
SAN JUAN – Process to Establish IRP Standing Panel
Wednesday, March 14, 2018 – 17:00 to 18:00 AST
ICANN61 | San Juan, Puerto Rico

SAMANTHA EISNER: Click on one of the links that is on the session page that says ICANN 61 San Juan. It gives you the email address that you can email questions into. We have a remote participation manager here with us today, and just to confirm the email address is icann61-202@icann.org if you have any questions. Thank you. I'm Samantha Eisner, one of the deputy general counsel with ICANN. Today we're here to continue the community discussion on establishing an independent review process for the standing panel for the independent review process. So, what we'll cover today we'll have, I'll give a welcome and overview of work to develop the standing panel, [inaudible] who is one of our associated general councils for ICANN, she's attending remotely and is online. She'll weigh in as necessary on the overview and some of the background of the IRP that we'll go through quickly, I know many people in the room are very familiar with ICANN and the generalities we're trying to achieve. Then we'll move more into the specifics, we have Don Austin, Julie Hammer here today, who both were participants in our community webinar we had about a month ago, on the standing panel and I also have a statement to read from Alan Greenberg who also wanted

Note: The following is the output resulting from transcribing an audio file into a word/text document. Although the transcription is largely accurate, in some cases may be incomplete or inaccurate due to inaudible passages and grammatical corrections. It is posted as an aid to the original audio file, but should not be treated as an authoritative record.

to give his input into the conversation today but wasn't able to join us. Then we'll turn to a group discussion to try to focus on some next steps.

First, if you haven't had a chance I encourage you to look at the meeting for this session, we have some relevant links that includes the transcript to the webinar that was hosted as well as some documents that were circulated earlier to the community. This presentation is also up there as well. It's a document that we'll probably turn to first in conversation.

The purpose of this session is to continue our focus on efforts to get the standing panel into place, the standing panel work includes cross community efforts that are a little bit different and we think pose some challenges, different from some of the other work that happens in the community. Just like people, for example, to review teams etc, because there's a requirement in the ICANN bylaws that the community must come together and agree on a 7 member sleet to nominate. It's not like the review processes were each SO and AC that would participate in the specific reviews, for example, has the opportunity to identify through a nomination process upto 3. This is the community coming together and saying here are 7 that meet a whole range of diversity requirements and qualification requirements.

We need to continue working on this, we need to identify next steps, and we also... one of the things we're trying to do is to get an understanding of the full timeline that we need to allow for the community work on this to proceed before we send out the call for expression of interest. We anticipate that will be a key part of the process in order to get... to identify interested panelists and we want to make sure we can do a really good estimate for them of how long the whole process will take from the time that they apply to selection, as well as information as to the, how much of their information will be shared and with whom across the process. So, the overarching concern is that we need to build a process that gives the ICANN community sufficient information to nominate a standing panel, balancing the concerns of independence, conflict of interests, and efficiency.

At the webinar, one of the overarching concerns that we heard is that there might not be sufficient competency across the community to make the panel recommendations. This is a really important part of ICANNs accountability, we're look at bringing in very confident, skilled, panelist who can serve as that standing panel to create a body of IRP jurisprudence. The IRPs under the new by laws are binding on ICANN, they create precedence and so while there will be a very large obligation on ICANN to help train the panel, we want to make sure that as a

community we're bringing in the best panelists, it's really to the benefit of everyone in the system to have a high level of competency and respect among the people that will ultimately be seated on that panel. For those of you who aren't familiar, the standing panel will be the group of people from which three panelists will be selected to hear any IRP.

Some of the questions that we posed before the webinar, during the webinar, and I think the questions still stand are listed here, what is your SO or AC need to do? Who do you need to empower to help answer the questions in here? How will work with others across ICANN to reach agreement on the process? How will you work with others across ICANN to reach agreement on a panel? What can we do from the ICANN Org side to help support this effort?

I'm going to run through a couple of slides really quickly, just to give a little bit of baseline for those of you who aren't familiar with the IRP and for the benefit of those who might listen to the recording later, the IRP is an accountability mechanism provided by Article 4, Section 4.3 of the bylaws, that allows for independent review of ICANN board or staff actions, alleged by a claimant to be inconsistent with ICANNs articles of incorporation or bylaws. So proceedings will be presided over by an IRP panel of 3 members, selected from the standing panel, and IRPs are intended to be a final binding arbitration process. The

improvements to the IRP were one of the key provisions of the enhancing ICANN accountability process, that went alongside the IANA stewardship transition work. The standing panel was identified through that CCWG and emphasizing the by laws as a really key component to making sure that ICANN remains accountable to the community.

