
CLAUDIA RUIZ:

Good morning, good afternoon, and good evening to everyone. Welcome to the Consolidated Policy Working Group call on Wednesday, the 15th of July, 2020, at 19:00 UTC.

Due to the increased number of attendees, and in order to save time, we will not be doing the roll call. However, all attendees from both the Zoom room and then phone bridge will be noted after the call.

I would, however, like to note the apologies. We have Sylvia Herlein-Leite, Justine Chew, Evin Erdogan from Staff, Marie Joly-Bachollet, Nadira Al-Araj, and Priyatosh Jana.

From staff, we have Heidi Ullrich, Michelle DeSmyter, and myself, Claudia Ruiz, on call management.

Our interpreters for today on the Spanish channel are David and Veronica. On the French channel, we have Claire and Camila.

I would also like to note that we have real-time transcribing provided for today's call. I will be sharing the link in the chat in a moment. A friendly reminder to please state your name before speaking not only for the transcription purposes but also so the interpreters can identify you on the other language channels and to please keep your lines not muted when not speaking to prevent any background noise.

Thank you very much. With this, I turn the call over to you, Olivier.

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.

OLIVIER CREPIN-LEBLOND: Thank you very much, and welcome to this Consolidated Policy Working Group call this week with a number of usual items, with first the work group updates, the Expedited PDP Phase 2, where Hadia Elminiawi and Alan Greenberg will be providing us with a good update on what's happening. Then we'll have the Subsequent Procedures immediately afterwards. In this occasion, we will have Marita Moll rather than Justine Chew, who has sent her apologies. So Marita will be taking us through the Subsequent Procedures discussion on Work Track 5: geographic names. Then we'll go through the policy comment updates with, this time, Jonathan Zuck, as Evin is away, and then Any Other Business, which means it's the right time for me to ask whether there is any other business that anyone would like to add to this agenda or any amendments to be made to this agenda.

I am not seeing any hands up. I should just say that—well, we will see—I thought there was going to be a presentation from Hadia and Alan, so I hope that we've got that. You have more than 15 minutes that's listed there if needed. So that was the only amendment I would note in the agenda as it currently is, but nothing else.

So let's move and adopt the agenda as it currently is on our screen and go to the action items for our 8t of July call. All of the action items for this are completed, in which case I should just ask whether anyone has any comment on any of the action items that are there.

I'm seeing Bill Jouris.

BILL JOURIS: I just want to note that, while I've volunteered for the drafting on the LGR item, I'm in serious need for some mentoring, having never done this before. So, if anybody can give me a little guidance on this, I'd appreciate it. Thank you.

OLIVIER CREPIN-LEBLOND: Thanks very much for this, Bill. And welcome. Great that you've stepped forward. I'm sure we'll all be around to help you out on that. If anybody wishes to be a co-drafter for this or a co-coordinator, then please do step forward. We'll have a little more about this when we reach the policy discussion in the agenda.

No other comments or questions here, so we can therefore move on. We can go to the work group updates. We'll start with the EPDP Phase 2 updates. If you click on this title, you're going to see a presentation turning up: EPDP, 15th of July, 2020. Hadia Elminiawi and Alan Greenberg are ready on the starting block. I'm not sure who wishes to take the slides, but you have the floor.

ALAN GREENBERG: I will start very briefly and just tell you what we're going to do. Hadia has a presentation that is quickly reviewing where we are on the EPDP. We are just getting ready to issue the final report. We're doing a review right now. Hadia will review essentially where are and what the issues are, and then I'll take over and talk about what I think we should be doing about it and the game plan going forward. Thank you.

And we have Hadia.

HADIA ELMINIAWI:

Thank you, Alan. Let's get started. This was [a quick] presentation to ... If we can have the next slide, please. Quickly, we will be going through the objective of the standardized system for access/disclosure and how the system works, and then I'll be highlighting Recommendation #9, which speaks to automation, and Recommendation #18, which speaks to the evolution of the system. Then I will briefly talk about some of the concerns.

If we could have the next slide, please. The objective of the standardized system for access/disclosure is to provide a predictable, transparent, efficient, and accountable mechanism for the access/disclosure of non-public registration data. The temporary spec was in response to the general data protection regulation. For each of the implementations, the GDPR is the only law that is specifically mentioned throughout the report. GDPR is a [inaudible] data protection law and therefore it has a high probability of complying with other data protection laws as well. So the system definitely complies with the GDPR.

If we could have the next slide, please. How does the SSAD work? The reason I'm going through this is that I won't be going through all of the recommendations. Also, other recommendations basically cover what I will be talking about now. First, for users/requesters, the requester needs to be accredited by the accreditation entity. The accreditation authority is a role performed by ICANN Org or overseen by ICANN Org as ICANN can actually outsource this function to a third party. The accreditation authority will confirm and verify the identity of the

requester. An identity provider will be responsible to verify the identity of the requester and manage the identity credentials. The accreditation authority can act as the identity provider or decide to outsource this role to a third party. This [inaudible] authentication process is supposed to speed up and [ease] the review process for the disclosing entities as they will not need to verify or reverify the requester.

Requests from accredited users are received, authenticated, and transmitted by the central gateway manager to the relevant contracted party in an automated fashion as long as technically commercial feasible and legally permissible. The central gateway manager is a role that is going to be performed by ICANN Org. The central gateway manager checks if the received request meets the automated disclosure criteria. If it does, it direct the request to the relevant contracted party in order to release the data. The criteria for automation is either set through this policy recommendation or will be set in the future through a GNSO-chartered standing committee. This is explained in Recommendation #18. If the disclosure request does not meet the automation criteria, the central gateway manager directs the request to the relevant contracted party to review and respond to it. The contracted party will follow a standardized review and a response process. A logging mechanism will be put in place which will allow the central gateway manger to follow the request and make sure that a response is returned and that the service-level agreements determined in this process are met.

