

YESIM NAZLAR:

Good morning, good afternoon and good evening to everyone. Welcome to the At-Large Consolidated Policy Working Group Call taking place on Wednesday 16<sup>th</sup> of October, 2019 at 1300 UTC. On our call today, on the English Channel, we have Olivier Crepin-Leblond, Cheryl Langdon-Orr, Maria Korniiets, Gordon Chillcott, Alfredo Calderon, Eduardo Diaz, Lianna Galstyan, Carlos Raul Gutierrez, Justine Chew, Sivasubramanian Muthusamy, Nadira Al-Araj, Avri Doria, Roberto Gaetano, Marita Moll, Alan Greenberg, Virkson Acosta, as well as Yrjo Lansipuro. On the Spanish Channel we currently don't have anyone.

We have received apologies from Holly Raiche, Alberto Soto, Ricardo Holmquist, John Laprise, Bastiaan Goslings, Maureen Hilyard, Lutz Donnerhacke and from Jonathan Zuck. From Staff side we have Heide Ullrich, Evin Erdogan and myself, Yesim Nazlar, present on today's call and I'll also be doing call management. We'll have Spanish interpretation for today's call and our Spanish Interpreters are Veronica and Marina. Just a kind reminder as usual, please don't forget to state your names before speaking, not only for the transcriptions but for the interpretation purposes as well please. Now, I'd like to lead the floor back to you Olivier. Thank you very much.

OLIVIER CREPIN-LEBLOND:

Thank you very much, Yesim. I'm not sure whether you mentioned apologies from Tijani Ben Jemaa, I just received as well. I'd like to hear if we've missed anyone in the rollcall. I think Abdulkarim has to -- yeah, okay. Thank you.

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*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.*

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Today's agenda is going to be packed as per our previous agendas. We'll start with the EPDP Phase 2 Update with Hadia Elminiawi and Alan Greenberg. Then, I'm afraid that Jonathan has just sent an apology for the call, something has come up. We'll see with Yesim if we can cover the GEO Names survey, which I think is a significant difference from last week. Then, we'll have ICANN66 Talking Points and the CPWG Charter and Workflow, which are just a follow up from last week, if anybody has any comment.

Then we'll have Justine Chew speaking to us about the Subsequent Procedures and the Accountability Mechanisms, the Appeals part. Last week she spoke to us -- well, we had an introduction to it and this discussion is taking place in the previous seven days, so we'll have version two of her presentation with an update on this.

Then the Policy Comment Updates with at least two of them that are currently in commenting stage or drafting stage, due later on this month, not that far away. One being due this Friday and the other one due next Monday. Finally, Any Other Business and this is the time when I have to ask if anybody has any other business or proposed amendments to the agenda? Going once, going twice, it looks as though there are no amendments, so the agenda is approved as it is currently on the screen.

We can therefore move straight over to Agenda Item Number Two and that's our Action Items from the last call. There are not that many that are remaining. I think there is just one with Hadia suggesting that the Public Interest to the CPWG is just process, I'm not quite sure what that is, under remit. Jonathan Zuck to move ALAC above policy remit as per

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Holly's recommendation to add pros in between slides. I'm going to need some help on this action item because it doesn't make too much sense to me, I can't quite remember it. Perhaps, Hadia, would you know what this is about?

HADIA ELMINIAWI: Which one?

OLIVIER CREPIN-LEBLOND: The audit and checked one. Hadia suggested adding public interest...

HADIA ELMINIAWI: Yeah, it's the one with regard to the Public Interest Framework. I've just sent a presentation to Evin about a draft with regard to the Public Interest Framework and also, I updated the Wiki Page.

OLIVIER CREPIN-LEBLOND: Okay, fantastic. Excellent. That's fine then. That's what we'll using in a moment for our Policy Discussion later on. I've heard someone asking for the floor.

JUSTINE CHEW: Evin's hand is up. The point under the Action Item is not the one that you mentioned, it's got something to do with the CPWG Charter. Thank you.

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OLIVIER CREPIN-LEBLOND: Okay, couldn't quite make sense of it. Thank you for this Justine. Evin.

EVIN ERDOGDU: Thank you, Olivier. Just to clarify, thank you Hadia, she had updated regarding the feedback regarding Public Interest but this Action Item was in regard to the CPWG Process for comment to Google Doc and Jonathan let me know that he's working on this and will have it finalized next week.

OLIVIER CREPIN-LEBLOND: Thanks for this update Evin. Any other comments on this or any of the bullet points that we have in our action items? Not seeing anyone, so thank you for this. We can move straight into the Expedited Policy Development for the Phase 2 Update with Hadia Elminiawi and Alan Greenberg. I'm not sure who wishes to start?

ALAN GREENBERG: I'm happy to have Hadia start and I'll fill in anything after her.

OLIVIER CREPIN-LEBLOND: Thank you, Alan. Hadia Elminiawi you have the floor.

HADIA ELMINIAWI: Thank you. I just actually sent a few slides about the status of the Building Block, not that one, I just sent it, I'm sorry for that Evin and Staff. I also sent it to the group now. Basically, I don't know without seeing the presentation itself, it's a little bit difficult but --

YESIM NAZLAR: Sorry for interrupting, I haven't received your presentation yet.

HADIA ELMINIAWI: I'm sorry for that.