We've been working, and I'll just give a little nod to David McCawley who is here today. David McCawley has been the repertoire in the CCWG on enhancing ICANN accountability.

He's been leading the team that has been developing the updated supplemental rules for the IRP. The IRP requires us to give some special rules to the arbitration provider that helps administer the IRP, because there are specific rules that need to align to ICANN bylaws and to the needs of the ICANN community. These have been out for public comment, the IOT is working diligently to try to get another version out, we'll hopefully have some resolution on many of them fairly soon, and the IOT has also offered to help coordinate with the community on some of this work to get a standing panel in place.

Here there's a four step process laid down in the by laws for how the selection of the standing panel is anticipated to go. The first step is for the selection of an IRP provider, we've agreed we

don't actually need to do that because we have an IRP provider in place. We went to the next part which is, we need to develop a call for expression of interest, we need to have community input on how to get to our standing panel. We have some diagrams listed on the session page from today, you can go through and click those links, you'll see a lot of the information of the process flow that we anticipate. Then we developed some questions to start spurring some community conversations. These on the slides, I'm not going to run through them really specifically, we can turn back to them at any point in the conversation if you choose. On some of the hallmarks of where we think having some community input around this would be really helpful. We want to understand how are you... how can the community help us attract qualified candidates? Once we get to the point that we have candidates, what can we do to help develop this process in a way that we have some handshake agreement on what it means to be a highly qualified candidate, before we even go into that initial review period. It streamlines ICANN's process in giving that the range of people who are identified as highly qualified to the community who then will take that range of people back and identify that the nominated slate.

DONNA AUSTIN:

Can I just ask a question?

SAMANTHA EISNER: Sure. Donna.

DONNA AUSTIN: Thanks Sam, Donna Austin. You said that there's already an IRP provider in place. Could you explain a little bit about that please? Who that is?

SAMANTHA EISNER: Sure. After the independent review process was put in place, after a different ICANN reform efforts. The international centre for dispute resolution, which is the international arm of the American Arbitration Association. After an IRP process, they were identified as the IRP provider, so they have been serving in this role... the IRP provider actually serves almost in an administrator role, so they help coordinate with the panel, there's a lot of administrative support that's needed to support a 3 party panel in arbitration proceedings, so they help confirm filings and make sure that the panelists have the information they need. You actually coordinate payment of panelist fees through the provider. They do more than just administrative work, they're a largely administrative component, and one of the things that we discovered during the initial trunch of trying to find an IRP provider, and this was before my time but I've

talked to many people who were part of that. Is that it was actually very difficult to find an IRP provider who was willing to abide by supplementary rules, to do things that differ from their standard arbitration rules. The ICDR was unique in that, and we've had a long relationship with them because of that. Because of those unique challenges and wanting to not extend out the full implementation of the IRP, after our conversations with the CCWG as well as the IOT, we reached an agreement that it made sense to proceed at this point with the IRP provider that we currently have contracted.

Turning back, we have issues on the nomination of slate, how will the community come together, and again I encourage you to look at the more fulsome questionnaire that is on this link from the meeting page. Then, what supposed to happen in this process is the community comes together with a slate, they provide it to the board, there's a presumption that the board will approve the slate as provided by the community barring some concerns that are specified in the by laws. If those concerns are raised, what type of coordination will happen among the community group that was participating or across the community that was participating in the nomination of the slate. Hopefully this will be one of the situations that wouldn't happen because of the planning that went into the earlier phases, but just in case we wound up in it, it seemed like something that we

should plan a bit for in advance instead of trying to address it on the fly later. Turning past that, what we heard at the webinar, there was a lot of concern about the community's ability to actually have the qualifications in order to assess the level of panel provider that would be needed, to make sure that we were looking at it from a proper way of meeting the needs of a full fledged arbitral panel and not just focusing on the community effort, but really looking at who the panelists were, what they brought, and how to see it in a cross community way.