A GNSO standing committee will be chartered by the GNSO to introduce improved [inaudible] standardized system for access/disclosure, and improvements will be mainly in relation to service-level agreements,

automation, third-party purposes, financial stability, and operation enhancements.

If we could have the next slide, please. On the 7th of February, the EPDP team published its initial report for public comment. The initial report outlined core issues described in relation to the proposed system for standardized access/disclosure and the non-public gTLD registration, and provided preliminary recommendations in this regard.

On the 26th of March, 2020, the EPDP team published an addendum to the initial report for public comment. The addendum concerned the EPDP team's preliminary recommendations and conclusions on the Priority 2 items.

Following the publication on the initial report and the addendum to the initial report, the EPDP team reviewed public comments received in response to the publication of both the initial report and the addendum and continued its deliberation for the production of this final report.

If we could have the next slide, please. All in all, we have 22 recommendations, two conclusions, and two undealt-with items.

If we could have the next slide, please. The two conclusions are with regard to OCTO purpose and accuracy, where the OCTO purpose is deemed not to be required because we have Purpose 2, which is seen to cover this purpose is required. Purpose 2, to remind everyone—ICANN Purpose 2—says “contribute to the maintenance of the security, stability, and resiliency of the domain name system in accordance with ICANN’s mission.” And that’s ICANN’s purpose.

The other conclusion is in regard accuracy. The conclusion was not to deal with it now and that the GNSO would look more into it and determine the way forward.

The remaining Priority 2 items that no recommendation were issued in their regard is in relation to legal versus natural and feasibility of unique contracts to have uniform anonymized e-mail addresses.

If we could have the next slide, please. I'll be highlighting two recommendations: Recommendation #9, which deals with automation, and then the mechanisms for the evolution of the system, which is Recommendation #18. The contracted parties' report says "must." "Must" here makes it an enforceable recommendation. Contracted parties must process in an automated manner disclosure decisions for any categories of requests for which automation is determined. Automation is determined through two ways, one through this policy. We have deemed four cases as possible for automation through Recommendation 18, which was considering adding cases to automation, through maybe further legal advice or guidance from the European Data Protection Board. Again, the contracted parties must process in an automated manner the disclosure decisions for the categories identified through this policy or through Recommendation #18 and are deemed to be technically/commercially feasible and legally permissible.

Then the recommendation says, "For the avoidance of doubt, the EPDP team recommends that any categories of disclosure decisions that do not [inaudible] consideration of automated disclosure in the future, subject to the process detailed in Recommendation #18." So this

sentence again also emphasizes that more automated phases could be added through Recommendation #18. Then contracted parties may also request the central gateway manager to automate some cases, to automate some requests, some certain types of requests, or requests coming from certain requesters.

If we could have the next slide, please. The [fashion in] which automated processing of disclosure decision is expected to work in practice is that the central gateway manager would confirm that the request meets the requirements for automated processing and then directly contract the party to automatically disclose the requested data to the requester. This could be done in the form of a command via secure mechanisms or some other way that is to be determined during implementation.

So what are the safeguards provided for the contracted parties? If the contracted party determines that the automation of disclosure is not legal or brings with it significant risk, the contracted party maybe could determine this through a data protection impact assessment that leads to this conclusion. In case this happens, the contracted party can ask ICANN Org for an exemption. Then ICANN Org would look into the request and look into the reasons. Then, if it deems the request correct, it will grant this extension to the contracted party. If, at some point, ICANN Org determines that the claim was incorrect or abusive, it can reserve this exemption and notify the contracted party that the exemption was reserved and start sending automated cases for the response of the contracted party.

In the context that further consideration of potential use cases is deemed legally permissible in relation to Recommendation #18, legally permissible is expected to be determined in the absence of authoritative guidance, like a law, by the party bearing liability for the automated processing of disclosure decisions, which would be most probably, of course, the contracted party.

So those are safeguards put in place for the contracted parties.

If we could have the next slide, please.

CLAUDIA RUIZ: Hadia, I'm getting some messages [that some people] are having a hard time hearing you. Could you please speak up a little bit?

HADIA ELMINIAWI: Okay, I'll do that.

CLAUDIZ RUIZ: Thank you.

HADIA ELMINIAWI: Recommendation 18. We mentioned in Recommendation #9 that more automated cases could be added [through] Recommendation #18. Recommendation #18 speaks about a GNSO standing committee. A charter will be developed by the GNSO Council in conjunction with advisory committees, like the GAC and the ALAC. The charter must allow the committee to address any operational issues involving the

standardized system for access/disclosure. The composition of the standing committee will be representative of the ICANN Advisory Committee and GNSO stakeholder groups and constituencies represented in the current EPDP team. It will be typically one member or one alternate from each [and may be] [inviting] also ICANN Org liaisons as members. For recommendations to achieve a consensus, support of the contracted parties will be required. Contracted parties do have a source of a veto [inaudible] here. The standing committee may recommend to the GNSO Council, but the committee itself will be disbanded, and that's by a simple majority.

So that slide mainly speaks about the standing committee and the composition.

If we could have the next slide, please. The charter will allow the committee to address any operational issues involving the SSAD. This may include but is not limited to—this is the language used in the report—service-level agreements, automation, third-party purposes, financial sustainability, and operational enhancements.

If we could have the next slide, please. How would issues be put forward to this committee? The committee will address the issues through one of two methods. The first: any policy or implementation [issue] concerning SSAD operations may be raised by a member of the GNSO standing committee and seconded by at least one other committee member in order to be put on the working agenda. Or the GNSO could ask the standing committee to look into an operational issue. So there are two paths. Either one of the members puts forward an issue, or the GNSO itself asks for a certain issue to be looked into.