YESIM NAZLAR: The problem is the email you have sent is I believe without the attachment.

HADIA ELMINIAWI: Without the attachment, sorry.

YESIM NAZLAR: I think Evin has just forwarded me the presentation. Give me one second please, I'm trying to upload.

HADIA ELMINIAWI: I did send it late, I'm sorry for that. Not to expect much, it's only about an updated about the status of the block, where we are right now. Basically, we have only completed two block, which is block number A, which talks about the criteria and content of request. Block number K, which is about the [inaudible] of acknowledgement. Tomorrow will have the first reading to block M, which is about the terms of use.

We'll have the second and maybe final reading for the accreditation block J. We'll have also the second reading of the financial stability

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block which is block number N. Basically, I'm going to talk about the status of the blocks. This is what I've just said is completed is A and K. Tomorrow, the first reading for Terms of Use. Most probably we can finalize Accreditation block tomorrow. We also have the second reading for block number N, which is about the Financial Stability.

Block number G, we had our first reading last Thursday, it's still an ongoing block. Retention, it should be complete but it's not marked as complete yet. DNH is ongoing [inaudible] policy and then we still have actually remaining, I, L, V and C.

Then we have four more new blocks that we haven't worked on at all and those are Audit Requirements, Login Requirements, Rights of Data Subjects and Automation, those are totally new blocks.

Actually, what they're trying to do is finalize the blocks, this is what we're working on right now. Hopefully after Montreal, I don't know if this will be possible, we could have an initial final report, complete block. I'm sure though that we will be able to do that but that's hopefully what we are aiming for.

That's basically the letter that went out to the Board from the EPDP team. It's basically asking the Board about the responsibilities and operational role that ICANN is willing to take. Again, the response to this is important because many, almost every decision we are making has ICANN involved in it, whether an operational role or a decision-making role. It's important at this point to know what ICANN thinks about that.

That's it for me today. I think Alan can add more.

ALAN GREENBERG:

Thank you very much. I guess the last point is really the salient one. An awful lot of what we're talking about is going to be ultimately based on whether ICANN can assume any responsibility for making decisions. We don't know number one, definitively that ICANN is willing to and we don't know if ICANN will be allowed to because assuming decision implies that we also move the responsibility to ICANN and there are some views that is possible, there are other views that there will be no possible way to implement this with any sort of real automation going forward.

Of course, for a number of types of requests, particularly those related to intellectual property and cyber security, response time and the number of requests is a critical issue and it's not clear how those will be addressable in ways that require manual intervention on each and every request, which some registrars believe will ultimately be the case. We're trying to build something but we don't have the parameters, let's say what is allowed and what will work. It's an interesting game we're playing.

Hopefully, most of the work we're doing will be useable but we really don't know exactly what form it will take. It's a real challenge. All we can do at this point is wait for ICANN to come back to us and hopefully they will have some sort of response from the European Data Commission or the Data Protection Board going forward. It's a little bit of a blind man game of trying to design something without really knowing what the parameters are. Interesting challenge.

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We are making some progress, for instance one of the things, there were people who contended that for every request we actually had to notify the data subject that a request had been made and we've now I think pretty well agreed that that's not the case. The GDPR allows the data subject to ask what data has been released and to whom but it's not a matter of notifying them on a request by request basis. We're making some progress. We're not wasting our time but it's really a confusing job because of the lack of specificity of exactly how this can work in the future. Thank you.

OLIVIER CREPIN-LEBLOND: Thanks very much, Alan, and thank you for this update, Hadia. Now, I open the floor for any questions or comments on this topic. Looks like you've explained everything pretty well. I am not seeing any comments in the chat, which means I think we can move on. Just to find out, I gather you have a number of EPDP sessions starting I gather next week or the week after, during the ICANN week? When are the EPDP sessions taking place?

ALAN GREENBERG: There are sessions scheduled, I honestly haven't bothered looking exactly where they are yet but there certainly will be work going on then.

OLIVIER CREPIN-LEBLOND: Are they taking place before the ICANN meeting starts, like for example the ATRT3 I think starts on the Friday next week?



ALAN GREENBERG: As far as I can tell, no. Specific reviews are a special case. Pretty well nothing else is scheduled outside of the ICANN week other than specific reviews.

OLIVIER CREPIN-REVIEW: Thanks for this Alan, apologies, I am always missing a week, thinking that we start in a week and a half but in fact the meeting is several weeks away. Not seeing any hands up, we can move to the next part of our agenda.

The GEO Names Survey and then Next Steps, Jonathan was going to take us through this. Evin mentioned that she has looked at this and she can take us through a new slide deck, the Draft GEO Names Survey and there is also a GEO Names video, both are available in English and in Spanish now. Evin Erdogan, you have the floor.

EVIN ERDOGDU: Thank you, Olivier. Basically, that was it, was just relaying the updates that Jonathan took from the CCWG last week on the call regarding the Work Track 5 GEO Names Scenarios. There is a new Google Form for this and it was circulated on the CPWG list. It's still technically a draft, if there is any last call feedback on but this incorporated the feedback from this working group. Also, I shared on the chat and on the agenda are two At-Large videos that Jonathan created on the topic of GEO Names, one is in English and one is in Spanish. Please check this out and circulate them, they're great resources for this topic. Thank you.

