right? We need rules in place and we need the other procedures around that -- (lost sound) -- the IRP that are dictated in the by-laws to be implemented.

And so the focus should be on: How can we make sure that we can conclude the work and whether or not I am considered as a full participant or not? Whether you see me as a full participant or not, I don't really have a position on that. But do know that it is important for this work, which is implementing the IRP and making sure that this goes into place, that there's a consideration of what normal (Inaudible) rules are, what normal procedures are, how we as an entire community -- this in this place I am consider ICANN as part of the global community. We are making sure that the IRP is efficient, both in time and cost-effectiveness. We are all participants. It is the funds that the public trusted ICANN with that are

paying all of the administrative fees, except in extraordinary cases. It is what you pay for in registration fees and contractual fees that take up the time and resources for ICANN to defend against IRP that we want to make sure are developed in a way that make sense for everyone. So the suggestion that ICANN is only participating in the IRP process in a way that can shield ICANN from or protect ICANN more is to ask the question: What are we protecting ICANN against? We are protecting them against any sort of misuse of funds, from inefficient use of funds, while still making sure that we are holding up the IRP that is in the by-laws, to make sure that the community has the ability to come and seek the accountability from ICANN that they have. If that is the baseline we can maybe move forward to work with the community conversation: What should the IRP look like in the future? Do the next round of work, which include appellate rules and CEP. Who do you want as part of that conversation? If I makes sense to exclude ICANN on the basis that they are likely to be participating in all of the (Inaudible) how can you -- parties in the process wouldn't be there as well.

So we need to have all of that as part of a conversation as we look at the composition. I am not suggesting any particular outcome here, but I think that every participant to this group has participated and brought a voice to the table, including ICANN. We need to consider what voices we want to continue having at the table also to make sure that the process runs smoothly. So something that is present today the board that there's not then opportunity for ICANN Legal to come in, for example, and advise the board on something without having the transparency around what it might be that we might be suggesting to the board that this group understands the contribution along the way.

With that, turn it back to the group and let me if there are any questions I can answer from the ICANN side.

>>SPEAKER: David: Thank you, Sam. I see a hand from Robin. If this is further on the discussion, I would prefer to do it at the end and go through the process that I spoke about earlier. Let me ask what your hand is up for.

>>SPEAKER: Robin: I did want to discuss this issue and the relevance of ICANN Legal participation and the role that it should play in our work. Are you asking me to defer that until later?

>>SPEAKER: David: Yes, I am going to ask that you hold that for a minute. I'm sorry. I hear a lot of background noise. I am going to ask you to hold that. We'll have a brief discussion very shortly. We are going to kill one of the things that I said. Malcolm has already mentioned what by-law 4.4N says. We can skip that.

I am going to ask Bernie if you could briefly inform us as to how the IOT was formed, and just so we have an accurate background for this discussion.

>>SPEAKER: Bernie: Can you here me?

>>SPEAKER: David: Yes. Just as I went on mute you asked. But I can hear you.

>>SPEAKER: Sorry. The IOT was a creation of Workstream 1 and was confirmed in a memo by Thomas Rickert, then e-mailed on November 5, 2015. I think that if I heard correctly, Malcolm doesn't have an issue that the community did at the onset when it created the IOT ask ICANN to be a member, just one member, regardless of the number of people who have participated. And so in the interest of letting

everyone have a good discussion, I think that probably summarizes the position. But I will be glad to answer any questions on this, if there are any.

>>SPEAKER: David: Thanks, Bernie. That is my recollection as well. Malcolm, you mentioned in your mail and mentioned to (Inaudible) that I would taken this -- actually I have taken the decision to keep the group going as it was originally constituted and as it ran when Beckie was the head. I will read Malcolm's chat in just a minute.

But Brenda, if you could put up on the screen the e-mail that I sent you that summarized the positions that the people put on the e-mail subsequent to Malcolm's December 6th e-mail making this proposal? I can briefly summarize that we have received comments from Beckie, Avri, Mike -- Beckie, Mike -- Leon, further comment from Leon, Kavouss and myself. They are on the list. I believe it is un--- there's a lot of background noise. If everybody could please mute that is not speaking. I believe the document on the screen is un-synced, so you can scroll and see the comments. This is my best attempt to create reasonable excerpts from what people have posted. You have the e-mail list in your inbox. There's more in the e-mail than I may have pulled out. I was going to read through these, but it is now 30 minutes almost past the hour. I am going the skip that, unless anybody thinks that I should get into it. And so we can move to discuss this issue.

I would like to ask people to get in the queue. Robin had her hand up first in this. I will go to Robin first. In the meantime and while she is speaking, I will try to read Malcolm's chat. Robin, why don't you go ahead.

>>SPEAKER: Robin: Can you hear me okay?

>>SPEAKER: David: Yes.

>>SPEAKER: Robin: Great. I just wanted to support what Malcolm has suggested, and also point out that in my recollection of how we have constituted things over the last few years it's always been the case that we welcome the participation and input and the guidance from ICANN Legal. The question is whether or not they have a decisional role when it comes to consensus calls and making critical judgment calls like this. So I think we are really all in agreement that it's important that they participate and provide the valuable experience that they have. It is just a question of: What's the appropriate role? And I went back and I looked at the CCWG charter -- the original charter from which this group originally came, as you guys were just talking about -- and the charter explicitly says that ICANN doesn't participate as a decisional participant. Let me pull that up here briefly.

In the CCWG charter it says that the (Reading) -- include a staff representative to provide input from the deliberations and able to participate in this effort in the same way as other members from the (Inaudible) a need for any consensus calls neither the board liaison would participate in such a consensus call.

I think what we are doing now in this working group is sort of changing that around and allowing for the voice to count in a consensus. Not only it to count for a call, but each and every person -- whether a person or staff or legal representatives -- to individually count. That surprises me, because I am a co-leader of other working groups and we have never been allowed to count ICANN staff as participants for the purposes of calling a quorum or even in the decisional aspects of it. This is quite a departure of what

we are doing in other ICANN working groups. I think that it is a little bit unfair to characterize Malcolm's statements really targeting against ICANN Legal and integrity and that sort of thing. It is just what is the appropriate role here. Again, what original charter said, what the CEO of ICANN Stat said: Yes, we want to hear from them, but they don't have an appropriate role in the decision making and consensus making. This's all I wanted to say. Thanks.

>>SPEAKER: David: Thanks, Robin. I put my hand in the queue since I want to speak as a participant. But I will go to the back of the queue. I have been speaking. I will take my hand down for a moment. Robin, your hand might take down. The next in queue is Avri. Please go ahead.

>>SPEAKER: Avri: Thank you. Avri speaking. I was very involved at the time of this group being formed as a community member. I remember that we had separate groups also talking about staff participation and the whole discussion, what was open. And this group was specifically basically brought out as indeed an exception as something that was being done because this wasn't creating the policy so much for IRP but the procedures, the supplemental. And that they were considered not only important in terms of overview, but important in terms of bringing along on a consensus. It was almost an experiment, something that we were talking about at the time that we've since put aside about indeed having a closer working relationship with the staff organization at times when it was appropriate. Because they are indeed members of the internet community, though they are a different type than those of us in the community. So I was one that fought very hard for the current arrangement we have being accepted and explicitly adopted. To say that it was in the rules and -- is a mischaracterization. It is quite intentional that it is structured as it is structured now.

>>SPEAKER: David: Thank you, Avri. Beckie is next in the queue. Please go ahead.

>>SPEAKER: Beckie: I want to say that this group is not traditional GNSO working group. It is not a CCWG, it's a specific function identified in the by-laws for implementation of the IRPT rules and other things. And so while I understand that the role of ICANN Legal maybe different in this event than it is in other places, as others have said, that's quite intentional. And indeed I do think it is entirely appropriate to have the party that will be defending the actions of board and staff as part of the conversation about how the rules should operate role. That is absolutely -- I mean "standard" isn't exactly the right word for it. I think it would be peculiar if they weren't here. So I am going to go back to what I said on the list, which is I think that part of the problem is one frankly we are stuck on one issue. And we try to solve an issue with reconstituting the group. If the group is going to be reconstituted -- which I actually think would be beneficial that we should go to the -- with the by-laws say. Consult with the SOs and ACs and get a robust group together going forward. I would certainly advocate for an ICANN member of the real member of the group -- whatever that is -- to be somebody from ICANN Legal on it. But I am troubled that we are trying to solve a just agreement with a, you know, in a procedural way, as opposed to just getting the disagreement resolved.