If we could have the next slide, please. If a member puts forward an issue, that issue, if it's an implementation issue, will be considered, and the recommendation concerning the implementation guidance will be sent to the GNSO Council for consideration and adoption. Recommendations which are deemed policy and that require changes to existing ICANN consensus policies shall be [required to] [inaudible] to be used in the issues [inaudible] [phase] of future policy development and/or review. There lies one of our concerns. Putting forward an automation case and the coming up with a recommendation in its regard will be deemed a policy matter and registered to be scoped later. However, this is not our understanding. Also, we think that the report language does not say so. However, this is still a concern.

If we could have the next slide, please. So those are the concerns. First is the addition of an automated case. It's considered a policy issue. However, there are several parts of the report that say that this is not the case. For example, on Page 12, it says—the text under SSAD roles and responsibilities; central gateway manager—that the central gateway manager is responsible for managing and directing requests that are confirmed to be automated to contracted parties for [inaudible] of data, consistent with the criteria established and agreed [inaudible] of the GNSO standing committee for the review of the implementation of policy recommendations concerning SSAD. So that clearly says that recommendations for further automation could be set through the GNSO standing committee.

Our second concern is with regard to Priority 2 remaining items, which is legal versus natural and feasibility of unique contacts to have a uniform anonymized e-mail address. We don't have any

recommendations in this regard. With regard to legal versus natural, in Phase 1 we had a recommendation saying that contracted parties could differentiate but are not obligated to differentiate.

Another concern is the conclusion with regard to accuracy, where the conclusion here is that the EPDP team will not consider this topic further and that the GNSO will form a scoping team to further explore the issue and decide on the next steps.

I'll stop here. I'll thank you. If you have any questions, please do raise your hand. Thank you. I'll give the floor to Alan because he wants [inaudible]. Thank you.

ALAN GREENBERG:

Thank you very much, Hadia. Well, as Hadia ended with, we have a list of what we believe are concerns. We're still going over the final report with a fine-tooth comb and making sure there are no other issues. There may be some.

The bottom line is, as Hadia said, it's quite clear from our reading of our final report that new automation cases are not policy. As long as they adhere to the policy that we have outlined, we can add automation cases.

The problem is that, at various times in recent weeks, groups that constitute three quarters of the GNSO have said that new cases are policy. So have an interpretation problem. Right now, the SSAD is an essentially very expensive, glorified ticketing system and tracking system. If all we're going to get out of the ticketing system and tracking

system ... You can do it an awful lot cheaper and an awful lot quicker. We're talking ten to twenty million dollars and probably, I'm guessing, at least a three-year implementation. So, if all we're going to get out of the ticketing system ... You can buy them off the shelf.

So the hope is we can evolve and evolve without additional PDPs. But, if the GNSO does not agree that that is the interpretation, then we're certainly wasting a lot of resources and wasting time because you can get a ticketing system up and running a lot quicker.

So what it comes down to is, at this point, for that reason alone—there are other issues also, as Hadia mentioned—when we're being asked, "Do you support the report or not?" the only answer I can come up with is, "It depends." If the GNSO agrees to our interpretation—it's not solely ours; it's a number of other people's, including, as it happened, the now-former Chair of the EPDP—then we can support it. It's not the greatest thing around, but it's the best we could do. If, on the other hand, the GNSO does not agree that new cases are implementation issues, then we're wasting our money and there's no way I could recommend that the ALAC support this. In addition, there are the other issues of legal versus natural, accuracy, and anonymization. Those are issues which are really critical. If the result is that the GNSO says either we're not going to do anything about or we'll do something about in another PDP which will start at some undefined time and take an undefined amount of time to defeat, that's really pushing them so far down the road that we're not availing ourselves of any of these things.

Remember, all of the things we're asking for is things that other registries/ccTLDs do as a matter of course. So these are not necessarily things that are completely foreign and outrageous.

So the bottom line is that what we are going to be recommending to the ALAC, once we finish our review of the report, is that the ALAC conditionally support the report, and conditionally on clear, unequivocal statements from the GNSO as to how they're going to interpret the report, and, moreover, how they're going to proceed on the Priority 2 issues.

To be honest, I'm not expecting that the GNSO will comply, but they may surprise us. I think that's the only way that we can do anything else other than simply say we don't support it. The structures we ended up with are not necessarily satisfactory. The GNSO standing committee is far from satisfactory in that says everything must go back to the GNSO. Unless they change their rules, at least it's a standard majority, not a supermajority, that is required. The outcome is far from satisfactory, and I think we want to be as flexible as we can. But nevertheless, I think we have to be really clear that what we have right now potentially is a huge waste of money and time. We need to make sure that, if were going to go with this path, it's effective. We're working some of the other groups within the EPDP—the same ones we worked with before (Business Constituency, IPC, and GAC). They're all in the middle of deliberations, so I can't announce how they're going to go. But I'm not expecting a radical change from the overall stance that they've taken in recent months.

I see a huge number of hands up. Do you want me to run the queue?

We'll start with Cheryl.

OLIVIER CREPIN-LEBLOND: Yeah, go ahead, Alan.

ALAN GREENBERG: Cheryl, please go ahead.

CHERYL LANGDON-ORR: Thank you, Alan. Thank you, Olivier. I'm going to be very brief. First of all, an absolute thank to both of you. As you know, we recognize the [heroic] work. I think we do need to have it said again here. The conditional support approach I think, from a personally perspective and from my position as liaison the GNSO Council, is the wisest way forward. I'm delighted to hear that and I do hope that ALAC go down that pathway.