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OLIVIER CREPIN-LEBLOND: Thanks very much for this Evin. I would actually also if you are watching the videos to give feedback on the, how did you find them? How could they be improved? Is that the sort of video for a topic? Jonathan has gone to some great lengths to explain things. I'm hoping that this is a type of material that we can produce on a more general basis for some of the other topics that are in discussion in our community. The floor is open for comments or questions on this.

I know that awhile ago we already had a big discussion on the GEO Name Survey, so there was already a question mark on many of these. This is the updated list. Somebody has unmuted somewhere. I'm not seeing any hands up. No doubt Jonathan will be able to take us through this in more detail next week. The talking points are just for comment at the moment. Please comment on the mailing list and we'll follow up from this.

You can, if you want, I think -- just wondering if this -- whether we can comment on the draft itself? This is in a Google Doc; no, you can't comment on the Google Doc itself. There is a whole text about EPDP Phase 2 Evaluation of ICANN's Multi Stakeholder Model and DNS Abuse. These are the three main talking points. One of them, the topic of DNS Abuse is one that we will be discussing with the Board in further detail, I think the plan is to start discussing it within ourselves, in or community and then afterwards take it further. No hands up, let's move on then.

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What I propose is that we go to the next agenda item immediately after this and that's the Subsequent Procedures with an update from Justine Chew. Justine, you have the floor.

JUSTINE CHEW:

Thank you, Olivier. Please let me know if I need to speak louder. If we can just jump to slide number three. This is something that was tabled last week, so I'm not proposing to go through the entire slide deck, I just wanted to highlight certain things and to pick up on the discussion that were having last week pertaining to ALAC's right to file objections as well as appeals.

Just by way of update, in terms of accountability mechanisms, as the bottom of the slides points out, most of the comments that was received back from the Public Comment Process, did indicate that existing accountability mechanisms per the bylaws which covers requests reconsideration, independent review process and ombudsmen, those three were insufficient or didn't work well in terms of dealing with decisions that were made within the new gTLD program.

Also, in some cases, there was not substantive appeal mechanism for some of the decision made, for example mostly pertaining to evaluation. The example that I like to use is community priority evaluation. We need to say that in the last round once the CPE panel had made a decision there was actually no way to appeal that determination or decision on the grounds that the panel got something terribly wrong.

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Once they made a decision that was it. Of course, technically speaking the grief party could bring it up for review by way of requests or reconsideration but there are also difficulties with that because per the bylaws and the way the bylaws are structured, requests or reconsideration focuses on procedural appeals, meaning to say that whether ICANN or ICANN Board did not follow certain processes in making a decision, that's procedural whereas the appeals that we're talking about are more substantive appeals.

On the points that were raised within the evaluation or the objection for that matter. Most of the comments received from the Public Comments process did indicate that the existing accountability mechanisms didn't sufficiently support the program, therefore most of the comments supports, a proposal of a new appeals mechanism. Although discussions on the comment itself have concluded, the SubPro working group are still working on elements to the new appeals mechanism.

As indicated on the right-hand side, the high-level agreement would probably be a recommendation to propose a new substantive appeal mechanism. We are still looking at certain elements, which I will highlight later on. One of the elements is a standard review for appeals, going into more detail on that later.

The intention for proposing a new appeals mechanism also recognizes the CCTRT recommendation 35 which suggested some form of dispute resolution panel mechanism, we're grappling with that in SubPro.

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As was raised last week, there was a question of this discussion to recommend introduction of a new appeals mechanism. One of the questions that came out of that was should AC's have standing in funding to file an appeal? If not, why not? We were discussing this question last week and we came to some preliminary understanding as far as I can tell on how to respond. This is the slide I want to concentrate a bit more time on. What happened after last week's call was, I circulated a note to the mailing list and there was discussion over the last seven days. I eventually came up with a draft position that I put out for feedback and I didn't get any feedback but I got a number of responses supporting the intent of the draft.

What I'm proposing to do and I did say that I would take this back to this week's call, so this is what I'm doing now. What I'm proposing to do moving forward is -- I have redrafted the draft response a little bit and I'm proposing that we should tie this response or tie the element of funding to file -- tie the element or the right to file an appeal, tie it back to the funding to file objections because they go hand and hand. If we retain the right to file and objection then by right, we should have the right to appeal. It doesn't make sense to have one without the other. It doesn't make sense to have no appeal and the right to file an objection without an appeal mechanism.

There is also the issue about standing. I went back to have another look, the question was, should ALAC have standing? I suspect there is a little bit of misinterpretation. Standing talks about whether you have the right to be heard so to speak. This question of standing isn't something or I'm suggesting at least, it's not something that should be considered by SubPro, it's a question for ALAC to decide whether it

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believes it has standing to file an objection or an appeal for that matter and it's a question in terms of objection, it's a question to be determined by the dispute resolution service provider. It could be a possible grounds for appeal if for example, the dispute resolution service provider got wrong, saying that no, ALAC doesn't have standing but actually we do. That is grounds for an appeal.