>>SPEAKER: David: Thank you, Beckie. David McAuley speaking again. I put my hand up in the queue because I want the following comments to be understood as comments from a participant, not as the IOT lead. In the meantime, recall too that there are other comments on screen that you can scroll as to what

other people on the list and invite others to join the queue if you want to join the issue. This is an important issue and we need to come to grips with it.

Let me chat about a few other things. Robin mentioned the charter. I think she accurately quoted it. I don't see this as a charter issue. It was formed on an ancillary issue and (Inaudible) from the beginning, as I recall. And I don't think the charter provisions override what happened with that support group. And then the other thing I mentioned -- Malcolm, what you said in chat. I don't think it was Beckie's decision either to have ICANN Legal participate. It was how it was formed. It is a small point I guess, but I just think it should be clear that that's the way the group was formed and that is the way it's operated so far. I think it should continue to operate that way until we change.

Now I actually participated -- contributed some comments on the list where I said I thought it would be -- it would be strange to pass muster and fundamentally fair and due process and the respondent's side was excluded. I heard Malcolm's comment earlier. I am not sure I have been convinced. I understand in some cases Malcolm would be supporting ICANN's legal side of it, but won't be a part of the litigation or mitigation. ICANN is guaranteed to be on the respondent's side in every IRP. I think it is something worth recalling that many IRPs are brought by individual entities. A good example is applicant for a new GLD. And I think Mike said he represented a case like that or two cases. And so it is not unusual, not strange or unfair or anything surprising that an individual entity would make a claim as an IRP claimant for their individual benefit and not as a member of the community -- in which case ICANN may be just indirectly would be representing community interest in some case. In other words, what I am saying: ICANN has, I think, a very legitimate stake to participate as a full member in this. I will also mean that on the idea of touching base with the by-law, what Beckie is suggesting -- one of the things that happened is touched base where I normally work in the registry stakeholder group just to see what the reaction would be. I think there is developing a strong interest in yes, the IOT team should come back and check with the SO leaders. We were formed under CCWG Workstream 1 and the by-laws became the by-laws. I think this is a good time right now -- a question that goes to the identity of the IOT -- it is a good time to go formally to the SOs and ACs and say: "Here are we are. We are the IOT. We have been operating in the manner under Workstream 1. We now have a challenge to ICANN's participation. What do you think? Tell us how the constitute this team."

It is also an opportune moment because we are discussing a later to the same people saying give us more members, help us reinvigorate this group. So in my opinion this is an excellent time to go to the SO/AC leaders with those two procedural questions and say: "Here we are. We want more information. Let's take the disagreement off of the table and reconstitute the IOT formally and add more members and discuss ICANN's role." When we discuss it, we can discuss: Do they have a role? Is it formal? Is it more than one or one? What is the role of (Inaudible). Are observers allowed? Etc. etc. etc.

Pressing the questions that Malcolm brings up. I think we can put together a team that will draft something along these lines, bring it to the whole IOT team look at it and polish it and do it. I would suggest we do it as a matter of urgency, including in the holiday period, to get this done. We have work to get down. We have two rules time for filing and intervention. We are on the cusp. That is my suggestion as a participant.

I will stop now and see if anybody has any comments. And I will take my hand down. I haven't had a chance to read the chat in the meantime. Bernie, if you have seen anything in chat that you think should be called out I will ask you to call it out. And I will ask if anybody has any further comment on this topic. I don't see any hands. And Bernie I take it -- I'm sorry. Sam has her hand up. Then Bernie I will ask if you could sort of review the chat while this is going on. And thank you. So Sam, over to you.

>>SPEAKER: Sam: Thank you. I just want to make sure that I understood your suggestion. Is this for the IOT itself to do a review of who is participating? Or is this something to support SO/AC consideration of what the IOT looks like?

>>SPEAKER: David: I'm sorry, Sam. Part of that dropped. Would you restate the question?

>>SPEAKER: Sam: Sure. Your suggestion of the us doing from review, that was to support the SOs and ACs as a who will looking at the IOT and not the IOT doing a study of itself; is that correct?

>>SPEAKER: David: Yes. It is along those lines. What I am suggesting is we as the IOT get together and reduce to writing where we are on two important issues. One is Malcolm's challenge and two is adding new member to the IOT. And put those in writing to the SOs and ACs and say: "As a matter of urgency we would like to constitute" -- I can't think of a term right now. "The IOT, we have important work. We need to get on with it. We need to do this urgently."

I would ask others to weigh in on that suggestion and what do we do in the meantime. I suggest that we press on and discuss the issues that we have in front of us, especially the two rules that we have, and get them ready to tee up. That is what I am saying.

I believe it is the latter of what you described Sam. Does that answer your question? Before I go to Malcolm, I will ask you, Sam, if that answers your question.

>>SPEAKER: Sam: Yes.

>>SPEAKER: David: Malcolm's hand is up. Go ahead, Malcolm.

>>SPEAKER: Malcolm: Thank you, David. Like Sam, I want to be sure that I understand exactly what it is that you are proposing here. Use the word (Inaudible) SO/ACs to reconstitute the group and especially in this context, that doesn't (Inaudible) for more than one interpretation. I will put two possible interpretations to you and say which is what you are proposing.

One is that we write to the SOACs and ask them to essentially re-convene this group so this -- as we put some issues before them like the participation and about the status of ICANN's participation and the various questions around that and also how many people should be and who they should be and so forth and as the SOs and ACs to reform this group. That is one understanding of "reconstitute this group."

The other interpretation -- and I think this may have been what you intended, but please I would like to be clear on this -- is more modest move of writing out to the SO and AC leaders, inviting them to submit additional participants for this group and also consulting them on the issues for the (Inaudible) in relation to ICANN Legal's participation. For the enlarged group to then take action upon informed by that submission of views that we hope to get from the SO and AC leaders.

They seem to be two very different approaches there. One is almost sort of almost dissolving this group and asking for it to be reformed anew. The other is a consultation exercise on particular issues, plus a call for new participants that would then be decided by this group. Which way were you proposing?

>>SPEAKER: David: Thanks, Malcolm. It is helping me to sort of sharpen it. I hadn't been that specific. What I was suggesting is the work that we have done and are doing is legitimate. But it is a good time to go to the SOs and ACs and say under the by-laws: One, we want new members. We think that will help us as a team. And two, there has been a challenge to our work to ICANN's legal participation or -- whatever we phrase that -- participation, continued participation in the group. We don't think we are able to decide that. We have to come to you and have that issue resolved. I don't think we as an IOT team can decide on ICANN Legal's validity as a member of the group.

>>SPEAKER: Malcolm: If we are not going to decide it and the SOs and ACs are, how are they going to do that? What is the process? If they have different views, how will they be balanced and how will that be resolved?

>>SPEAKER: David: I can't answer your question, Malcolm. The by-law says what it says.

>>SPEAKER: Malcolm: I am not trying to be difficult, but we are going to let them (Inaudible) raise a question of how this is implemented.

>>SPEAKER: David: Part of --

>>SPEAKER: Malcolm: Should we take this under advisement. Maybe to come up with an answer on the spot is unreasonable. Is this something that we should take away for consideration?

>>SPEAKER: David: Let me react to that. That's your hand. Let me react to that. While I do, I am inviting people to come and in the queue and take part in this discussion.

Part of what I am struggling with is by-law itself. Basically says -- let me read it again. It's worth reading. Of course I have a problem with the link.

IRP implementation oversight team should be established (Reading). Comprised of members of the global internet community.

This doesn't give us much direction. So I take the phrase "under advisement." I don't want to decide right now. But I am worried that "under advisement" creates drag. We have had some nice momentum recently this group. I want to continue that. We have run out the string on this call. But we are going to have a (Inaudible) in January. Rule 4 and I forget the number. We are going to move forward on that. We are not going to sit and wait.

What I would suggest is maybe a small team. My suggestion is me you and Sam, if possible -- I don't know. I am thinking out loud -- to come up with a draft to the SOs and ACs and say that, "by-laws give a certain direction. We are moving along and would like to do two things. Add new members." No problem. "And two, we have a challenge to ICANN Legal's continued participation. We don't feel we are authorized to make a decision on the latter question. So we are asking to consult with you as the by-law requires and see what happens from there."

My guess is as we draft that and discuss that draft early in the next call, it will help us crystallize what we are doing. That it is best I can say right now. I see Avri's hand is up. Go ahead.