There were some ideas that were raised during that that I think probably some of the places that we might want to focus some of the future community conversation, there are ideas of recruiting firms who are experts to help make recommendations. The use of an external firm in order to help vet applicants, or I've also heard some suggestions of the use of maybe a high level respected jurors to help collect or review the applicants who come in through the expressions of interest process and weigh it against all the documented qualifications that have been provided for the IRP panels. There are also questions of maybe this is something we want to look at, as a nominating committee like entity, because while we have the challenge today of identifying the first panel. Panelists may only serve for a certain portion of time, so this is actually going to be a process, it's going to have to replicate over and over, hopefully

we will never be in the position of having to find 7 at the same time again, as we've had some conversations within the IOT on the need to stagger terms across the initial identification of panelists, so that we can have some continuity of service, even as terms change.

We need to consider, are we doing something that's for the long term, how can we best operationalize this, and how can we identify the process that the community will support and will support the community in coming up with these, with the mechanism to identify the best candidates. Another idea was that we needed to start the conversation on qualifications, including the identification of primary, secondary, and disqualifying characteristics. That's one of the documents that we'll turn to shortly. One of the additional questions that I wanted to pose is, that because of the ongoing nature of the panel work, do we want to look at this first selection process as the initial selection, and then do we want to meet again to figure out how to handle future selections that will happen on a rotating basis, or do we want to try to solve the issue altogether and identify what the process will be for this year, for 3 years in the future when we have the next trunch of needing to identify people, etc. With that, is this a good time to turn to you? So, first we will turn to Julie Hammer.

JULIE HAMMER:

Thanks Sam. Julie Hammer from the ASAC but I'd like to stress that while I'm vice chair of ASAC, I'm very much speaking in my own capacity as an individual with a view on this. My views come from observing the work that David McCawley has led from a distance, as a member of the CCWG accountability and reading the reports as they've been developed, and also thinking about the questions that have been posed to us by the team and by Sam, and having some personal views on that. I think that from my perspective, the main issue that it's important for the community to focus on in the first instance, is the selection criteria for the panel members and they've been referred to on a previous slide as qualifications. I think they're... qualification characteristics selection criteria. I think what ICANN community needs to come to an agreement on is, what are the essential skills and experience that we need in every panel member, what are the desirable skills and experience that we wish to have in panel members, what are the essential skills and experience that might exist in some panel members but we must have their in aggregate but not necessarily in all panel members, and what are the desirable ones that we would like to have in aggregate but we could do without if we really had to. It's almost like a matrix of essential, desirable, what must we have individually, and what do we need in aggregate of all 7 panel members to allow us to pull together a panel of 3 specific jurors to supervise any one particular claim. Of course, the disqualifying criteria are

also quite important and I think those things have to be agreed up front before any sort of recruitment process can go ahead. I think this is where the community can come in and make sure that the aspects of skills and experience important to their particular SO and AC are covered. The ASAC might come in and say well we realise that it's not going to be possible for every individual panel member to have some technical understanding in their background, but it would be very desirable for at least 1 or 2 to have some, maybe essential for 1, desirable for 2 or 3, something like that. I'm really speculating. As I see it, as skills and experience matrix both for individual panel members and for the panel in aggregate it's important to agree up front. Once that happens, then that makes the process of seeking out appropriate people to apply and assisting ICANN Org, or whatever the recruitment mechanism is to facilitate people applying and becoming interested, makes it that much easier. It also makes easier the evaluation process, and I personally think that to have representatives from right across the community involved in the interviewing, the assessment and interviewing stage of the process is not necessary. If we have made that specification upfront, very thorough, and very clear. What we should be able to do is leave it to either ICANN Org or to an independent specialized recruitment agency, or to a combination of both because let's face it ICANN Org does have skills in this regard. It might be ICANN Org with a specialist

recruitment person, some combination to actually go out and assess the applicants and interview them, and come to a series of recommendations of what combination of those applicants might for the best mix for a final panel. Where I do see the community having another role to play in that process though is, talking about agreeing what might be a useful series of questions to ask in any interview and making sure their issues are covered by those questions, but I wouldn't want to see whoever the interview panel were, limited to those questions because I think they have, they will be experienced people in the process of interviewing, they need to have the flexibility to be able to burrow down into an area based on the answer that they get, to be able to really come to a detailed evaluation of the person. I think as a starting point, a series of questions that the community has been involved in putting together and agreeing is another touch point which we could have with the SO and ACs. When it comes to the final slate of candidates, what I see is that we could ask that the recruitment team to present to the SO and AC representatives a matrix where there are ticks and crosses, or various levels of evaluation against this skills matrix, which could be a multi dimensional skills matrix of essential and desirable criteria for individuals and aggregate, and come up with a recommendation of what that team believes to be the optimal set of 7 jurors to appoint.