Moving forward also, I'm suggesting that the draft, if we can conclude the draft, if no one else has any feedback to it, we relay this draft immediate time back to SubPro working group as additional feedback to the question arising from the discussions of the initial report. It's not going to go through as an ALAC statement, the way that we do public comment. This is in line with approach that we've taken so far with all the additional clarifications that we sent back to SubPro, that's the reason when we discussed initial report. Further to that, it could also be incorporated into a subsequent ALAC statement because this appeals mechanism is new, it wasn't addressed initial report, so it could be one of the issues that could be put into a further public call for comment. We haven't decided that yet.

I think the question of that is going to be discussed at ICANN66, at least one of the sessions of ICANN66, SubPro sessions, where there is a laundry list of issues that we think that might still need to go back for further public comment. This could well be one of them. If that happens, then we can also put this statement into our public comment to the additional call for public comment or if that doesn't happen, then we can put it into our statement in response to public comments to the final report of subsequent procedures.

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Moving to the right side of the screen. This is the draft statement that I've prepared. I'm not sure if I need to read it out. The only two portions that I changed a little bit was to do with bearing the costs and the user pays model because the user pays model has been mentioned in SubPro deliberation, it could likely be recommended. In any case, if say for example if we do implement the pays model, then the costs only comes into bearing if we lose the appeal. If we win the appeal then it's the other party that will bear the costs anyway.

The other portion I amended was to add the response to the question of standing which I explained earlier.

I'm going to pause at this point in time to see if anyone has any questions or any feedback to the draft that is presented now?

OLIVIER CREPIN-LEBLOND:

Thanks very much for this Justine. The floor is open. I was just going to comment on the proposed statement that you have here, I think it's very balanced. It's an interesting angle to say that the question of standing for [inaudible] was actually in the hands of the dispute resolution provider. Indeed, that's one of the things for any objections, the dispute resolution provider has to make. It looks as though this is quite in line.

That being said -- and I think we might have mentioned it last week but are there calls from some parts of the community to strip the ALAC of the ability to file objections and are these the same as the ones that are also questioning the GAC? Are these treated as an overall ability for

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advisory committees to file objections or is it specific to the GAC and the ALAC?

JUSTINE CHEW:

Thanks for the question, Olivier. The question per say deals with AC's, it's ALAC and GAC but as far as I recall there was one comment in opposition to ALAC per say and I believe they objected to the fact that ALAC should have standing and also that ALAC be funded to file both objections and appeals. As far as I remember, it's only one part of the community that said that. Alan, do you have something to add?

ALAN GREENBERG:

Yes, I do. Certainly when the discussion first came up way, way earlier in this PDP and we're now talking several years ago, there were a number of very negative comments about the ALAC, essentially not so much about the concept but the fact that there was a belief that we filed objections in the last round simply because we were pressured by various special interests and did not take a decision on our own but were simply acting as drone for some other group who was objection and specifically people with specific interest in the health area. That certainly formed the basis for the some of the objections. I haven't heard those comments recently and I'm assuming they're apart of ancient history at this point. Just to make it clear. Thank you.

OLIVIER CREPIN-LEBLOND:

Thanks for this, Alan. I note points made by Avri Doria in the chat regarding the procedural restrictions on reconsideration. Avri, would



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you care to please explain this? Removal of these procedural restrictions.

AVRI DORIA:

Sure. Let me reiterate I am not saying anything about the need for any specific appeal that the SubPro may decide on but I just wanted to point out that the old bylaws had the restriction or the limitation that reconsiderations could only be for procedural matters as Justine said and that was what was in effect during the last round.

However, with the transition the bylaws were revised so that reconsiderations and indeed the independent review can be done on a wider set of bases having to do with mission and values and commitment. It is a wider, it may not cover everything SubPro needs and as I say, I'm making no claims for that nor any claims on what the Board may or may not do with recommendation. I just wanted to point out that the bylaws were indeed different now than they were for the last round. Thanks.

OLIVIER CREPIN-LEBLOND:

Thanks for this, Avri. The old procedure has been replaced with the new procedure, that's now been formulated, is that correct?

AVRI DORIA:

The bylaws were changed so that the reasons one files a reconsideration and what they can argue inside one widens beyond just procedural errors or mistakes, whatever.

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OLIVIER CREPIN-LEBLOND: Thanks for this, Avri. Next is Alan Greenberg.

ALAN GREENBERG: Thank you. I just wanted to point out that the appeal we're talking about in the PDP is very much over and above procedural errors and you violated the bylaws and things like that, which are in the accountability measures, it is they made a mistake. It was a stupid judgement or something a keen to that. That's part of it. The other part, which I don't know if we've discussed actively but certainly from my perspective it's a major thing, is we're looking at something that's an awful lot less light weight than the ICANN Accountability Measures. I think there is good justification for putting an appeal mechanism into this procedure that is specific to what the review of gTLD applications is focusing on, instead of the general accountability procedures. Thank you.

OLIVIER CREPIN-LEBLOND: Thank you, Alan. Back to Justine Chew.

JUSTINE CHEW: Yes, I support what Alan said. Also, the question of expertise because some panels which determines certain evaluations are outsourced, so they are outsourced third parties and they are so outsourced because they have expertise. If you bring an appeal in house, the question raised was, does the bylaws mandate appeals procedures, would that panel have expertise?

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If it's the Board for example or the Board can establish a panel of experts to advise them. We have to look at all those things. There is still an open-ended question as to whether we think certain things should go through the bylaws mandated appeals mechanism, accountability mechanisms or whether it should just remain specific to the new gTLD program? When we go to the next slide it might shed more light on what we're trying to describe.