>>SPEAKER: Avri: Yes. I think the way you just put it is actually quite workable. We are going back to our so-called chartering organization, as it were, and basically asking for a clarification, asking them very specific questions. And I think as long as that does not end up negating us continuing to work I think that is a great idea. We have to continue working towards consensus on the issues in the meantime, because

that will take many months. And it will take many months when we have answers and we start to understand and start to incorporate new people. So hopefully we can do these as parallel tracks where we continue to work on consensus, but ask for advice from the so-called chartering organization. I don't know that we are using that title for them here, but that is how they essentially get referred to elsewhere. Thanks.

>>SPEAKER: David: Thanks, Avri. That is a good term: "Parallel operations." Robin's hand is up. Go ahead. Take the floor.

>>SPEAKER: Robin: Thank you. I don't think that we want to ask the SOs and ACs to make these decisions for us. I think this is a working group that has authority under the ICANN's by-laws and we need to understand what our authority is and how we operate. What we need to do, instead of going to ask others what do they want to do, we have to take a good hard look at what documents actually govern our activities here. And I think this that's the obvious starting place. And if the answer is clearly there, then there's absolutely no reason for us to ask the SOs and ACs: "What do you think?" Because we will have seen that. I quoted the charter before under which this group was originally formed. So I think -- is there a document that has changed that? Do we have a new charter now? I don't remember seeing one. But I could have missed something. I am wondering: What do we actually have on paper that has some kind of authority with respect to how we make our decisions and how we operate? The one that I am seeing is the charter under which it was created. It seems to me until someone can present a document with authority that says otherwise, I am concerned that we are in violation if we do otherwise. Thanks.

>>SPEAKER: David: Thank you, Robin.

>>SPEAKER: Sam: I'm sorry.

>>SPEAKER: David: Who is that speaking? Beckie. Turning up the charter for the CCWG? Or are you saying that there is a charter for this group?

>>SPEAKER: No. The charter that I referred to earlier that said that ICANN's staff do not could want as decisional participants, that was the original charter for the CCGW under which the working group was originally formed. What I am wondering now is what document are we operating under if it isn't the charter is -- if it is something different than what we were originally created from, there should be some documentation that would answer this question for us. This shouldn't seem like such a mystery. It should be in the chartering documentation. Thanks.

>>SPEAKER: David: Beckie, did you want to say something further before I call on Sam?

>>SPEAKER: Beckie: I don't think the charter for the (Inaudible) working group is relevant. I think it could be accepted that there is a document or charter it is the by-laws provision and I think that I will take responsibility for this, we went out and we consulted. And I think Leon is on the call. And I think that the co-chairs of the accountability went out and sought input in the form of members from the various stakeholder groups. But I don't think we documented anything. I think that's an exercise that is worthwhile doing. But in the meanwhile, the by-laws provision is the document that I think governs.

>>SPEAKER: David: Thanks, Beckie. Sam, you have the floor.

>>SPEAKER: Sam: Thanks. So I heard Robin talk about this charter and talk about consensus participation, etc. and how it is limited through the CCWG charter. And not for this call. I know we have

only 3 minutes left. It would be helpful to see what the consensus call issues are being flagged and ICANN Legal's participation in the -- this might be an easier way to fix this issue. If someone can help explain the consensus call issue and where it has been a problem within the IOT it would be useful and would give ideas of a passthrough. We have heard some other positions. We have heard some other descriptions of how ICANN might be or be appropriate to participation etc. But look at the examples of where that has been an issue and see if we can fix that for the participation going on now.

>>SPEAKER: David: Thank you, Sam. And with respect to that last task that you were suggesting, I would ask Sam that you sort of confirm it on list so we have it crystallized on it what your suggestion is.

We have 2 minutes left. So I want to thank everybody for the discussion. This is an important moment for us. We have to sort this out. My hope is that we can sort it out and continue to work in the background and that we can sort it out consistent with the by-laws. I have made a suggestion on the phone of doing a draft and maybe creating drafting team. We have run out of time on the call. What I will do like I asked Sam to do, come list and make that -- put it in writing and ask if people think it is a good idea. I am going to ask that people respond on list.

I don't want to wait until January to move that idea forward. If it is not a good idea we can kill it. If it is, we can pick it up. This is a really important moment for this team. I personally you can tell, I like the idea of formalizing consultation with the SOs and ACs, as the by-law requires. I really like that idea. I think it is time do it and it will help us crack two nuts: One that Malcolm has raised on ICANN's participation and get new members. And ICANN 64 will probably have a reorganizational meeting.

Thank you for this discussion. I will close the call in about 30 seconds. But I will ask one last time if you have any closing comments to add to this.

>>SPEAKER: Malcolm: If I may, this is Malcolm. I know this is difficult and I know this is contentious, but I would like on a personal level that there is nothing personal about this. I have the highest respect for ICANN Legal team and for those helpful contributions on the things that Sam was just talking about there. We couldn't have acted as effectively. But nothing intended here to be a slight or personal slur on anybody's professional or personal integrity here. But I do think at least these points in the arguments I have raised have at least as much merit to be worthy of consideration without (Inaudible). So I would like to leave you in (Inaudible) Merry Christmas to you all.

>>SPEAKER: David: Thank you, Malcolm. Welcome comment. So we have reached the top of the hour. Thanks again, everybody. Look for something from me on list about the idea that we have spoken about. This is important. Move this forward. We are gaining some nice momentum. This concludes this call. I wish everybody Happy Holidays and goodbye.

>>SPEAKER: Bye, all. Happy Holidays and safe travels for anyone that is traveling on the holidays.

>>SPEAKER: Bye-bye.

EXHIBIT C-83

IOT-IRP Meeting

Thursday, November 29, 2018—19:00-20:00 UTC

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>> DAVID McAULEY: Okay. Thank you all for joining, and I appreciate this opportunity to address what we need to do now. Especially on two fronts. On finalizing the rules that we have, and on perhaps reconstituting the IRP IOT team. So before we get started on the agenda, 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 or 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.

>> BRENDA BREWER: Excuse me David, Greg has his hand raised.

>> DAVID McAULEY: Oh goodness. Sorry I missed that. Go ahead, Greg.

>> GREG SHATAN: Thank you. It's Greg Shatan. Can you hear me?

>> DAVID McAULEY: Yes, we can hear you.

>> GREG SHATAN: 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 prior, so I'll mention it again perhaps. And in September, I became the president of the New York chapter of the Internet society. Which is an at large structure, also a member of NCUC. As we have others who participate in NCUC on behalf of the group, I'm not associated with that aspect actively, but I do represent the group to at large. Thank you.

>> DAVID McAULEY: Thanks, Greg. Congratulations on that. And Malcolm's hand is up so go ahead. Malcolm, if you're speaking, we're not hearing you.

>> MALCOLM HUTTY: Sorry, I can't speak double muted. David, this is a principle SOI update. At the public meeting, following the board meeting in Barcelona Goran asking question about the state in community policy processes said that ICANN staff do not participate as and are not full participate in community processes but acting supporting law to provide staff advice. From the of that advice from Goran, as chief executive, I believe we need to revisit the vision to include ICANN legal stuff and as full participates in this group. I would ask that they be reclassified as a support role and full participates eligible for consensus course.

>> DAVID McAULEY: Okay. Thank you, Malcolm. Before I comment, I see Sam's well, Sam had her hand up. Greg, I believe that's an old hand or is that a new hand from you? 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'd 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 ICANN participating in some substitutive fashion. The reason being that ICANN is the only person on this call or any setting that I'm aware of that's guaranteed to be a party in every single IRP. Be that as it may, that's my personal view. It's certainly not a company view, but having I see your hand up. I'll come to you. Having said that, I understand your point and sort of what I 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.

>> MALCOLMN HUTTY: Yes, I believe, it's precisely because of ICANN special interest, but I should participate only in supporting capacity. That said I was not as ICANN leave this call or not participate in any respect it was the state of their participation I was speaking to. I noted that the transcript didn't caption my words clearly. So if I may repeat my request for the benefit of the transcript more slowly.

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

>> MALCOLM HUTTY: Thank you. My request is that ICANN and Joan's Day be classified so that that a participate in this group as staff supports, not as full participating members of this group, and as a consequence of that, they would not be considered eligible for inclusion in quorum counts or consensus courts.

>> DAVID McaULEY: Okay. Thank you. 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 that's been captured, or we can go back and listen to the tape, but I suspect that that

>> BERNIE TURCOTTE: David?

>> DAVID McaULEY: Yes, go ahead.

>> BERNIE TURCOTTE: My hand is up, when you have a minute.

>> DAVID McaULEY: No, go ahead. I'm asking if you would talk now.

>> BERNIE TURCOTTE: Okay. Thank you. I understand Malcolm'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.