Provided that that is not the only information presented. Provided that there is more information about not recommended candidates that can be looked at, debated, and that the SO and ACs can come to an informed view themselves about whether that really is the optimal solution or not. I see that that gives them sufficient influence in the process, to have confidence in what might then be recommended to the board. Should the board not agree, then I hope that there could be a collaborative communication between the board and the SO and AC representatives to come to a resolution about why the community thinks this, why the board doesn't agree and move towards a final agreement.

I think the only other point I'd like to touch on is that I think the process that we set up needs to be able to continue going forward. I think there's no point setting up an initial process that's going to end in problems further on, so my view would be, let's see what the by laws permit us initially to do, do we have to appoint 7 people for 5 year terms, or can we appoint a few for say 3 years, 4 years, 5 years, and then recruit new panels. Or, if we do have to recruit 7 people for 5 years, can we then move to an approach where some will not be renewed, some might be renewed for 2 years, some might be renewed for 3. So that we can quickly get into the required stagger of panelists that is best achieved.

Then for ongoing recruitments, we have an existing skills matrix for the panel, and as people drop off the panel we know what skills we need to fill, and we know specifically what we need to go out looking for as we continue on. I think I'll finish there and give Donna a chance to weigh in with her views. Thanks.

DONNA AUSTIN:

Thanks Julie, Donna Austin. A little bit like Julie, I am the vice-chair of the GNSO council with these more or less my personal perspectives. I've come to this in a very different way to Julie. I wasn't involved in the accountability discussions and I was just filling in on a webinar because Heather couldn't make it. I've come to this very late, but these are my initial thoughts, based on what I heard as a result of that webinar. One of the things that struck me is, and I've had a conversation with Becky Burr about this, this is, what we're really doing is setting up the constitution of court for ICANN. This is a pretty serious thing that we're doing and one of the concerns I had is what expertise do we actually have within the community that can help us drive through to the process that we're looking to set up. I agree with a lot of what Julie says, in terms of selection criteria and the importance of drilling down and understanding what that is. But I have concerns that we don't have the expertise within the community to do that. I think there is value in having the community involved, but I think it has to be augmented by

potentially a global recruitment organization or something that has reputation to be able to assist in this kind of work. The other thing that concerns me a little bit is that this idea of community, and I think in this regard we need to be careful about how we define the community and what the community involvement is in this. We have a tendency in post transition to put a lot of emphasis on our SOAC leaders to take these efforts forward. I would like to think that what we do is look to the community to see what expertise is out there for this kind of effort and see if we can draw some of that out. I think the selection criteria is important, the setup is important, but I think ensuring that we have the right expertise to be able to do what needs to be done to establish the panel, so I think I agree with a lot of what Julie says, but I think there's an augmentation here if we can have members of the community that are skilled in some way, a professional organization that can help, develop that selection criteria and also the process itself. Then ICANN will, because of the expertise that they will bring to it as well.

In terms of community expertise, I supported the nominating committee for a period of time, so my experience of that is old, but I tend to think that some of the expertise that the nominating, the people who've part of the nominating committee process might be able to extrapolate to this effort in some way, and I'm looking at Cheryl as one of the chairs. I'm not

talking in... expertise in terms of legal expertise and things like that, but, in terms of establishing a committee that has actually looked at a selection process. It's not the... but potential. If we're looking for expertise within the community, then perhaps that's somewhere we can look. Might be a stretch Cheryl, I understand that, but I've been thinking about this in terms of where we can draw the expertise from and the nominating committee is one place we can look. I am really conscious this is a different level of skill set that we need, so I'm very conscious of that. I think Sam is going to read a statement from Alan Greenberg, and I have to say that I am pretty much on the same page as Alan in a lot that he said. I'm not as organized in my thoughts as Julie is, but I think the take away for me is that this is a really, really, really important exercise, and it's important that we get the right people to the table to start the process. I think that's the thing that probably sticks out most to me. Thanks Sam.

SAMANTHA EISNER:

Thanks. First I'm going to read a statement that was provided by Alan Greenberg who is the chair of the ALAC but speaking on his own behalf. Then we'll open it up for questions from people in the audience. Again, if you're listening remotely, I don't know if we have anyone who is on the line... if you are, you can send an email to icann16-202@icann.org and we have a remote participation manager who will be entering those questions into

the room. Then, if we exhaust questions, I have a couple that I'd like to pose, not just to you two but to the room, because we have a lot of experienced people here to get some further input.