The earlier slides talk about what questions should be appealable, what process should be appealable. Who should be arbitrator of the few? Which party should have standing to appeal? What are the possibly likely outcomes and remedies and how bears the cost? I mentioned last week that SubPro was building a metric so that we have picture of what the subsequent procedures actually needs to deal with. Once we get through this, then we can have a closer look at what might be necessary to be determine within specifically the SubPro mechanisms or if viable then we shut it off to the accountability mechanism.

I'm not going to go through this chart entirely. I'll leave it to you guys to have a look. It's quite substantive. The SubPro working group members have provided input into this, we're still providing input. This isn't finalized at this point in time. I just want to say that we have given some thought to the issues that came up within the last round that needs addressing and it's reflected in this metric. There are eight processes all together that are affected within subsequent procedures, including background screening, evaluation.

Moving on to the next slide we have DNS stability. Geographic names. Technical and operations evaluation, financial evaluation, registry

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services, CPE. There are nine all together. I am happy to note that my suggestion to include technical support in this chart was accepted by the SubPro working group, so [inaudible]. Okay, moving on, the slide --

OLIVIER CREPIN-LEBLOND: Thank you, Justine. I was going to ask you actually, very interesting table here, with all of the outcome that might warrant an appeal. Are these just examples or are these going to be defined as actual channels by which you can only file appeals on these specific channels? Just trying to see if what is restricting the scope of the fields and the scope -- or is this just example to give you an idea of how things would work out?

JUSTINE CHEW: I don't quite follow your question. If I may, the second column talks about possible scenarios of which appeals might be warrant. It follows through in terms of a particular scenario, who can appeal? We identify who are the potential parties affected and therefore who would have standing to appeals and who might be the arbiter of the appeal and what could be the possible outcomes, including remedies.

OLIVIER CREPIN-LEBLOND: What I mean is, at the moment you have 9 scenarios for this, nine different processes, are these in line soul scenarios that are protentional possible? What I mean by that is, if something else comes up a reason for rejection and it doesn't fit within this table then does it mean that

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there is no possibility of appeal or are you just taking as potential just examples of processes?

JUSTINE CHEW:

As far as SubPro working group can decipher, these are the nine process that could potentially raise questions. There isn't anything outside of this, unless someone can think of something else. Alan, can comment too, I think his hand is up.

ALAN GREENBERG:

My belief is we try to identify the possible decision processes that are generally outsourced to someone else, although I think there is one that is an ICANN one and said you can appeal them. I believe the intent is we're identifying all of the possible opportunities where a formal decision is being made and therefore is appealable. I think that's the intent.

JUSTINE CHEW:

Exactly. As I said, SubPro looked at this and these were potentially the only nine processes that could generate an outcome that could appealed. We didn't see anything outside of these nine. If someone sees something else, by all means raise it. I personally don't think there is anything else that we haven't covered. Any more questions, otherwise I'll move on?

One of the other remaining questions for the topic of appeals is what standard of review should apply? This is still fresh in terms of the discussion time line. Two have been suggested, one is the noble review

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or the noble appeal and the other one is clearly erroneous; you can read on what each one applies. Again, this is just been thrown out recently. Sub pro members are still looking at this so it's not conclusive yet but this what we're working off to begin with.

Also, as noted, in theory it could be possible to have different standards of review for different issues that are being appealed. That being the case, it could become rather complicated so it could be we want to set down rules to say that for conflicts of interest determinations we would put that as a noble appeal. But for others, the standard to be applied would have to be clearly erroneous. Now, I would like to see examples of what is clearly erroneous and what is not clearly erroneous, that's probably something that I will take back to SubPro. Again, this is just a suggestion of how we move forward, the discussion. Any questions?

ALAN GREENBERG:

An example of what might be considered clearly erroneous and notice I said might because it's not clear, is in the previous round there were multiple deliberations or appeals -- multiple decisions that .COM and .CAM were confusingly similar or not confusingly similar. There are some people who believe that that is clearly erroneous, you cannot have the same two strings being both confusing and not confusing.

There are others who believe that the decision was based on context of not just the string itself but how the string is going to be used and therefore it is justifiable to have the strings both confusing and not confusing. But that's an example of what some people might claim as clearly erroneous as opposed to, I just don't agree with the decision.

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The noble appeal makes it very clear that we're asking another person for their opinion as opposed to judging whether the previous one is right or not. Thank you.

OLIVIER CREPIN-LEBLOND: Noble appeal could effectively be a reboot of a decision from scratch.

JUSTINE CHEW: Yes, that's right.

OLIVIER CREPIN-LEBLOND: We don't like the review, the thing from this person, we're not going to get the same panel to look at it with new information that's brought in, we just want someone else's point of view. What happens if that someone else's point of view is different? Is there then an appeal to the appeal or is that final?

JUSTINE CHEW: That is a question that SubPro is also grappling with. I think we're heading towards the position that we have to have a limit on the number of appeals. I think at the moment it is one appeal and that's it. But again, hasn't been concluded yet. The discussions around this new appeals mechanism is still ongoing.