But I think this is one of those times that we need to be, particularly now, very, very careful and very, very specific about using the term "GSNO" and "GNSO Council"—it is the council that is the manager of many of these processes—and we make sure that the ALAC is, in its conditional support and its writings, very specific about using the appropriate council terminology because there's a whole lot of untested and recently modified parts, including how current and moving-forward standing committees operate, and of course the PDP process that simply hasn't been tested yet. So I think, if ALAC keep talking council and not just short-form GNSO, that would help us as well later on. Thank you.

ALAN GREENBERG: Cheryl, my apologies. It is council we are talking about any time I've said GNSO. And any document we have will make it really, really clear that we are talking about decisions of the council, the decision-making part of the GNSO. There will be no doubt about it. In drafting things in my head, I've already been very careful to make sure we make that distinction, but thank you for bringing it up here.

Holly?

HOLLY RAICHE: What about the GAC as well? Because the GAC has come out with a very strongly-worded statement on how they're very unhappy about the very same things that we seem to be unhappy about. I think they're an ally. I don't remember if they've talked about the issue that Hadia explained very well. Have we approached them, and is there some kind of cooperation with them as well? Thank you.

ALAN GREENBERG: Thank you. As I think I said, we are working with the other groups that we have worked with in the past, including the GAC. Whether the timing is such that we will be able to support the same statement or not, I doubt that. The GAC—

HOLLY RAICHE: What about the SSAC?

ALAN GREENBERG:

If I may finish the GAC first, the GAC has a number of different things. They can give advice to the Board, and they surely will when this goes to the Board. Exactly what they will say in response ... Will they insert something in the final report, as we are planning to? By the way, the final report is coming out in about a week-and-a-half, so the ALAC is going to have to at very quickly. But Hadia and I will try to get something to the ALAC relatively soon.

So whether they will insert something in the report, issue a separate statement, or whatever, the GAC is in the middle of that discussion right now. I'm not privy to that discussion and I wouldn't share it unless I was told to in any case. But I have no doubt that the GAC's position has not changed on a number of things, including legal versus natural, on the absolute need to have automation be effective and not be contingent on further PDPs—pretty much the same items that we are. They have one or two that they think are more important than we do, and vice-versa, but our positions have been very, very close for a long time, and expecting them to be here. As to exactly the words that they use, will they say “conditional support” or will they say “support”? But they have concerns. They tend to be more discrete and governmental than we do, so they may word things differently. I don't know how they're going to do that, but I'm expecting a similar position to ours.

In regards to SSAC, the SSAC will only act by formal SSAC matters. They will never support someone else's statement. They may come out with their own which is very similar, but they act according to their own procedures. So we're not going to get any cooperative effort, but they

too have said that legal versus natural and a number of other things are absolutely critical to going forward. They've also considered accuracy a really critical area. So I'm expecting similar things from SSAC. It'll be a different subset, but, as far as I know, there's been no change in their position.

Hadia?

HADIA ELMINIAWI:

Thank you, Alan. I just wanted to note that the recommendations of this report are interdependent, so it is a one-package document. Accepting some and refusing the rest is not possible. So it should be considered as such by the GNSO and subsequently by the ICANN Board for consideration and potential approval. The reason for that is the one-package deal, but many of us let go on some of the recommendation, but this is because some other recommendations compensated for the weak parts that we thought existed on some others.

So, again, this is a one-package deal. You cannot pick and choose. Thank you.

ALAN GREENBERG:

But, of course, ultimately, the Board can do what they want.

OLIVIER CREPIN-LEBLOND:

Alan, we'll close the queue after Matthias.

ALAN GREENBERG: Okay. Thank you. And, well, after you, I presume. Matthias, please go ahead.

MATTHIAS HUDOBNIK: Hello. Thank you very much for your presentation. You mentioned, Alan, the debate about legal versus natural. I wanted to ask if the debate is discussed after the SSAD one, are their positions almost the same as before? So what is the plan? First the SSAD and then they will decide the other critical things? Maybe you can just elaborate on this one. Thanks.

ALAN GREENBERG: Well, Phase 1 allowed contracted parties to redact information on everyone, not just natural persons. So it allowed them to. At this point, that has not changed. Moreover, there are entities within the EPDP that say the SSAD should honor the same principle. That is, the SSAD does not need to release information just because it's a legal person. The contracted party might decide that we're going to treat everyone the same, legal or not. In fact, we tried to change the decision process that's dictated in the report to say, "First you should look at whether this is a legal person or not. If it's a legal person and there's no natural-person information involved, release the information. Period. There's no decision-making process. It's not protected." And we had some exceptions for what is typically referred to as the women's shelter or something like that.

The contracted parties refused. They say, "No. Even looking at the record to see whether it is a natural person or not is processing, and

therefore, on the chance that there may be natural-person information, we can't even look at it to see if there's natural person information in before doing the rest of the test."

So, at this point, we may end up with a system where there is no distinction at any point in the entire process between natural and legal persons. That's where we stand right now. We've said we don't believe that's acceptable, and so be it.

Olivier?

OLIVIER CREPIN-LEBLOND: Thanks, Alan. Three quick questions that require a quick answer. \$20 million cost for the gateway. Is that what you said? \$20 million.

ALAN GREENBERG: There's a bunch of numbers, and I don't even remember if they were added up. But my recollection is there are well over ten, and one always estimates these things. So I'm saying \$10-20 million.

OLIVIER CREPIN-LEBLOND: Okay. With my tongue in cheek, please consider me as a contractor for this one because that sounds great—[a great contract]. Kidding.

The second thing you said is ccTLDs are doing what you're asking as a matter of course. Any examples of this?