>> DAVID McaULEY: Thank you, Bernie. Excuse me, 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 is drawn up today we are not heavy certainly not going to make decisions. It is it has been my intent and I hope I expressed it somewhat clearly. What I hope as lead that we can do between now and the end of January is finish work on the rules of procedure. We have interim rules that the board's approve and there was some disagreement at ICANN 63 about that. I think everyone was expressing themselves in good faith there, but there was some disagreement. We can sort of take that issue entirely off the table by finalizing the rules and not having interim rules anymore. And my goal is that this group should get this done by the end of January in the following manner. In this meeting and in the meeting, I

hope we can hold on December 13th and on the list, first address Rule 4, the time for filing rule and review the public comment, somewhat formally. We're not going to read them as they were written. Bernie and I will read parts of them, and put them 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 and 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, whatever you want to call it. My hope is that will be done by the end of the January. Greg, I see your hand up. That this group could with some focus finish the rules. And then I also think, as you know, that we could go to the SOs and ACs around the time that we finish them we can go to them now so they can get started on this process, to add new members to IRT and sort of reinvigorate our work because we do have a chain of things left for us to do. And there's no reason to continue with this pace. I think we should have a meeting at ICANN 64, a small discrete one-hour meeting, where we 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 on. Malcolm's point is noted. I would ask Malcolm to come to the list and repeat what he said on this call, assuming he does make this a formal item discussion. I appreciate what you said Bernie. I appreciate your point. It's not fair to us to sort of garner our arguments right now, because it's not something we prepared to do. So anyway, that would be what I suggest. I'm open to what people think about that. Greg's hand is up so I'm going to call on Greg right now.

>> GREG SHATAN: Greg Shatan for the record, and I don't have Malcolm's exact words in front of me. I just wanted to point out we're implementation oversight team and not working group and that implementation is hybrid tasks of staff and the community, so whatever Goran was speaking to, I would be very hesitant on applying it for all seasons, in particular, in IOT context. We need to look at exactly what's going on here. So and on a related point, I think we should consider, you know, calling out to members and asking they either step up or replace themselves, or we ask for new members if needed. If our problems is getting a quorum and whatever and we have to look at that quorum issue. I don't know that we have a quorum issue but the idea we're closed to business to any new members is exacerbating that issue. My main point is as an IOT, 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 you.

>> DAVID McAULEY: Thank you, Greg. Before I go on to Malcolm, I will say I do believe we have a quorum. We've been working under the that five working members would equal a quorum and I believe that we have that even irrespective of ICANN's participation. Having said that, thank you, Greg, 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 then and also 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 for us 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 closed group during CCGW, but when this team was sort of adopted by

the Bylaws in October of 2016, Bylaws 4.3N does say the IOT will be established in consultation with the SOs and ACs and so I think we now have the opportunity to go to SO and ACs and say we're looking for new members. As you can see from some of my mailings, 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 alike. Now I'll turn to Malcolm.

>> MALCOLM HUTTY: I just make one quick reply to Greg because he made a specific point there relating to the fact this is a slightly different group than other kinds of working group within ICANN. I spoke to what Goran had said at the public meeting what Greg might not be aware. I'd like to share with him. When Goran said that, it was relation to a question from me, it was specifically in relation to this group. But specifically

>> DAVID McAULEY: Malcolm, 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.

>> MALCOLM HUTTY: Yeah, I just wanted to make Greg and everyone else to understand that Goran was speaking specifically in relation to a question in this group not about ICANN not about ICANN community processes in general. So that's information, but having said that, I think we've done on that subject to write to the group, I will do so David. However, I think now we need to think about what comes next and your proposal that 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 sent your proposal to the mailing and the response, I got back was 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 to 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 to hear the groups views on the matter.

>> DAVID McAULEY: Thank you, Malcolm. A couple points starting at the back end of what you said. With respect to why I said what I said, as I see it, the group that currently exist is the group that's 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 rules be 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 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 IOT, how the IOT should run. Anything that you want to propose, I think you should propose. What I don't want to do is try and 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 in response to a question you were raising about this. I think it's fair to say at least that question it took Goran right there in the moment. I don't know that he was preparing for that. Be that 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 substitutivity 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.

>> MALCOLM HUTTY: No, your invitation that I come back I'm quite happy with. I consider that a way forward we the close that or move forward.

>> DAVID McAULEY: 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 this and we will 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 on IOT and as 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 registrars stakeholder group, registry stakeholder group, ISSPCP, IPC, BC, NCSG I think 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, but I have read Bernie's summary more recently. I would invite folks 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 simply 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 even ICANN is okay with changing 45 days to 120 days. It would be no point in reading those. And so what I'd 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 contingency. And the business constituency basically said, The BC further recommends that the calculation of any time period should not include the time within which the parties are formally engaged in any ICANN accountability mechanism relating to or in connection with the issues being referred to IRP. I doubt that will be very a very contentious aspect of of the rules. And then in removing the one year period the BC said, The current revisions to the updated supplementary Procedure rule number 4, time for filing, addressed these time limitation concerns by extending the 45 day aspect of the time for filing language to a 120 day period for filing after the claimant becomes aware of the material effect and the 12 month limitation to file an IRP has been eliminated in the new amendment. The BC supports these revisions and urges the IOT not to revert on these essential changes to IRP procedure.

Okay. Bernie, if you would like to take on the IPC comment.

Bernie, if you're speaking, we can't hear. If you're having difficulty following, just let me know. I'll be happy

>> BERNIE TURCOTTE: Sorry about that. I was double muted as Malcolm said. Going to the IPC removing one-year repose. Can you hear me now?

>> DAVID McAULEY: Yes.

>> BERNIE TURCOTTE: Okay. Excellent.

On the removal of the separate 12 month limitation, as the IPC commented during the previous public comment on the draft supplementary procedures, the previously proposed overarching limitation period

would appear to be inconsistent with the constructive knowledge requirement under the ICANN Bylaws, as confirmed in the advice by the Sidley Law Firm. The IPC therefore supports its removal. In the event that the outcome of this public comment and the further deliberations of the IRP IOT do conclude that some overall limitation period, or repose, is nevertheless required, the IPC asserts that there must be a reasonable limitation period from the date of ICANN's action or inaction. We believe that 12 months is inadequate, and that 24 months or 36 months is far more in line with analogous statute of limitations principles in established statutes and case law. Again, any such 24- or 36-months 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 an ICANN action or inaction.

And then there's a second part.

The IPC believes that the starting point of the time for filing period must be unambiguous. The time for filing period should not start running before the publication of the adopted minutes setting out the reasoning of the action or inaction. Whenever an action or inaction immediately affects a party, or multiple parties, 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 is also something on interplay with other accountability mechanisms.

Interplay with other accountability mechanisms remains unclear. We, and others, have previously expressed our strong belief that it is necessary to amend the time for filing periods to ensure that the deadline for filing an IRP be tolled during the time within which the parties are formally engaged in other accountability mechanisms over the issues being referred to IRP, in particular: A. the Cooperative Engagement Process which is a voluntary but strongly encouraged step prior to the commencement of an IRP Bylaws Section 4.3(e); B. An ongoing Reconsideration Request process, including any Ombudsman review which forms a part of that process pursuant to Bylaw Section 4.2; C. A request under ICANN's Documentary Information Disclosure Policy (DIDP); and D. A Complaint to the Ombudsman pursuant to Bylaws Article 5. Since complaints to the Ombudsman generally are not subject to set time limits, we recognize that this might give rise to concerns of undue delay. Nevertheless, Ombuds complaints are out of the hands of the complainant and they should not be penalized for something which they cannot control. An IRP is an extremely costly and time consuming process. It is not to be entered into lightly. All members of the community deserve the opportunity to attempt to resolve their dispute using the other accountability mechanisms in place without the concern that they will serve to exhaust the limitation period for bringing an IRP.

That's it. Back to you David.

>> DAVID McAULEY: Thank you, Bernie. And what we're trying to do is create a record along with the comments so people can look at the phone call come back and take a look. I'm going to go ahead and read a comment from noncommercial stakeholders where they say, hence we support the following change: "Under the prior text, a claimant would have had to have filed their IRP within one year of the action/inaction that is being challenged. Under the new text, the only timing requirement that the

claimant has to meet is the 120 day requirement above, whether the challenged action/inaction happened 3 months, 3 years or 5 years prior or more.

The NCSG under no circumstances accepts the return to the previous text, as the IRP is a critical tool to keep ICANN accountable and as transparent as possible. However, we reiterate our previous comment that while the time limit might be appropriate for commercial actors, it is not for consensus policy.