GREG SHATAN: Largely just to second what Alan and Justine are saying. Initially we had no appeals, so the idea is to go to one appeal but not multiple appeals

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at this point but the idea a pellet reconsideration should get rid of the vast majority of issues and should be made in a way that more intent on resolving anything or re-trying anything that was done before.

As for as the De novo review, these are standards of appeal, it's not necessarily a judgment about whether we did or didn't like what went on before but it give the reviewer the chance to start from scratch and not give weight to what was done before, not to overcome a presumption that what was done before was right. Clearly erroneous is a high bar, it creates a higher presumption that the underlying decision was correct. There are other intermediate standards between the clean slate and the clearly erroneous. The clean slate could well end up ratifying the decision that was made below and they can certainly take into account what was said below but they're not bound to follow it. Thanks.

JUSTINE CHEW:

Thanks for that Greg. Going back to slide number eight. The question now is, is this group happy with the draft? Do I need to circulate this through -- I'll take guidance from your Olivier, do I need to circulate this draft to the mailing list and give people time, another two days or after the weekend to say yes, no or make any more tweaks before I forwarded back to SubPro?

OLIVIER CREPIN-LEBLOND:

I understand that there has been some discussion already on the mailing list or was that a side discussion that I read? I thought there was a full discussion so far. I would say unless you need an answer right



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away, we can still leave it open and ask again if more people want to comment on it. I've seen so far, a lot of people just respond very positively and saying that they're pretty pleased with it. I just dropped off from Adobe Connect.

JUSTINE CHEW:

Greg's got his hand up but just to respond to you, yes, this was posted a week ago at least. We've had some chatter on the mailing list. No one has objected. No one has said they needed to change anything. It's been a comment of support all the way. Hasn't been substantive, there is only maybe four people who commented, that's why I'm asking for advice in terms whether we're ready to go with this draft or whether people want to be given time to have a closer look at it? There is no timeline to submit this back to SubPro but obviously we shouldn't hang on to it for too long.

OLIVIER CREPIN-LEBLOND:

I'm going to have to ask someone who is on the call if anybody has their hand up because I've just dropped off.

YESIM NAZLAR:

I'm not seeing hands at the moment.

OLIVIER CREPIN-LEBLOND:

Thanks for this. It's entirely in my hands, I guess. Look, let's just have it there until the weekend. Now everyone's had a good chance to see this and to hear the discussion, so we'll leave it a few more days open for

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further comment and if we you like, please support it, if you don't like and you wish to change a few things in there, please let Justine know as soon as possible and then we've got something by the weekend. Is that a good timing for you Justine?

JUSTINE CHEW:

It's fine with me. As I said, there isn't a strict timeline by which I have rebut, to put this back to SubPro. I'm happy to keep it open till the weekend and then I just post it back to SubPro next week. I just wanted to make two additional points. One is in terms of the cost for any appeals, we did advocate for cost to be known upfront, that's one thing. The second thing, to answer Nadira's point, time to resolve appeals, that's something that's being consider by SubPro. There has been concerns raised that any mechanism that we recommend should not prolong the application process unreasonably. It's definitely one of the elements that SubPro is looking at.

If there is nothing else then I would like to make a couple more points about the other bullets on the agenda. I will circulate this draft through the mailing list for people to comment on.

Under the community applications, SubPro has started deliberating on CPE, I believe we have used one meeting to look at the comments. In summary, I believe that SubPro has accepted the fact that CPE needs to be reviewed quite thoroughly and in fact there has been a number of threats on the SubPro mailing list, talking about different elements of CPE that needs to be really looked into and perhaps amended. One of it revolves around mainly additional, clearer guidance to be given to CPE

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panelists on things like Nexus, connection between the string and a community. Also, the definition, in simple terms, definition of community. Opposition, in terms of not using the time period of the procedure for opposition to community applications as an objection mechanism.

There should be distinct process to say that something is an objection and something is an opposition to the community application and they shouldn't be mixed and they shouldn't be allowed to extent any objection or opposition towards the community applications. Objections period is from A to B, that is objections that closes and then when you go to the community priority evaluation, we do not accept any more objections and they have to frame certain oppositions to the application, that is not an objection. I can't get into the specifics at the moment because we have said that it is hard to distinguish between the two but we are looking at the element.

Auctions, we have started on the topic of auctions, and the weekly auction has generated substantial interest and in fact we are looking at the model that was proposed by ALAC where we suggested to apply a multiplier to the weekly auction. People are not aware, the weekly auction is basically a sealed bid auction process where a certain point in time and we haven't decided when that's going to be, whether it's going to be when the applications open or when contention sets are established, that's a questions that's still opened ended. Either or at this point is there is a contention then parties, if they are unable to resolve it, do a private resolution or some sort, joint venture or that sort of nature, then it goes to an auction to resolve the contention.

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At that point, in time the parties will be required to put in a sealed bid. None of the parties known what amount they are putting in, that's the purposed behind a sealed bid. ALAC argued that in terms of [inaudible] auctions, any form of auction will still be disadvantages to a poorer applicant, that's why we proposed that a multiplier be applied to a weekly auction to support certain types of applicants, for example, the applicant support applicants who went through the ASP evaluation and they have been declared as applicant support.