The statement from Alan says: "The new by laws specify that ICANN AC and SOs be involved in the creation of the IRP standing panel in a variety of ways, Section A calls for ICANN to consult with the SO and ACs to initiate a tender process. Section B calls for ICANN to work with SO and ACs to identify and solicit applications. Section C requires that the SO and ACs nominate a slate of proposed panel members. Section A is fine, some AC and SOs may be able to and choose to participate. Section B is a bit more problematic. In that the implication is that the SO and ACs will take a more prominent role. Section C is very problematic for two reason, one there's no established mechanism for the AC and SOs to work together, even if SO is interpreted to mean the SO councils. No AC or SOs formally have expertise in the selection of legal experts, in international law, corporate governance, judicial systems, alternative dispute resolution and arbitration, some individuals might, but that would just be a serendipitous coincidence. I am very concerned we have put in place by laws that are quite inappropriate, and that needs to be addressed. However, we have a situation where we wish to and need to name a standing panel quickly despite this issue. We need to find a way to ensure we are naming a qualified and

appropriate panel despite having this conflict between what the by laws implicitly presume about the SO and ACs, and their real skills and processes. Simply presuming the ACs and SOs somehow will magically develop the right skills and processes is not sufficient. The only way I see forward is for us to have access to independent skills to help name an appropriate panel. That sounds like there may be a requirement for external independent support, funded by ICANN organization, but working for the SO and ACs through their appointed representatives."

With that, I would like to turn to those of you who are here and see if you have any questions, thoughts, or anything you want to put on the record. Kristina.

KRISTINA ROSETTE:

Kristina Rosette, Amazon registry. Obviously, Alan can't answer this question because he's not here. But, I would be interested in hearing from both Julie and Donna as to what their respective AC and SO are currently planning to do in terms of, for example, Julie do you anticipate that the ASAC is going to enforce your views as the position of ASAC? Donna, has there been a discussion along similar lines within the GNSO? I think that will be helpful for us to have an understanding of. I also, I guess the other question that I have. The one thing that, a couple of things

struck me during the initial background Sam, and one of them was, maybe I misheard, but it sounded as if there had been reference to selecting only 7 panelists, which I read the bylaws to say that it needs to be at least 7. In other words, 7 is the floor but not necessarily the ceiling. To the extent that there have been any decisions made along those lines. Thank you.

SAMANTHA EISNER:

I'll take that one quickly, this is Sam again. Then I'll turn to Julie and Donna for your first question. You're correct Kristina, so the by laws do say a minimum of 7. Working through the IRP IOT process, there is an agreement that the initial trunch be 7, so that we had some sort of limit to where we were starting from, but does not mean that it will always stay at 7. It will be a minimum of 7 and it can move up from there. Correct me if I am recalling this incorrectly.

DAVID MCCAWLEY:

Sam thanks, it's David McCawley speaking for the record. There have been discussions about that with a view towards getting a panel in place, but not that the number 7 is seen as an absolute, there need to be 7, there is some desire to get a panel in place as quickly as is reasonably possible while remaining true to the by laws. Kristina, that's not set in stone. Thanks.

JULIE HAMMER:

Thanks. I must say the ASAC has not discussed this at all, this is very much my personal views and the ASAC being highly technical group, I suspect that their main focus when we may have... when we will need to have a discussion about this topic within the ASAC is that the panel be able to deal with issues that have a technical focus. As far as process goes, the ASAC usually does not want to get too involved with what they see as administrative processes, but, certainly the ASAC leadership will wish to be involved to the extent that we see this being a robust process for ICANN. I just like to make a comment though on the at least 7 or is it exactly 7 point. I believe that once we get a series of essential, desirable, and disqualifying criteria in place and see what the individual and aggregate requirements are for the people. That it may be that when we look at the individuals that apply, maybe we can get all of those things with 7 people, or maybe we can't and it could be at the end of the recruitment process, we say: "Hey to cover this, we actually need to have 9 panelists available" or: "No, we can cover everything we need with 7." It might be that that's a premature to try and answer that question just yet, we leave it until a little bit further in the process to see what we need.

DONNA AUSTIN: Kristina within the GNSO council we have not had any discussion about this. Heather and Rafiq and I, as the leadership team are aware of the need to do something about this, but we haven't had substantive discussion. We did have some discussion about this in the registry stakeholder group yesterday, but at a pretty much high level that this is something we need to pay attention to and be involved in to the extent that we can, but we have that to the extent of that discussion that I am aware of. I am not sure whether other ST&C's have had conversations around that.