That's the end of that comment, and so Bernie, if you want to go ahead and take a stab at the registrar stakeholder group.

BERNIE TURCOTTE: Sure. The Registrar Stakeholder Group would like to thank the IRP IOT for their work and the proposed amendment to its original updated supplementary procedure number 4, time for filing. The registrar stakeholder agrees that extending the time allowed 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, David.

>> DAVID McAULEY: Here's a comment from registrar stakeholder. On the separate 12 month limitation, the registrar stakeholder does not support the new proposal that deletes this idea – we believe there must be a reasonable limitation period from the date of ICANN's action or inaction. We believe that some cap is needed to allow for predictability and for the final establishment of a reliable body of precedent. We believe that 12 months is inadequate. The registrar stakeholder believes that the calculation of the overall limitation should not include the time in which the IRP Claimant was engaged in certain accountability mechanisms. We provide alternative proposals, either of which is acceptable to the registrar stakeholder. A. 36 month limitation, excluding the time in which the IRP claimant was engaged in CEP or an ongoing reconsideration request process relating to the issues being referred to IRP; or B. 24 month limitation, excluding the time in which the IRP claimant was engaged in CEP an ongoing reconsideration request process, the first ongoing Ombudsman review, or the first or second ongoing documentary information disclosure policy request, relating to the issues being referred to IRP. So that was that. So next over to you Bernie or I believe it's ICANN comment.

>> BERNIE TURCOTTE: Yes. I will get into that.

We 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 first, I'm going to go to the full text of the ICANN since we abbreviated it in the summary. ICANN org's objection relates to the second question. The new language posted for comment by the IRP IOT removes any outer limit from the date of ICANN's action giving rise to the IRP to the time of the filing of an IRP. This means that an IRP could be filed 2 years, 5 years, even 10 years after the act being challenged, so long as an IRP is filed within 120 days of when the claimant learned of ICANN's act and the alleged harm caused. This removes any finality to ICANN's actions, ignores the principles supporting the IRP, and depletes, rather than upholds the principle of accountability. Removing an outer time limit on filing fundamentally changes the nature of the IRP from holding ICANN accountable to its Articles of Incorporation Articles or Bylaws into an individualized grievance mechanism for matters that were long thought to be closed. It also provides an ability to raise challenges to ICANN's actions long past any

established statute of limitations that might be available in a court of law. The use of outside time limits on potential challenges is a concept accepted across legal systems, often referred to as a statute of limitations. When the IRP was first introduced in ICANN's Bylaws, there was no time limit to file. Time limits were introduced in 2012, upon the recommendation of a panel of dispute resolution and corporate governance experts, to bring the IRP more in line with accepted dispute resolution standards. The time limit then put in place was approximately three months from Board action. Even with a time limit of 12 months, as initially recommended by the IOT, the outer limit to file an IRP would be approximately 9 months longer than claimants have had for the past few years.

One, the IRP is a tool to hold ICANN accountable to the Articles of Incorporation and Bylaws. The IRP is a way to identify if ICANN violated its Articles of Incorporation or Bylaws, and to hold ICANN accountable to those findings. The IRP cannot result in individual damages or awards or relief from ICANN. No one in the ICANN community is benefited by long delays in identifying ICANN's improper actions.

Two, placing an outer time limit to file upholds the purposes of the IRP. Placing an outer time limit on how long a claimant can challenge an act of ICANN is consistent with the purposes of the IRP as defined under Article 4, Section 4.3(a)(vii) of the Bylaws, which is to secure the accessible, transparent, efficient, consistent, coherent, and just resolution of Disputes. Through the Enhancing ICANN Accountability Process, the ICANN community agreed that the IRP should be transparent, efficient and accessible both financially and from a standing perspective and designed to produce consistent and coherent results that will serve as a guide for future actions. One of the purposes of the IRP is to reduce disputes going forward by creating precedent to guide and inform the ICANN Board, staff, Supporting Organizations (SOs) and Advisory Committees (ACs), and the community in connection with policy development and implementation. Removing any time frame within which one must file an IRP works against these principles. The longer it takes to challenge an action of ICANN, the less consistent or coherent a review of that act will be. Board members, organization personnel, and community members change; memories fade; documentation may no longer be available. Instead of guiding future actions, the outcome of an IRP on an action taken many years prior would be backward looking, and raise bigger questions of how would the community move forward? In short, allowing an IRP to be brought years after the action in question removes: (1) incentive for the ICANN community to be vigilant in raising issues of ICANN's accountability to its Bylaws and Articles; and (2) any sense of stability or finality to ICANN's actions. In its deliberations, one of the primary examples that the IOT relied upon to support the removal of a statute of repose is the possibility that a policy recommendation addressing content and therefore outside of ICANN's mission came out of the GNSO's policy development process (PDP) and was approved by the ICANN Board. In the example, years later a potential registrant was impacted by the policy approved by the Board and wished to bring an IRP. The suggestion that ICANN should never have finality to its decisions is therefore based upon a presumption that all parts of the ICANN community allowed an out of mission policy to pass through the PDP including public comment and that the Board then approved an out of mission policy. Further, once implemented, no one came forward to challenge that action for a matter of years. This example shows that eliminating any outside time limit on filing encourages participants to wait to hold ICANN accountable, as opposed to addressing potential Bylaws violations when they are thought to have

occurred. This does not serve accountability or the purposes of the IRP, and is based on a complete breakdown of the multistakeholder model that the IRP is not designed to fix.

Three, removing an outer time limit creates unprecedented rights and destabilizes ICANN. Removing an outer time limit on filing an IRP removes any certainty from ICANN's authority to enter contracts, including with its registries and registrars. It allows people to come forward, years later, to try to upend binding agreements. ICANN's contracted parties already agree to be bound by consensus policies that can change their obligations mid agreement, and have agreed with that level of flexibility in contracting with ICANN. This proposed change would remove any certainty in ICANN's authority to enter each of those agreements, and would greatly impair ICANN's ability to perform its mission. Each of the over 2,500 contracts that ICANN holds with registries and registrars is grounded in law and has legal limitations on when disputes related to that contract may be raised. The suggested removal of time to file an IRP could allow challenge to an ICANN action taken a decade ago on a contract, or could impair a contract entered into years before the IRP procedures went into effect. In either situation, even if an IRP were filed to challenge ICANN's old actions in relation to a contract and ICANN won, the mere fact that ICANN would allow the IRP rules to be modified in a way that would interfere with these contracts could subject ICANN to legal liability under the law. This would create confusion, uncertainty, and put ICANN at risk of facing staggering costs to address this situation. ICANN is not aware of any other organization that allows a challenge to be raised against any action at any time. Similarly, the members of the IOT pushing for the removal of time limits to file an IRP have offered no examples of other organizations that open their actions up to challenge at any time. The removal of time limits to file an IRP is unprecedented and puts the entire ICANN model at risk.

Four, the time to file an IRP runs from each individual action or inaction. Multiple opportunities exist to challenge ICANN's acts in a timely manner. Every time the ICANN Board or organization take an action, that comes with the possibility that someone might declare that act to be outside of the Articles or Bylaws and allege that act caused material harm. For example, if the ICANN Board approves a policy recommendation, and then the ICANN org implements that policy in a way that is alleged to be outside of the Bylaws or the Articles, the implementation decision is a separate act from the policy approval, and has the potential to give rise to new grounds for an IRP even if that implementation date was years after the policy approval date. If ICANN org later takes compliance activity related to that policy in a way that is alleged to be outside of the Bylaws or the Articles many years after the policy approval date, that action, too, is a new act of the organization that can be challenged through an IRP. There is no need to draft a procedural rule that allows challenge of the very first act on an issue, no matter when taken, as the IRP can be timely used to challenge the specific act alleged to cause the Articles or Bylaws violation.

Five, an outside time limit to file an IRP is consistent with the Bylaws. In building its first set of Draft Supplementary Procedures for public comment, the IOT developed the time for filing rule in accordance with its obligations under the Bylaws. The Bylaws state that the Supplementary Procedures must identify the time within which a Claim must be filed after a Claimant becomes aware or reasonably should have become aware of the action or inaction giving rise to the Dispute. The IOT proposal stated both the 45 day window from becoming aware or reasonably should have been aware of the harm caused by the

action, as well as the outer limit of 12 months from the date of the action. The CCWG ACCT deferred the issue of setting a time frame, leaving the issue to the 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 a claimant to bring an IRP.