These guys because they are given applicant support, that's already a rubber stamp to say that you are less advantage in terms of finances, therefore you should be given a multiplier fact in putting in your sealed bid. Meaning to say that if they put in \$1, it could be in effect taken as a \$1.50. Where someone who doesn't have that multiplier will still be a \$1 in terms of their bid. That's ongoing, just wanted to point that out. Thank you.

OLIVIER CREPIN-LEBLOND: Thanks very much for this, Justine. As usually, great, great update on these subsequent procedures and great to see this going into the subsequent procedures Wiki space. I see Alan Greenberg has his hand up.

ALAN GREENBERG: Just a very brief comment. I'm a little bit more active then I was for a while. When I started on the EPDP I largely dropped out of the SubPro PDP but I'm trying to get back into it although putting not nearly as much time into as Justine. I just wanted to give Justine credit for the

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amount effort she's putting into it, the diligence that's going into it, not the least of which are the presentations she's doing here. But at the same time, I also wanted to comment on the SubPro procedure itself. We often still have comments, is it worth putting in comments? Does anyone really care?

And the amount of effort that SubPro is putting into making sure when we're trying to come to closure on these various issues, closure in preparation for a draft report, the amount of effort that we're putting into reviewing the comments and making sure we're factoring them in is quite phenomenal. My hats of both to Justine and the group as whole to the work that's going into this. As you know I'm not one of the people who necessarily savor new gTLD's and new gTLD rounds in general but the amount of work and diligence we're putting into doing this, given that we're doing it, is quite amazing. Thank you.

OLIVIER CREPIN-LEBLOND: Thanks for this Alan. I see your comments are echoed in the chat. Now we have to move to the next part of our agenda and that's going to be the Policy Comment Update. Jonathan Zuck is absent so Evin Erdogdu is going to be leading this section. Evin, you have the floor.

EVIN ERDOGDU: Thank you, Olivier. There have been no recently ratified statements by ALAC, however the next steps to improve the effectiveness of ICANN's Multi Stakeholder Model was submitted and that's currently being voted on by the ALAC. There are currently three public comments opens for discussions. Proposed IANA SLA for Publishing LGR's and IDN

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Cables is usually not something ALAC comments on but there was a very brief statement earlier this summer in July.

The other two, the CPWG and ALAC may wish to comment on, those two are Registration Directory Service Review Team Final Report, which closes on the 25<sup>th</sup> of November and Draft PPI and IANA FY21 Operating Plan and Budget, which closes on 27<sup>th</sup> of November and that can be circulated to the ALAC Budget Sub Committee mailing list. I will pause there, if anyone would like to comment on these public comments or volunteer to be penholder?

OLIVIER CREPIN-LEBLOND: I think maybe we should ask on the mailing list, I'm not seeing anybody going forward, jumping forward with working on these. I do understand that the closing date is after the ICANN meeting, quite some time from now. We need to get a crew ASAP on this and also perhaps even decide on whether we wish to comment on. Let's follow up on the mailing on these.

EVIN ERDOGDU: Thanks very much Olivier. Then in terms of current statements there two submitted, these weren't to public comments but Marita Moll and Maureen finalized the CPWG and ALAC response to Amazon Public Interest Commitments and this was submitted through the forum, so the GDD team will have these comments. Also, Jonathan Zuck worked alongside Olivier to finalize a question that will go to the ICANN Board regarding domain name abuse.

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That leaves two ICANN public comments and actually this slideshow hasn't been updated but Hadia has provided both a draft for comment on the workspace as well as a presentation regarding feedback on the ICANN Board's proposed public interest framework. I'll turn it over to Hadia, if she'd like to discuss this. Hadia.

HADIA ELMINIAWI:

Thank you, Evin. Basically, the presentation is not really a presentation. Last week I tried to put some slides together which explained what this about. Actually, this is the proposed draft. Actually, after taking another look at it now maybe there are some edits that are required. Let me explain how I was thinking. Actually, looking at the global public interest tool or framework presented. I was thinking in determining the public interest we should not only be looking at the outcome but we should also be looking at the process and procedures for which we reach this outcome, decision or whatever it is.

What's good about this tool actually, it takes into consideration that this is actually what it does. The tool does make sense because it looks at the public interest as it relates to ICANN's purposes and stems from the mission and bylaws. The tool relies heavily on that. This does make sense. However, when you try actually using the tool, for example one path over another, based on the public interest, both paths could confide with the tool and be in the public interest. It will be difficult to use this tool to favor one over another.

We can give examples for that; for example in the EPDP work, the standardized for applicant disclosure, we go in two different paths and

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they're both in the public interest and they're both fine. Which one do we favor? Can we rely on two for such a decision? No, we can't. I see this tool as actually good in determining what is not in the public interest, in figuring out what is not in the public interest. It is also good and helpful in pointing out how a specific decision already taken or a specific comment already made serves the public interest. It could also work as a tool that points out how a specific decision serves the public interest but not how to favor one outcome over another because it also needs to balance the benefits of both paths, they're both in the public interest and then make the decision based on that.

Basically, that's what I tried saying to this draft. I'm open for questions and discussions. Thank you.

OLIVIER CREPIN-LEBLOND: Thank you for this, Hadia. Evin, you have the floor.