KRISTINA ROSETTE: Thank you.

CHERYL LANGDON-ORR: Cheryl Langdon-Orr for the record, and I'm specifically putting on my hat now as one of the members through the process watching this panel and what we did in the ALAC and at-large to perhaps respond to you Kristina, I'm not trying to answer the question for Alan, but I can give you an insight into what I know has happened. That is, two fold, we also have not had formal discussions, I have not witnessed any formal discussions of the ALAC on this matter at all, but we did have discussions and opinions shared... when I say at all, since we've had the reports put out. During the process, we had very regular, in fact monthly at one stage, fortnightly, and then terribly weekly meetings with

the regional leadership and general rank and file members of at-large as well as some of the ALAC, where we went through every single work track including the IRP and panel make up was one of the discussions that was had. I think the ALAC will be in a reasonable position to discuss this, but it hasn't as the committee discussed this. Does that help? Thanks.

SAMANTHA EISNER: David.

DAVID MCCAWLEY: Thanks Sam. David McCawley again speaking for the record. I wanted to just mention that the idea that's being floated about the expertise, third party help. I think it's an interesting idea and it would be in the interest of this group, I believe, to flesh this out to try and see what this means. I would suggest that that would be done in with an eye towards maintaining the by laws. I agree with the point that Alan made, that the by laws are not as comprehensive as maybe we would wish, but now that this process is starting, it would be good to flesh that idea out. I think the other thing, you made a good point at the beginning Sam, this is an incredibly important endeavor, and the discussion that Donna referenced that she had with Becky, coming up with a constitutional court, this is in sense creating a constitutional convention and so, I would just encourage the

leaders of the SOs and ACs to come together, create a mailing list, do some regular discussions about these things as the by laws are what they are, and we have to stick within them. Our work [inaudible] on the IOTs will help as best we can and my role as a leader, I have to remain impartial, I am happy to do that but we will help as best we can. In that respect, I have discussed this with Katrina, I'm active in the ccNSO, unfortunately, they have a council meeting going on right now, but I believe I will be able to bring Katrina along to these sessions. Anyway, those are my comments. Thank you.

SAMANTHA EISNER: Heather.

HEATHER FORREST: Thanks very much Heather Forrest for the record. I want to ask, let's say, a very tangible question which is, how can we do better than what we have here? We need to get more people in the room, we need a process for getting the SOs and ACs involved in this. This isn't necessarily directed at a concern about conflicts and meeting schedule, and that kind of thing, but this is creative thinking. This is clearly something that affects all of us and we're losing a bit of traction within ICANN on the stuff that matters most to the community and we're not getting the community in the room, and we can also have a debate, existential on what

the community needs and who that is. I will be the one to go on the record and say that's not the SOAC leaders. Please don't send me and those 6 people an email after this session, saying over to you guys. We need to think about how to get more people in this room, this is not appropriate. I understand that we're all tired and it's the end of the day, and it's not the case that this wasn't on the schedule. This needs to be prioritized and to Donna's point, we haven't yet done it in the GNSO but I also don't want to see us do this in a silo. Donna, Rafiq, and I can take this back to the GNSO and the GNSO council, and we can have a debate about whether it is a council thing or a GNSO thing, but doing it in a silo isn't appropriate, so let's think creatively, with your help Sam, please. About how we get more people in the room and make this a more robust discussion. Thank you.

SAMANTHA EISNER: Kristina, then I want to share some thoughts I've been having during this.

KRISTINA ROSETTE: I completely agree with Heather. I actually was going to go in a different direction, in the sense that it seems like there might be, I hate this phrase, but some low hanging fruit that we can take advantage of, in terms of, you know, for example... I'm just looking at the list of IRPs that have occurred with the recent... the

2012 round or whatever we're going to call it. That's 15 IRPs over the course of basically, 4 and a half years. That's a lot of work. I'd be willing to bet that having a standing panel of only 7 people, means that each of those IRPs is going to take twice as long as it currently does. I'm not sure that's a trade-off that folks are willing to make. I guess my question to ICANN Org is, has there been any review, for example, of what the overlap is in terms of the timeline, what the average duration is. Has there been any effort to just realizing that it's not a perfect sample, but take a look at the panelists for those IRPs. What... for each of them, what was their background, what was their criteria, what's the commonality. Similarly, I know that there's different views in the community about the satisfaction, or lack thereof, with the outcome of the formal objections and the new gTLD process. The fact of the matter is, ICANN had contracts with 3 different providers, who in turn, have fairly extensive pools of panelists. Is there an opportunity to leverage that, or for example, whatever the agreements that were in place and may still be applicable, prevent the SOs and ACs from pursuing that. I realise that this is kind of all disjointed, but it seems to me that there's some kind of core facts and data that we might be able to pull that I don't know if we have.