ICANN org stands behind and supports the enhanced accountability measures that the CCWG ACCT recommended, including the expanded IRP. However, each of ICANN's accountability mechanisms need to be viewed in context to make sure they fit with ICANN's work and support the ICANN community. ICANN's actions do not exist in a vacuum: they are actions on community made policy recommendations; actions that impact ICANN's contracted parties and the business decisions they make; and actions that end users, registrants and all other parts of the multistakeholder community rely upon. All parts of ICANN rely upon ICANN acting within its Articles of Incorporation and Bylaws, and have an interest in swift action when ICANN is not doing so. The IRP does not exist to provide relief to a single individual or entity; the IRP exists to hold ICANN accountable to its Articles of Incorporation and Bylaws. The ICANN community has every need to bring swift challenges when ICANN has acted improperly. Removing any outer limit on when that act can be challenged only serves to harm accountability across ICANN. Over to you, David.

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

Which is known INTA. INTA commends the IRP IOT's removal of Rule 4's 12 month ultimate deadline for commencing an IRP, and its expansion of Rule 4's period for filing from 45 days to 120 days.

The next comment is from ISPCP. I could have read through that Bernie if you're tired of reading.

>> BERNIE TURCOTTE: That's fine. They're short now.

Removing one-year repose ISPCP. The ISPCP therefore strongly supports the decision to remove from draft rules the supplementary deadline of one year from the date of ICANN's action or decision. The deadline of 120 days that the IOT now proposes is entirely sufficient to ensure prompt action and meet the purposes of the IRP as set out in the bylaws. We urge the IOT not to revert to this change.

Back to you, David.

>> DAVID McAULEY: Thank you. There's a comment from Verisign on the one-year part. Yes? Did I hear a voice? I'm sorry, Malcolm's hand is up.

>> MALCOLM HUTTY: Yeah.

>> DAVID McAULEY: Go ahead.

>> MALCOLM HUTTY: David, you've just allowed or asked Bernie to read ICANN's whole reason input into this even though it was five pages. You now read merely the conclusion from the ISPCP but not it's reasoning. I would therefore ask for once this is very rare but for once I'm going to ask formally on behalf of ISPCP that in the interest of fairness, we should similarly read reasoning that the ISPCP provided for its position into the record. Unlike the ICANN or so-called input this is actually less than a full page. It won't take very long. May I go ahead?

>> DAVID McAULEY: Yes. 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 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, go ahead. You can read the ISPCP now or wait until I finish with Verisign.

>> MALCOLM: I'm happy to go now.

>> DAVID McAULEY: Go ahead.

>> MALCOLM: Okay. I'm happy to admit the page portion on the other issue and read only that portion that relates to repose issue on the discussion. That reads as follows: The ISPCP especially with cause of criticisms raised in previous public comment rounds that the then draft rules could have prevented certain actions from ever being challenged through the IRP in some circumstances because the deadline for filing the dispute would have elapsed before filing a dispute was permitted under the rules. The ISPCP would regard that as completely unacceptable. As set out in the Bylaws, the IRP should be available to resolve disputes between material affected party and ICANN. Claimants should be required to act promptly to make the IRP, but the ability to set deadline for filing must not be used to exclude certain claimant for types of disputes entirely.

Under the draft rules, claimants may only challenge ICANN in the IRP, if they been materially affected ICANN's action. This rule must be aligned with the rule on the 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 affected. The time for filing cannot be calculated from a date, such as when ICANN took the decision complaint about. As this disregards the time may elapse from decision and implementation which could amount to a considerable period, even years. To do so would in some circumstances entirely deprive claimant the opportunity to challenge legitimacy of ICANN's action regardless of how promptly the 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 this flaw in the original proposal in the previous public comment ground, and to the IOT to acting to correct it. The IRP strongly supports to remove from the draft rule that quote, unquote supplementary deadline of one year from the date of ICANN's action or decision. The deadline is 120 days that the IOT now proposes. It's entirely sufficient to insure prompt action and meet the purposes the IRP set out in the Bylaws. We urge the IOT not to revert this change.

That concludes the comment. Thank you.

>> DAVID McAULEY: Thank you, Malcolm. There's one comment left from Verisign. It goes as follows. The elimination of a period of oh, Leon said my voice is sounding like a robot. Am I being heard now if I speak slower?

>> BRENDA BREWER: You're sounding fine.

>> DAVID McAULEY: Okay. Here's the comment. The elimination of a period of repose that requires that all claims be brought within a period of time from the date of the challenged action or inaction, however, is not consistent with the bylaws. Verisign proposes that a repose period of 24 36 months be added back into Rule 4; the longer time period would address the concerns raised in the comments while at the same time ensuring fundamental fairness and due process to other members 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 --

[Dogs Barking]

We are short on time, if you could mute your lines.

But in discussing the comments, I would bring to our attention an e mail that Malcolm sent to the list August 14. You can search the archive to see his mail. I put it in a link about a week or so ago saying what the agenda will probably look like. And Malcolm in an e mail that's longer that I'm now going to state, basically in his opinion, we had three options. First option would be a a clear majority expressed a certain point of view. The second option is to spend yet more time attempting to find a compromise reach a compromise, and third option is report we're unable to reach full consensus. And instead include a report, a faithful representation of the opposing viewpoints and arguments, et cetera, and send that on. Those are three options. If anyone can think of anymore, I ask you put them on the list. We should have this discussion our meeting on 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 the agenda. One, we already 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 in that respect and we can discuss that. And secondly, I have proposed a letter that would be something that this group would send to the SOs 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 IOT to us to discuss and agree. And so you should see that letter in your e mail box. 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 substitutive meeting ICANN 64. Having said all that, I would open the floor to any discussion of the rules that Bernie and I the comments the 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. Go ahead.

Malcolm, can I be heard? I'm wondering if

>> BERNIE TURCOTTE: We can hear you quite well David.

But I cannot hear Malcolm.

>> DAVID McAULEY: 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 SOs 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 says he thinks only his first option is correct. So 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 compromise. Option three strikes me as being viable, 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. Bernie and I will tee up the call on the next one, but I do urge those on this call please try to be available for a follow up call in December.

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

>> DAVID McAULEY: We're just in the process of closing down the call. You're certainly welcome to make a comment. We're closing down the call with the view of having this discussion in the next meeting, December 13 is my hope for that meeting.

>> MALCOLM HUTTY: I just wanted to say in listing those options, I was just simply being logically complete. I don't consider in any way legally valid given the nature of the feedback that's been received. My own view 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 actually a direction of the charge that this group has been given under the Bylaws. So I would rule out that third option completely.

>> DAVID McAULEY: 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 Malcolm. Avri, if you had a comment, you're welcome to make it on the phone. Otherwise, I suggest we end the call now, and pick it back up on the 13th. Avri said by the end, we were back down to the stalwart participant group. I think that's a fair comment. Again, I'll reiterate, I hope that we can all reassemble on the 13th. It will just be a 60-minute call. We can have other calls in January. We can talk on list. I appreciate the fact we had good 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.

We can end the recording.

>> BERNIE TURCOTTE: Bye everyone.

>> DAVID McAULEY: Bye bye.

This rough edit transcript, which may contain missing, misspelled or paraphrased words, is only provided for your immediate review and is not certified as verbatim and is not to be cited in any way.

EXHIBIT C-84

Recommendations to Improve ICANN (Internet Corporation for Assigned Names and Numbers) Staff Accountability

Open Date

13 Nov 2017 23:59 UTC



Comments Closed

Close Date

14 Jan 2018 23:59 UTC



Staff Report Due

15 Feb 2018 23:59 UTC



Report of Public Comments

(<https://www.icann.org/en/system/files/files/report-comments-accountability-recs-16feb18-en.pdf>)

Follow Updates (/users/sign_up?document_id=13795&following=true)

View Comments
(<https://mm.icann.org/pipermail/comments-icann-accountability-13nov17/>)

Originating Organization _____

Cross Community Working Group on Enhancing ICANN (Internet Corporation for Assigned Names and Numbers) Accountability (CCWG-Accountability)

Staff Contact _____

Brief Overview

Purpose: This Public Comment seeks community input on the CCWG-Accountability Work Stream 2 (WS2) draft recommendations on ICANN (Internet Corporation for Assigned Names and Numbers) Staff Accountability. These draft recommendations were developed by the CCWG-Accountability as required by Annex 12 of the final report of the Cross Community Working Group on Enhancing ICANN (Internet Corporation for Assigned Names and Numbers) Accountability, Work Stream 1 (CCWG-Accountability, WS1).