EVIN ERDOGDU: Thank you, Olivier. Just one last ICANN public comment. Jonathan Zuck is the penholder for the CCTRT Accepted Recommendations Public Comment and he has noted that he will circulate a draft on the mailing list and it's due next Monday on the 21<sup>st</sup> of October, so we can work on getting comments in the community to finalize this statement. Back over to you Olivier, thank you.

OLIVIER CREPIN-LEBLOND: Thank you very much, Evin. Actually, could I just go back one small item here. The public comments for decisions, I realized we haven't really



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spoken much about those, the three that are currently up for decision. The first one, Registration Directory Service, RDS WHOIS 2 Review Team Final Report. Unbeknown to people who have been following the expedited policy development process, there is also a review team that's been looking at the registration directory service and that's more gear towards the more technical side of things. I'm not sure whether Alan followed this in any way in the past or even more recently? Maybe he hasn't. I can't remember who from our team was part of this RDS WHOIS 2. Maybe a couple of words on that if anybody on the call has been in RDS WHOIS 2 or knows about RDS WHOIS 2.

Then secondly, the Proposed IANA Service Level Agreement for Publishing Label Generation Rules and IDEN Tables. At the time when IANA stewardship transition took place, the label generation rule, the IDEN table were not fully formed and so this is just a set of service level agreements that are added to all of the set service level agreements that IANA has in performing the services that they have to perform in updating the root zone and on this occasion, the label generation roles which are something, not quite the root zone but related to the way a domain name, top level domain is handled.

Then thirdly, the Draft PIN IANA and Fiscal Year 21 Operating Plan and Budget, again, something that has come out of the IANA stewardship transition is that because the IANA function is absolutely, well pretty much more important than anything else out there, we're speaking here about updating the root and having a reliable service to update the root, the IANA budget is finalized several months and voted on by the Board several months before the overall ICANN budget, which I remind you all has to be finalized by the end of the previous fiscal year which is

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in June. That's why we are looking at the advance draft PTI and IANA Fiscal Year 21 Operating Plan and Budget now and collecting information on this.

ALAN GREENBERG:

Thank you very much. I know a little bit about the RDS WHOIS Review Team, I did chair it. I've made this comment before, I think despite the fact that there is other WHOIS activities going on, specifically the EPDP, I believe that the review team has made some rather important recommendations and they're recommendations which are going to be somewhat controversial and opposed heavily by some parties and I'm looking at specifically things related to data accuracy among other things. Yeah, I would like to see the ALAC look at this carefully and make some strong comments on at least some of the aspects of it.

OLIVIER CREPIN-LEBLOND:

Thanks very much for this, Alan. Just one question, does any of these -- se we have a review here going one and we've got a policy development process, for those people that don't understand the difference between the two, does any of those two actually preempt the other or are these two separate -- if this process comes with one recommendation and the EPDP comes with a very different recommendation, which one is the one that wins the argument? I think I've said it a bit too simply but you know what I mean.

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ALAN GREENBERG:

It's not an easy question but the EPDP is setting policy and the Board has no choice but if the Board accepts that policy recommendation and there's an if, then it may preclude some recommendations we make. For instance, if the EPDP comes out with processes which do not allow certain things to be implemented then they can't be implemented, period. Yes, there is a precedence, they're being decided at different levels but they have different implications. Yes, most definitely there are interactions and yes, the RDS WHOIS Review Team was cognoscente of the fact the EPDP was going on and that GDPR existed and that some things may be precluded or governed by it.

On the other hand, there are things that are flexible. Now, the Board is going to have to make a decision on the RDS Review Team recommendations and the Board is cognoscente of those issues going forward. It's a multi bodied problem with interactions in both directions but that's the world we're living in.

OLIVIER CREPIN-LEBLOND:

Thanks very much for this very valuable information Alan. Let's hope we've got a penholder for this process very soon indeed.

Let's go then to our next agenda point please, any other business. Is there any other business? I'm not seeing any hands going up. Noting the pre-ICANN66 Policy Report, there is also a blog on ICANN.ORG about the ATLAS III participants, they're going to have a full taste of what's coming up. The question I have, we've got future policy and outreach ambassador to attend At-Large summit. I'm not seeing any other hands. When is our next call? I believe it would be next week,

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next Wednesday. I have a difficulty next week, a busy week in London. I might have to arrange things with Jonathan on this, he can take the lead on that. What time should next week's call be?

YESIM NZLAR: Normally it should be next week, on Wednesday, 23<sup>rd</sup> of October at 1900 UTC.

OLIVIER CREPIN-LEBLOND: Thanks for this. I wonder and this is just me, if we were to stick to the same time as today's, would that be a major problem for anyone? If not, I'm ready to just let Jonathan run the call because I will definitely be busy at that time next week?

YESIM NAZLAR: Next week at this time we'll have the ATLAS III webinar, unfortunately we cannot do it.

OLIVIER CREPIN-LEBLOND: Okay, in which case, I defer to letting Jonathan run the show next week. I might just be jumping in every now and then but just listening in but I'll be in an even worse condition than today. Thanks everyone for participating in the call today, it's been really, really helpful. We will be looking forward to hearing from you further on the mailing list on the issues that have been raised today and also seeing you next week as well. Have a very good morning, afternoon, evening or night, where you are. Goodbye.

YESIN NAZLAR:

Thank you all, this meeting is now adjourned. Have a lovely rest of your day. Bye.

**[END OF TRANSCRIPTION]**