ALAN GREENBERG: I don't have them at the tip of my tongue, but there are a number of them that do do legal versus natural determination. They just do.

OLIVIER CREPIN-LEBLOND: That hasn't been considered as asking for how much it costs them and this sort of stuff.

ALAN GREENBERG: The problem is, some of them have been doing it since Day 1. Our WHOIS information has never asked, "Are you a legal entity?" or whatever. We've never said ... Well, I'll go into the other half in a second. The problem is, our contracted parties are saying, "There is no practical way for us to ever find out if the 100 million/200 million domains we're talking about are legal or natural. Therefore, we're all going to treat them the same. It's a lot easier." Period. That's it.

OLIVIER CREPIN-LEBLOND: Okay. The third question—

ALAN GREENBERG: Some of us believe that one can go through a process.

Now, one more little thing. One of the other things that contracted parties raise regularly is, even if it is a legal entity that owns the domain, there may be personal information within the record. So you may be the IMB corporation but you're saying, "Olivier is the one who handles our domain questions, and he's the technical contact." Therefore,

there's personal information there. There are entities within the European Union that say, "If you choose to put personal information in your legal entity record, that's your problem, not ours." Our contracted parties have said, "No, that won't fly." So we have a lot of issues where we differ.

OLIVIER CREPIN-LEBLOND: Actually, we're just running out of time. The last question I had quickly was that I noticed in there that a veto of contracted parties is possible for any changes to the SSAD.

ALAN GREENBERG: Yes, and that's not unreasonable. If we are in a position where the contracted parties are going to accept liability because of the decision to automate, they have to feel comfortable with it. That's essentially what that translates into.

OLIVIER CREPIN-LEBLOND: Okay. Thanks. I think we've got everyone in the queue. [inaudible]. We only have 45 minutes left to this call. Thank you very much, Hadia. Thanks, Alan. For next steps, I guess you're going to come back with us with some text for quick changes/proposals.

ALAN GREENBERG: We may come back to you, or we may come back to the ALAC before we come back to you just because of the timing of your meetings and the overall timing of the process.

OLIVIER CREPIN-LEBLOND: Okay. Thanks very much for this.

So we can then move swiftly with the second update on the work groups, and that's of course Marita Moll, who will speak to us about the Geographic Names Work Team 5 final report. Marita, you have the floor.

Marita, we can't hear you at the moment. Is Marita here?

You are muted.

MARITA MOLL: Right here. Here I am. Helps if you unmute, right?

OLIVIER CREPIN-LEBLOND: A lot better now. Welcome.

MARITA MOLL: Okay. I was just saying while I was muted that I'm stepping in for Justine ... Hello? I'm getting an echo.

OLIVIER CREPIN-LEBLOND: Okay. Then maybe you might wish to be called, but start with this. In the meantime, can I ask staff to try to dial out to her or something?

MARITA MOLL:

Yeah, I was having an echo before. Okay, it's gone now. So these are Justine's slides. I'm going to do something she would never do, which is start in the middle.

Can we go to Slide 9, please? I think most people here know that Work Track 5 practically didn't change anything at all from the 2012 Applicant Guidebook, so we have an opportunity here to bring forward a few things about which we feel quite strongly and [present with]. I guess it's a dissenting view.

I wanted to start with the #4 that's highlighted here on this page: Resolution of contention sets involving geo-names. We had some discussion on this in last week's meeting when we were talking about Jonathan's survey, and we came to some interesting conclusions in the context of the survey. That's why I wanted to start there: just as a reminder and to build on what we did last time.

Can we start with Slide 14/15, please? 14. Last week, looking at the slides, we came to a temperature of the room that suggested—well, it was the survey—that the community was more concerned about the interest of communities than the interests of governments. So, in the context of geo-names, we will support the community over a government application of government. The words here are a little weird because many of the cities themselves are communities, so to call them a government agenda is not quite correct. That's part of the negotiation here where we can add some value to communities who are trying to get their own names.

We talked last week about the issue of adding geo-names as part of the criteria for the community priority evaluation. This comes into play when we're talking about contention sets because, as you see down here in the proposal that's underlined, in the case that a community applicant is part of the contention set and doesn't pass the CPE, the geoTLD be granted priority in the contention set. So that's a geoTLD that was on in the CPE. If the community applicant passes the CPE, it'll be granted priority in the contention set.

The thing is here, when we talked about it last week, is that we were looking for a way to incorporate some of this in the CPE to help communities that were trying to take their own city names, I guess (or region names, maybe), and they could maybe get some kind of boost or assistance in the CPE, which would, in terms of this particular last line, change that line. This is where we have a bit of a conundrum. If the community applicant passes the CPE, it would be granted priority in the contention set over the geoTLD. But, if the geoTLD went through the CPE and got a boost/bonus point of some kind, then it would be the priority. In any case, it's going to be a difficult choice.

The suggestion last week is that we could help geo-names who went through the community priority process. Last time, there was only one. It was .osaka, and it did go through. If that geo-name got a bonus point without penalizing the community, who were not using a geo-name—that's the key point here—we might want to go for that. We did do a temperature-of-the-room vote on that idea, and it came out with a strong yes. We could go for that. So the discussion last week was not in terms of Work Track 5, and this week it's a similar issue, but it's in terms of the Work Track 5 report.

So the question here is, do we want to support a change like this? Can we go to the next slide, please? Can we support offering a bonus support to a geo-name involved in the community priority evaluation? Do we [have it] meet the requirements? This would be a variance of Proposal 2. That's my question that I would like to have a short discussion on. If we can stick with our resolution, stick with our decision of last week, then we're good to go on this one.

We got hands up here?

No hands up?

CLAUDIA RUIZ: No, Marita. No hands up.