Karen Mulberry

karen.mulberry@icann.org (<mailto:karen.mulberry@icann.org>)

Contents

[Brief Overview](#)

[Report of Public Comments](#)

[Section I: Description and Explanation](#)

[Section II: Background](#)

[Section III: Relevant Resources](#)

[Section IV: Additional Information](#)

[Section V: Reports](#)

Current Status: The CCWG-Accountability reviewed these draft recommendations at its 11 October 2017 plenary meeting and approved their publication to gather public comments.

Next Steps: Following the public comment period the inputs will be analyzed by the CCWG-Accountability WS2 who will consider amending the recommendations in light of the comments received and will publish a report on the results of the public consultation. If significant changes are required as a result of the public consultation the CCWG-Accountability WS2 may decide to not include these recommendations in its final report given it must complete its work by June 2018. If there are no significant changes required, the CCWG-Accountability WS2 will include these in its final report and forward it to its Chartering Organizations for approval and then to the ICANN (Internet Corporation for Assigned Names and Numbers) Board for consideration and adoption.

[Report of Public Comments \(https://www.icann.org/en/system/files/files/report-comments-accountability-recs-16feb18-en.pdf\)](https://www.icann.org/en/system/files/files/report-comments-accountability-recs-16feb18-en.pdf)

Section I: Description and Explanation

The CCWG-Accountability-WS2 on ICANN (Internet Corporation for Assigned Names and Numbers) Staff Accountability project obtains its mandate and scope from ICANN (Internet Corporation for Assigned Names and Numbers) bylaws and the CCWG-Accountability, WS1 Final report which included Recommendation 12 the following:

As part of Work Stream 2, the CCWG-Accountability proposes that further enhancements be made to a number of designated mechanisms:

- *Staff Accountability*

Annex 12, which details Recommendation 12, also included the following recommendations with regards to Staff Accountability:

In general, management and staff work for the benefit of the community and in line with ICANN (Internet Corporation for Assigned Names and Numbers)'s purpose and Mission. While it is obvious that they report to and are held accountable by the Board and the President & CEO, the purpose of their accountability is the same as that of the organization:

- *Complying with ICANN (Internet Corporation for Assigned Names and Numbers)'s rules and processes.*
- *Complying with applicable Bylaws.*
- *Achieving certain levels of performance, as well as security.*
- *Making their decisions for the benefit of the community and not in the interest of a particular stakeholder or set of stakeholders or ICANN (Internet Corporation for Assigned Names and Numbers) the organization alone.*

Having reviewed and inventoried the existing mechanisms related to staff accountability, areas for improvement include clarifying expectations from staff as well as establishing appropriate redress mechanisms. The CCWG-Accountability recommends as part of its Work Stream 2:

- *The CCWG-Accountability work with ICANN (Internet Corporation for Assigned Names and Numbers) to develop a document that clearly describes the role of ICANN (Internet Corporation for Assigned Names and Numbers) staff vis-à-vis the ICANN (Internet Corporation for Assigned Names and Numbers) Board and the*

ICANN (Internet Corporation for Assigned Names and Numbers) community. This document should include a general description of the powers vested in ICANN (Internet Corporation for Assigned Names and Numbers) staff by the ICANN (Internet Corporation for Assigned Names and Numbers) Board of Directors that need, and do not need, approval of the ICANN (Internet Corporation for Assigned Names and Numbers) Board of Directors.

- *The CCWG-Accountability work with ICANN (Internet Corporation for Assigned Names and Numbers) to consider a Code of Conduct, transparency criteria, training, and key performance indicators to be followed by staff in relation to their interactions with all stakeholders, establish regular independent (internal and community) surveys and audits to track progress and identify areas that need improvement, and establish appropriate processes to escalate issues that enable both community and staff members to raise issues. This work should be linked closely with the Ombudsman enhancement item of Work Stream 2.*

Section II: Background

The group adopted the definition of "accountability" used by the board and organization in its development of the board resolution on delegated authorities, passed in November 2016. Accountability in this context is defined, according to the NETmundial multistakeholder statement, as "the existence of mechanisms for independent checks and balances as well as for review and redress."

The focus of this group was to assess "staff accountability" and performance at the service delivery, departmental, or organizational level, and not at the individual, personnel level.

The group's work was a combination of problem-centered analysis as well as solution-focused exploration, with the goal of identifying any gaps to address as part of an effort to create a comprehensive system of checks and balances, based on the assessment of tools and systems currently or newly in place. The group considered the roles and responsibilities of ICANN (Internet Corporation for Assigned Names and Numbers)'s Board, staff and community members and the links between them, sought input on issues or challenges relating to staff accountability matters, and assessed existing staff accountability processes in ICANN (Internet Corporation for Assigned Names and Numbers).

In general, these efforts revealed an extensive accountability system both within ICANN (Internet Corporation for Assigned Names and Numbers) organization as well as in the mechanisms of review and redress afforded the Community, including the Board's role, the Empowered Community Powers, Complaints Office, and Office of the Ombuds. The group found that many of the issues or concerns identified by the group will benefit from simply making existing mechanisms more transparent. The group has identified a few important changes that will further enhance these accountability mechanisms. The changes proposed are designed to work with existing systems and processes, and to help establish mechanisms to support continuous improvement within the ICANN (Internet Corporation for Assigned Names and Numbers) system.

Section III: Relevant Resources

- [CCWG-Accountability Work Stream 2 - Draft Recommendations on ICANN \(Internet Corporation for Assigned Names and Numbers\) Staff Accountability \(/en/system/files/files/ccwg-acct-ws2-draft-recs-accountability-31oct17-en.pdf\)](#) [PDF, 290 KB]

Section IV: Additional Information

Supporting Documents

- CCWG-Accountability Work Stream 2 – SO (Supporting Organization)/AC (Advisory Committee; or Administrative Contact (of a domain registration)) Accountability Subgroup wiki – <https://community.icann.org/x/IBWOAw> (<https://community.icann.org/x/IBWOAw>)
- CCWG-Accountability Charter - <https://community.icann.org/display/acctcrosscomm/Charter> (<https://community.icann.org/display/acctcrosscomm/Charter>)
- CCWG-Accountability Work Stream 1 – Final recommendations Annex 12 - <https://community.icann.org/pages/viewpage.action?pageId=58723827> (<https://community.icann.org/pages/viewpage.action?pageId=58723827>)
- [Responses to Public Comments \(/en/system/files/files/responses-comments-accountability-recs-21mar18-en.pdf\)](#) [PDF, 57 KB]

Section V: Reports

- [Report \(https://www.icann.org/en/system/files/files/report-comments-accountability-recs-16feb18-en.pdf\)](https://www.icann.org/en/system/files/files/report-comments-accountability-recs-16feb18-en.pdf)

EXHIBIT C-85

IRELL & MANELLA LLP

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December 5, 2018

VIA E-MAIL AND U.S. MAIL (casefiling@adr.org)International Centre for Dispute Resolution
Case Filing Services
1101 Laurel Oak Road, Suite 100
Voorhees, New Jersey 08043Re: Afilias Domains No. 3 Limited v. Internet Corporation for
Assigned Names and Numbers, Case No. 01-18-0004-2702

Ladies and Gentlemen:

Our firm represents Nu Dotco, LLC ("NDC") in connection with the matters addressed below. I am sending this letter on behalf of NDC and VeriSign, Inc. ("Verisign") Verisign is separately represented by Ronald Johnston of Arnold & Porter, who is copied below. He joins in this letter on behalf of Verisign.

We write this letter to advise you that NDC and Verisign will be filing, before the end of next week, a request to participate in the above-referenced Independent Review Process ("IRP") as *amici curiae* pursuant to the Interim Supplementary Procedures for Internet Corporation for Assigned Names and Numbers (ICANN) Independent Review Process (IRP) ("Supplementary Procedures"). The request will be based on the material interests of NDC and Verisign relevant to the dispute that allow them to participate as *amici curiae*. Those interests include NDC's membership in the contention set for .web, its status as the winner of the .web auction who will be harmed by the relief sought by Afilias, and the centrality of NDC's and Verisign's alleged conduct in the dispute alleged by Afilias in the IRP.

The Supplementary Procedures provide that persons or entities are allowed to participate in an IRP as *amicus curiae* so long as they have a "material interest relevant to the DISPUTE but do not satisfy the standing requirements for a CLAIMANT set forth in the Bylaws." (Supplementary Procedures, § 7 at p.10). The following persons or entities are deemed to have the requisite interest and shall be permitted to participate as *amicus curiae*: "(ii) If the IRP relates to an application arising out of ICANN's New gTLD Program, a person, group or entity that was part of a contention set for the string at issue in the IRP; and (iii) If the briefings before the IRP PANEL significantly refer to actions taken by a person, group or entity that is external to the DISPUTE, such person, group, or entity." (*Id.*). NDC is a member of the contention set for .web, and NDC's and Verisign's alleged conduct during the application process and auction for the .web gTLD form the basis for Afilias's asserted Bylaws' violations against ICANN. Thus,

International Centre for Dispute Resolution
Case Filing Services
December 5, 2018
Page 2

both NDC and Verisign are entitled to participate in the IRP as *amici curiae* under the Supplementary Procedures.