SAMANTHA EISNER:

Thanks, this is Sam Eisner again from ICANN, and listening... I think, I fully agree. I think that we need to look at this differently, we need to figure out new ways of engaging. As I have been listening to the panel here, I've been thinking about, do we have... I know if I turn around to people in my technical team and community engagement team, we probably have the ability to put up some moderated forums where we can put out some specific questions and get more engagement on them. There are a few different things that it sound like, just from the conversation between Alan, Donna, and Julie, there's some commonalities, and of course, we're not making any decisions in the room, but there's some commonalities that we heard, there's a need for external inputs but are those external inputs on the selection criteria themselves, or is that something that the community feels competent to do. How can we leverage, and Kristina I think that it's a fabulous idea to go through, lets matrix out who the panelists have been for the IRP proceedings, identify their backgrounds, see what that range of experience has been across the IRPs. There have been some improvements to the IRP made to anticipate making the proceedings take less time. I don't know if the time spent over those proceedings will be one on one based on the new IRPs, but we have the data about who was there, how can we use that to feed into a skill set discussion with the community. It is a low hanging fruit, can we put that question up? Can we put the question of how prepared

do you feel as a community, not just the SO and AC leaders to have the discussion about skill set, or do you want to identify, such as what Julie was saying, from the ASAC there's likely going to be a statement that we need technical expertise on there from at least one or maybe more of the candidates. Within your SOs or ACs are there other things that are important? Are there other skills that you think you want to see and identify on that level? Even to the extent that we might use an external firm to identify, these are the qualifications that you look for in a skilled jurist, right. That's the easy part to get to, it's about the things that are important to the community in making sure that the panel can address and that the community feels that the panel is legitimate in serving the communities needs. If you're open to us trying to put together some discussion papers on a couple of these topics, finding a place to hold these forums online, so it's not just dependent on a single webinar, a single session. Pushing out through the SO and AC leaders to get your community to start looking at this and helping us find other ways to engage. I think we'd be really open to that. Cheryl then Julie.

CHERYL LANGDON-ORR: Thank Sam, Cheryl here. I wanted to come back and you've led into it, and I like what I'm hearing. I also like the matrix ideas and looking at those, at what has already been used and what is

desirable. One thing I'm relatively confident we'll hear in that type of process, say from at least the at-large community and the regional diversity we have, is that they want to ensure, as a criteria, sufficient ability to get regional, geo-regional diversities. There's going to be some common points that will be identified relatively quickly and relatively easy, I think that's a really good way forward.

SAMANTHA EISNER:

Yeah, actually I very much agree with Cheryl on that. One of the things that I had written down that I didn't speak to was, we need to overlay the diversity blanket on top of the matrix and while I don't think we should substitute diversity for necessary skills, I think it's still an overlay we need to be cognisant of, but what I was also wanting to say was, is there a little bit of a roadmap that we can look at putting in place over the next few months that may even put us in a position to have something a bit more meaty to think about across community session on this topic at ICANN 62.

HEATHER FORREST:

Thanks Sam, Heather Forrest. I think there's a good logic in ICANN Org starting with a discussion paper of some kind. Mainly because I think if each of the SOs and ACs were to develop its own independent process we'd have a hard time even just

coming back to get... we'd all start out in different directions. I think that's troublesome, but rather than reinvent the wheel, because I think there's a lot of time that can be burned here chasing down rabbit holes. Why don't we start with... it's not that we're starting from scratch. We have an existing IRP, if we start with that as a baseline and then say what worked and what didn't work, rather than throw that out completely. If we can see this as a lesson learned opportunity, otherwise I feel any lessons we may well have learned from the existing process might get lost or ignored. I would like to see them captured. I also don't want to see Sam that you spend your time reinventing a wheel which is already invented. My only concern with Julie and I am going to channel Donna here, it's going to be great mind meld from across the room. My only concern, Julie, about doing this in 62 is 62 is the policy forum and everytime we chip away and we try and add something non policy into the policy forum, we lose the policy forum. We are eventually all going to wake up and go whoops. I just want to be careful with that and put that out there.