MARITA MOLL: All right. Alan, you were the one who actually came around with the idea of the bonus point. Do you want to say something about that?

CLAUDIA RUIZ: Marita, actually Holly just raised her hand.

MARITA MOLL: Oh, good. Okay, Holly. Go ahead.

Holly, I can't hear you.

HOLLY RAICHE: Sorry. Cities are normally some kind of governmental structure. They generally have mayors or an equivalent, and they have a range of structures around them—city councils and so forth—so how do they fit as a community?

MARITA MOLL: Well, I guess I would say that I feel like my city is a community. I voted for the government. I pay my taxes. It's something that I'm a member of. I know these are difficult distinction to make, but this is the kind of distinction we're being asked to make with this particular idea.

HOLLY RAICHE: Okay. My next question would be, though, is the boundaries of the community identical to the governmental boundaries of the city? It's just, in defining the community, is there any distinction between the members of a city as a community versus members of the city as citizens of the city? I'm just trying to think of how you would define it as a structure that is not a governmental structure of some sort. I'm just a bit curious and puzzled a little bit by that. Thank you.

MARITA MOLL: I don't have detailed information about the Osaka situation in the last round, which was a city and did get through. So there must be answers to your question there that I don't have answers for. Maybe someone here on the list has the answer to that.

I see other hands. Great. Who is next.

ALAN GREENBERG: I think I am. I'm not sure.

MARITA MOLL: Alan, okay.

ALAN GREENBERG: Regarding whether we should have bonus points or not, it was an idea I put forward. I don't think it would sell within the overall working group. There were people on ALAC or in At-Large who objected. It's not a biggie for me to spend time on, certainly.

In terms of city TLDs being communities, I think, with the exception of .nyc, every single city TLD is a community TLD. They may not have had to pass evaluation because there wasn't contention for their set, but pretty much every city TLD is right now defined as a community TLD. So it's a bit late to back out on that and say that's not something we'd want to support. Exactly how that works? That's up to the city, and each of them do it differently. Thank you.

MARITA MOLL: Thank you. Greg? I think Greg is next.

GREG SHATAN: Thanks. First, to second what Alan just said, I think .osaka was authorized by the city, but I think, oddly enough, they authorized for applicants, so there was a bit of a mess there.

With regard to giving up preference, presumably what we're talking about here is that, in each case, the application was the city or was approved by the city or was in league with the city in question. And I believe that may have been a requirement, but even if it weren't, clearly if it were being used for that city's purpose or a purpose related to the city, that seems like that would be something that continues through.

I think where things get a little hairy in this recommendation, though, is where it says "Preference will be given to the applicant who uses the TLD for geographic purposes." So let's assume Katonah is both the name of a city or a town in New York and also a Martha Steward trademark. If the applicant for the geoTLD is based in a country and/or the TLD is targeted to where national law gives precedent, which has got to be the wrong word, to city and/or regional name ... So I guess we're saying here is, if Martha Steward and the city applies, there would be precedence or there would be a bonus point given, but only if U.S. law of New York state law gave something that we call "precedent,"—again, I don't know what the right word is; I don't know what people are looking for; maybe "precedence" is what's used in the ... but just an outside statement in the community round.

But I think that we're getting into interpretations of national law and trying to find a concept. There are various ways in which you can and cannot use the name of a city probably under many different laws, but whether they give precedent against some other use of it is a different question entirely. I just think we're getting into a real morass with the second half of this. It could be for everybody or it could be for nobody. I personally would be in favor of "for nobody." But trying to key it to national laws and to some form of evaluation or protection under

national laws, especially with regard to other applicants who are not subject to those same laws, I think, gets into dangerous territory for a number of reasons. Thanks.

MARITA MOLL: Okay. Oh, I lost my list here. Christopher Wilkinson?

CHRISTOPHER WILKINSON: Good evening. Thank you, Marita, and, in her absence, thank you, Justine, for the enormous amount of work, which I think many of us, including myself, would not have been capable of achieving in this format.

First of all, as a member of this—active member—of this subgroup of ALAC, I certainly support the general gist and direction of these sides and the policies that they recommend.

To add a nuance or two to what we just heard, I think that the most important factor overriding several others is the priority for geographical use. I don't agree with those who feel that non-geographical use should be not approved and that geographical use is on the same standing as non-geographical use. I know that there are some exceptions and tweaks that need to be dealt with regarding trademarks.

On the whole, I'm in favor of grandfathering past mistakes, but I think a very strong message that goes to the IPR community in this context is that it is extremely inadvisable for companies to dream up brands that are, in effect, hijacking other people's geographical names. There were

several instances of this past, and it's unfortunate. The more it goes on in the future, the more it'll create a nexus of disagreement and political problems which I think ICANN could be best without.

So, insofar as we can ask Greg to put his other hat on as an IPC member, Greg, your folk need to get the message that the use of geographical names for trademarks and brands is dangerous territory. Thank you.

MARITA MOLL:

Okay. Thank you. Greg has his hand up. But after that we're going to close this out because we can't go on it forever. Go ahead, Greg.

GREG SHATAN:

I don't think that anybody thinking about trademark is going to care all that much about whether they can get a TLD for it.

In terms of the larger question, there are existing limitations in trademark law for using geographic terms. Geographically descriptive terms may not be registered, except under certain circumstances. Geographically mis-descriptive terms have an even higher bar. But I don't think there's any other "dangerous territory" outside of that already established in trademark law—maybe people who have geographic community interests at heart are unhappy with it. But I don't think there's a danger there, except in any particular situation.

Going back to Katonah, Martha Stewart's Katonah application was opposed by the town of Katonah. I believe, in the end, she withdrew it. So this is the sort of thing where you need to look at the facts. After all,

the Chevy Nova also went into dangerous territory, since “nova” is not exactly a good thing for a car if you speak Spanish.