The Supplementary Procedures further provide that an IRP Panel “shall lean in favor of allowing broad participation” by *amicus curiae* in IRP proceedings. In this matter, this should include participation in briefing on Afilias’s request for Interim Relief, which seeks in substance to enjoin the transfer of property to NDC and preemptively enjoin ICANN from granting a request to transfer that property to Verisign, thereby subjecting NDC and Verisign to substantial injury.

Finally, please add counsel for NDC and Verisign to the ICDR’s service list in the above-referenced matter. NDC and Verisign also request access to any briefings by either ICANN or Afilias on the issue of whether NDC and Verisign may be permitted to join in this proceeding as *amici*.

Very truly yours,



Steven A. Marenberg

SM:kbj

cc: Kenneth B. Reisenfeld, Emergency Panelist (by email kreisenfeld@bakerlaw.com)
Ronald Johnston, Esq. Arnold & Porter (by email Ronald.Johnston@arnoldporter.com)
Jeffrey A. LeVee, Esq. Jones Day (by email jlevee@jonesday.com)
Arif Ali, Esq. Dechert (by email arif.ali@dechert.com)

EXHIBIT C-86

From: de Gramont, Alexandre <Alexandre.deGramont@dechert.com>
Sent: Wednesday, January 9, 2019 7:07 AM
To: LeVee, Jeffrey A. <jleee@JonesDay.com>; Smith, Steven L. <stevensmith@jonesday.com>;
Enson, Eric P. <epenson@JonesDay.com>; Ozurovich, Kelly M. <kozurovich@jonesday.com>;
Wallach, David L. <dwallach@JonesDay.com>
Cc: All Dechert Afiliats <AllDechertAfiliats@dechert.com>
Subject: Afiliats v. ICANN / Amending IRP Request

Dear Counsel,

Based on the information that we have learned through ICANN's 18 December document production, we intend to amend Afiliats' IRP Request. This would postpone ICANN's current due date of 25 January to respond. Our view is that it would make sense to wait until after Mr. Donahey's ruling on whether the proposed *amici* can participate in this case before agreeing upon a schedule for Afiliats to submit the amended IRP request – and for ICANN then to submit its response – but we are happy to discuss this further.

Best regards, Alex

Alexandre de Gramont
Partner

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EXHIBIT C-87

From: [de Gramont, Alexandre](#)
To: ["LeVee, Jeffrey A."](#); [Smith, Steven L.](#); [Enson, Eric P.](#); [Ozurovich, Kelly M.](#); [Wallach, David L.](#)
Cc: [All Dechert Afiliias](#)
Subject: RE: Afiliias v. ICANN / Amending IRP Request
Date: Thursday, January 10, 2019 9:00:19 AM

Dear Jeff,

1. The amendments will not affect the analysis that Mr. Donahey needs to perform, *i.e.*, whether Verisign and NDC can participate as *amici* given the process by which Articles 7(ii) and (iii) were added to the Supplementary Procedures, and if so, whether they can participate in the Emergency Proceedings and the proceedings before the IRP Panel. The amendments will not affect whether NDC falls within the language of Article 7(ii) and whether Verisign falls within the language of Article 7(iii). It is the other issues (*i.e.*, issues that do not turn on what we say in the IRP Request) that are in dispute. The reason to put off the Amended IRP Request until after Mr. Donahey decides the *amici* issues – and to put off ICANN's having to respond to Afiliias' request – is primarily to allow both parties to focus on the briefing before Mr. Donahey and to have those issues resolved as expeditiously as possible. It is also possible that Afiliias will amend its IRP Request based on matters that arise from the legislative history briefing and Mr. Donahey's decision concerning these matters. In any event, we do not want ICANN to have to respond to our IRP request on 25 January, and then have to respond further after we have amended.

2. We do not intend to modify the request for interim relief.

As always, we are happy to discuss further if that would be helpful.

Best regards, Alex

From: LeVee, Jeffrey A. [mailto:jlevee@JonesDay.com]
Sent: Wednesday, January 09, 2019 1:52 PM
To: de Gramont, Alexandre <Alexandre.deGramont@dechert.com>; Smith, Steven L. <stevensmith@jonesday.com>; Enson, Eric P. <epenson@JonesDay.com>; Ozurovich, Kelly M. <kozurovich@jonesday.com>; Wallach, David L. <dwallach@JonesDay.com>
Cc: All Dechert Afiliias <AllDechertAfiliias@dechert.com>
Subject: RE: Afiliias v. ICANN / Amending IRP Request

Alexis:

Two questions:

1. Why do you think it makes sense to wait for Mr. Donahey's ruling on the *amici* issues before serving your amended IRP request? To us, it seems as if we should understand now, rather than later, how Afiliias is amending its request.

2. Do you also intend to seek to modify the request for interim relief?

Jeff LeVee
JONES DAY® - One Firm WorldwideSM
Telephone: (213) 243-2572

From: de Gramont, Alexandre <Alexandre.deGramont@dechert.com>

Sent: Wednesday, January 9, 2019 7:07 AM

To: LeVee, Jeffrey A. <jlevee@JonesDay.com>; Smith, Steven L. <stevensmith@jonesday.com>; Enson, Eric P. <epenson@JonesDay.com>; Ozurovich, Kelly M. <kozurovich@jonesday.com>; Wallach, David L. <dwallach@JonesDay.com>

Cc: All Dechert Afiliias <AllDechertAfiliias@dechert.com>

Subject: Afiliias v. ICANN / Amending IRP Request

Dear Counsel,

Based on the information that we have learned through ICANN's 18 December document production, we intend to amend Afiliias' IRP Request. This would postpone ICANN's current due date of 25 January to respond. Our view is that it would make sense to wait until after Mr. Donahey's ruling on whether the proposed *amici* can participate in this case before agreeing upon a schedule for Afiliias to submit the amended IRP request – and for ICANN then to submit its response – but we are happy to discuss this further.

Best regards, Alex

Alexandre de Gramont
Partner

Dechert LLP

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EXHIBIT C-88

From: [LeVee, Jeffrey A.](#)
To: [de Gramont, Alexandre](#); [Smith, Steven L.](#); [Enson, Eric P.](#); [Ozurovich, Kelly M.](#); [Wallach, David L.](#)
Cc: [All Dechert Afiliias](#)
Subject: RE: Afiliias v. ICANN / Amending IRP Request
Date: Thursday, January 10, 2019 2:35:35 PM

Alex:

Thank you for your email. ICANN will not file its response to Afiliias' request on January 25. We should discuss further when Afiliias intends to file its Amended IRP Request so that it does not result in significant delays.

Jeff LeVee
[JONES DAY® - One Firm WorldwideSM](#)
Telephone: (213) 243-2572

From: de Gramont, Alexandre <Alexandre.deGramont@dechert.com>
Sent: Thursday, January 10, 2019 6:00 AM
To: LeVee, Jeffrey A. <jlevee@JonesDay.com>; Smith, Steven L. <stevensmith@jonesday.com>; Enson, Eric P. <epenson@JonesDay.com>; Ozurovich, Kelly M. <kozurovich@jonesday.com>; Wallach, David L. <dwallach@JonesDay.com>
Cc: All Dechert Afiliias <AllDechertAfiliias@dechert.com>
Subject: RE: Afiliias v. ICANN / Amending IRP Request

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Cc: All Dechert Afiliats <AllDechertAfiliats@dechert.com>

Subject: RE: Afiliats v. ICANN / Amending IRP Request

Alexis:

Two questions:

1. Why do you think it makes sense to wait for Mr. Donahey's ruling on the amici issues before serving your amended IRP request? To us, it seems as if we should understand now, rather than later, how Afiliats is amending its request.
2. Do you also intend to seek to modify the request for interim relief?

Jeff LeVee

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Enson, Eric P. <epenson@JonesDay.com>; Ozurovich, Kelly M. <kozurovich@jonesday.com>;

Wallach, David L. <dwallach@JonesDay.com>

Cc: All Dechert Afiliats <AllDechertAfiliats@dechert.com>

Subject: Afiliats v. ICANN / Amending IRP Request

Dear Counsel,

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Best regards, Alex

Alexandre de Gramont

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