SAMANTHA EISNER: Good point.

DONNA AUSTIN:

Thanks. Sam. I have two questions. What's the timeframe? What's the budget? But just other opportunities where we can have this dialogue, we've got the GDD summit coming up. I really think we should use this as an opportunity with the contracted parties to have a conversation around this. I get this nagging thing in the back of my head about who are we setting off on this path, when we talk about we. We've got us who are in the room here, we're suggesting that Sam goes off and does some work. Is there a way that we can... and David has got the IOT as well, but is there a way we can set up an initial kind of oversight committee who is representative of in some way, of our community but then we get into these debates about we need to have equal numbers and things like that. That, we waste so much time with that but I wonder if there's a way that we can think about... how can we just set up... I do... is there potentially a way we can do that, because I think Sam is to some extent, ICANN Org is going to need that backup, that kind of mechanism, but by the same token, I don't know how long the IOT is supposed to be in place and whether that's as a gap filler that you could potentially do that. I don't know whether that's an option David or Robin.

DAVID MCCAWLEY:

Thank Donna, David McCawley speaking again. Your rappelling with the question that is fundamentally important right now,

how does the community organize itself around this by law, especially the standing panel. The IOT does not have a timeline on it, but it does have a certain set of tasks, the rules, then sort of the pellet rules, and looking at whether there needs to be further conflict of interest rules, things like that. There's more work for us to do, but I think when we're done we have talked about suggesting to the board that we be disbanded, something like that. I don't know that we can do this under the current by laws as it is not our role. That's my answer. Let me just add one more point of information on the subject of number of panelists and what the calls on their time will be, and that is, from the standing panel, whatever that number is, 3 panelists will be chosen to hear an IRP, but a losing party will have the opportunity if they wish to appeal to the full standing panel, that is another call on time potentially. That's it. Thank you.

SAMANTHA EISNER:

I know we only have 1 minute left. I know... I think that even before a discussion paper and I appreciate your concerns Heather around that. I think we need an action plan to what Julie was saying, I think that is the first deliverable. Let's get an action plan out that we can circulate and weigh in. What I would like to propose is one of the first things of that action plan we can put in place, before we even have an action plan written is, I think we need to open an email list or a Wiki page, or something,

where you can start referring people to join into the conversation and to help participate in this. We do have the IRP... we do have the materials that we've presented on this, we already have a webpage up, but I think let's move it over to a page where we can actually have some dialogue and some conversation, people can comment on the specific documents, let's start getting inputs in, we'll get an action plan around the timing, around how things might be able to proceed, more flags in the questions there. I think that that's one of the ways we can start it moving. Even if we're not having a community session as I hear your concerns Heather and ICANN 62. I think we have an opportunity over the next couple of months, particularly with things like the GDD summit and if there are [inaudible] for other groups, to really start getting some momentum around this and hopefully it will be something tangible that you can share with your communities, to say look, if this is something that you're interested in, go here, start engaging. if you can start identifying people who can commit to do that, I think that would be helpful. If you don't have my email address I would encourage you to, it's very easy to do, just reach out to me and we'll figure out... let's get some people on it. If anyone in this room wants to be on that initial email list, give me your names, let's get it started. Even though I think there are a few people in the room, the good thing I take is, you're all very motivated and we should be, this is a very important thing for ICANN and the community, so I really

thank you for your time and thoughts on this. Does anyone else have anything to say?

DONNA AUSTIN:

I just want to say I really like the, you know, voluntary if you're interested, here's the mailing list, participate. I think those that will soon work out who is interested and they will fall away. That is a good initial start, good idea Sam.

HEATHER FORREST:

Thanks Sam, just very quickly. Heather Forrest, I agree in fact with what Donna just said and just to tickle [inaudible] any doubt, slap a disclaimer on it. Very much in the way Donna has said, I am not in anyway, shape, or form speaking on behalf of council. We've got a number of folks in the room from GNSO, I wouldn't like to give any impression that I was speaking on behalf of anyone other than myself, I think that's the spirit in which we've all embraced this session, given the low numbers and so on, it has been a good opportunity to present some personal views, but let's broaden it and get that involvement. Thanks Sam.

UNKNOWN SPEAKER: Can we thank the panelists, I reckon it was quite exciting to hear the matrix ideas and everything else, and Sam you as a panelist up there too.

[END OF TRANSCRIPTION]