But I think the idea that somehow there’s going to be anybody shaking in their boots because of the idea of this coming out of a TLD system is just not going to happen.

MARITA MOLL:

Okay. Thanks, Greg.

Just to go back to the discussion we had last week, am I hearing that we are now not supporting the idea of ... Well, let’s see. Let me get this right. We had a vote last week, 35 to 17, that we would add geo-names as part of the criteria for CPE, that we agreed with that, and that that would include giving them some kind of benefit, I imagine. Is that what I’m hearing here?

OLIVIER CREPIN-LEBLOND:

Marita, it’s Olivier. Who are you asking?

MARITA MOLL:

Well, that’s the problem with this kind of way of making decisions, right? Who am I asking? I don’t know. Maybe we should have a quick vote. I feel that ... Well, I’ve only heard from five people, and there are 45 people on this call.

OLIVIER CREPIN-LEBLOND: If you want to ask for a show of hands or green ticks with a yes and red crosses for the no. If anyone is only on the phone, they'll need to speak.

MARITA MOLL: Yeah. So what is the question? The question is, can we support offering a bonus point to a geo-name involved in the community priority evaluation to help it meet the requirements so that they could get to the evaluation and maybe end up with its name. I guess that's the question. Do we support that kind of idea or not?

GREG SHATAN: But that's not what community priority evaluation tests, so that's a problem. The community priority evaluation only tests whether they'll get the community status, not whether they'll get their name. So maybe we need to—

MARITA MOLL: That's right, yeah.

GREG SHATAN: So what is the question?

CHRISTOPHER WILKINSON: Olivier, this is Christopher again. I support the text, but my personal [inaudible] would be that we should go further, that the application for the geographical use/use of the TLD for geographical purposes should just have an [absent] priority. I'm not a fan of these point systems, but

that's a separate issue which we're not discussing this evening.
[inaudible] use, you'll have priority.

MARITA MOLL: Okay. Olivier, I think we're going to drop this one because it's getting too complicated, and—

OLIVIER CREPIN-LEBLOND: [inaudible] from Holly Raiche.

MARITA MOLL: All right, Holly. Go ahead.

HOLLY RAICHE: Just a question, as Alan said, look, a lot of cities already have benefitted from having the points. So I guess my question then to Alan and then to you is, is this already a [fact]? Maybe we should just move on because it has already happened. Thank you.

MARITA MOLL: No, it hasn't already happened, but I think we should move on.

Alan, do you want to say something?

OLIVIER CREPIN-LEBLOND: Marita, it's ...

ALAN GREENBERG: I think we've flogged this to death.

MARITA MOLL: All right. Let's move on to Slide 10. This was also brought up recently last week: trying to get some kind of situation going whereby certain geographic strings could get some advance warning about people applying for their names. This was something that was discussed in Work Track 5—can we go to the next slide, please? thank you—where we talked about it extensively and there was a lot of disagreement about whether or not there could be some early notification of the intention of some community, some group, some brand to apply for a geo-name. We're excluding non-capital city names here. That's because anyone can apply for them as long as they don't say they're going to use it for the geographic purposes.

there was, in the end, a straw poll that indicated that there was quite a bit of support for some kind of early notification just to let people know, and then, if they didn't care, that was fine. But that was not accepted by the group. This was something that we thought maybe would be worth bringing up again. Maybe GAC has also got an interest in this one, but several At-Large members who participate in Work Track 5 were interested in a tool. So it could be automated. That could fill the need of just notifying people because not everyone is keeping on top of this.

I think, Yrjo, you're also part of that discussion. Would you like to add something?

YRJO LANSIPURO: Sure. Thank you, Marita. We who wrote this dissenting view was of the opinion that at least an earlier notification would be not only a courtesy of, “Hey, we’re going to use your name,” but at the same time, if the idea is that the applicant wants to have that name to have some sort of association with their region or city or place concerned, it would be also a good [inaudible] practice for the applicants not to spring this as a sort of surprise to the potential subscribers and registrants but rather to have this courtesy of giving an early notice. Thank you.

MARITA MOLL: The question here is, does this kind of thing have some support in this particular meeting? Should we try to put in a dissenting statement on this issue? It doesn’t seem like a totally unreasonable thing to do. I think we did have a chat about it last week, and there seemed to be general agreement. Do we have any comments on this?

OLIVIER CREPIN-LEBLOND: Does Christopher Wilkinson?

MARITA MOLL: Christopher?

CHRISTOPHER WILKINSON: Just to give a personal angle to this question, first of all, I agree completely with what Yrjo has just said. Most of you know that I was

once, a long time ago, a member of the GAC and, a long time ago, a member of the GAC Secretariat. That's decades. In this particular case, really we must support, at an absolute minimum, advanced information of the local authorities and governments concerned.

If I put my local hat on, I'm representing an ASL based in Wallonia, in Belgium. If I put my local hat on, I must recall that, in a recent ICANN meeting, the delegation of Belgium made this very specific point that they want to have advance notice of any such applications. Thank you.

MARITA MOLL:

Thank you, Christopher. Greg?

GREG SHATAN:

Thanks. I guess I'm not quite sure what it is that we're recommending in terms of a tool or if we're just suggesting ... It's one thing to make a suggestion that could be best practice and it could avoid unnecessary unpleasantness if applicants were to check with others who may have prior rights or who might believe they have prior rights. That's probably not limited to geographic terms but more generally. But suggesting that there be a tool without getting into what the tool could be? It seems that, if it's something that we would actually try to require, we would need to flesh it out more. I think that then the question, when it talks about the appropriate question, is, is every Birmingham in the world—every Middletown, or whatever it may be ...

What I might suggest might be feasible would be to create a tool where geographic entities could put in a request to be automatically notified if

their name is put in as a string. Perhaps that can even be done for, again, others who might claim rights—for instance, surname rights or trademark rights or other rights that relate to strings. I think setting up a whole extra criterion ... I guess it's only a minority statement. It's a dissenting view. It's not really going to go anywhere, but I think it's more important in a dissenting view to express why one feels that way.

Personally, I don't back this, but I understand others do. But, as with many other things, the reality is that how it would be accomplished could influence greatly whether you get any traction for it, through a general tool to allow anybody to be notified of, on reveal day, if a string that they put into the tool has been applied is probably a lot more palatable than a tool that is aimed only at geographic names, especially those for where there's no recognized precedence in the system, and it's also a tool that requires diligence on the part of the applicant as opposed to on part of those who would want to be part of this watch service, so to speak. Thanks.

MARITA MOLL:

Okay. Thanks, Greg, except that this discussion is really about names—geo-names. It's not a bad suggestion, I would say, but it goes outside of the framework of this whole discussion.

Anybody else want to chime in on this?

OLIVIER CREPIN-LEBLOND:

Marita, it's Olivier. I'm a little bit concerned about the time. I don't know how many more slides you have for this, but I'm just thinking, if

there are quite a number, then we might need to cut this short today and then continue next week, if that's okay.

MARITA MOLL:

Let me see. I was going to stop here. I had one more that I was going to bring up, but let me stop here. But I just have one more question here. If we didn't talk about the tool, if we simply said that we felt people should be notified, would that ...Because this really is dissenting opinion, maybe that would be more palatable?

Greg, what do you think about that?

GREG SHATAN:

I don't know. I don't think it would be necessarily more or less palatable. I think that, if a "tool" made it easier to do, that might be viewed somewhat more palatable. But suggesting it without any implementation, I think, [sticks] to the substance of the question. So I would think that, in those cases where there are applications for terms that have multiple meanings, one of which is geographic, the question of how is much less important than the question of whether there should be such an obligation. I think the obligation is pretty much equally unpalatable no matter how you do it. As I said before, probably the only way it's palatable at all is if the action is taken by the geographic place and not by the applicant.

MARITA MOLL:

Okay. I just went to yet Yrjo say something, as he hasn't actually weighed on this yet.

YRJO LANSIPURO: Thank you. Sorry to take the floor a second time. Just to say that this term “tool” actually comes from the discussion in WT5 when some GAC members suggested this arrangement. There they were drawing inspiration from the existing tool for two-character codes. But I think that the word “tool” here is a shorthand for an arrangement that would make this sort of thing possible. Thank you.

MARITA MOLL: Okay. Thank you. Christopher, is it really short?

CHRISTOPHER WILKINSON: Very short. First of all, the PDP spends a great deal of time working out arrangements for other issues that they need to resolve. This is not our job. There are things that the PDP has been asked to do that they don't like to do but they have to. So I don't really accept that this has to be palatable. I just ate a radish out of my garden. I must say it was not palatable, but I'm very pleased that I succeeded in [grubbing] it. Yes, we need to be clear about this because, in my humble opinion on the basis of a decade of experience or more in this field, this is going to come and come. If we don't take a clear position from the At-Large point of view in support of the interests of the users in the areas concerned, we won't be taken seriously. Thank you.

MARITA MOLL: Okay. Thank you. I think, Olivier, I'm going to hand it back over to you. We'll have a close look at the discussion in later days and see if we got anything out of this. Thank you, everyone, for your participation.

OLIVIER CREPIN-LEBLOND: Thank you very much, Marita. We have to go quickly because we only have five minutes until the end of this call.

The next thing on our agenda is the policy comments updates over with Jonathan Zuck.

JONATHAN ZUCK: Thanks, Olivier. There are comments that are up for vote that's currently going on right now for the Latin American/Caribbean regional strategic plan. So those of you who are in the ALAC, please make sure and search for this in your inbox and make your vote known. For the rest of these, I think that there's nothing that we need to make an assessment on of whether or not to do a comment.

So I would ask, if there is, for these drafted comments, anything that anybody would like to raise with the group or if anyone has anything to share with the group in terms of talking points or something like that that they would like to include, please put your hand up if you are one of the drafters on one of these statements that's currently being drafted.

The ATRT is the one that looks like it's the closest in terms of deadline. I don't know if anybody wants to speak up and explain how that is or how

that schedule is coming, etc. Do we need to file for an extension, or is that going to be enough time to respond?

Olivier, go ahead.

OLIVIER CREPIN-LEBLOND: Oh, no. I see Sebastien Bachollet, so I'll let Sebastien speak.

JONATHAN ZUCK: Sebastien, go ahead.

SEBASTIEN BACHOLLET: Can you hear me okay? Thank you very much.

JONATHAN ZUCK: Yes.

SEBASTIEN BACHOLLET: Just to say that I thought we tried to put that in the right box, and it's not the CPWG. It's handled by the [OBS] or whatever. I guess it is [inaudible] they are planning to do the work. Therefore, I don't think we need to do it here. Thank you.

JONATHAN ZUCK: Sebastien, thanks for bringing that up. I think you're right. We discuss this ever time. We need to stop putting this on the ... I'll talk to Evin about it, but thanks, Sebastien.

SEBASTIEN BACHOLLET: But, you know, one of the reasons is that the list is with all the items, but you need to take into account the color green or blue. If it's green, it's [inaudible]. If it's blue, it's [inaudible].

JONATHAN ZUCK: Okay. I see that now. And I'll be working with Phil. So I don't think there's actually anything else that we need to go over here, Olivier, so I'll pass the microphone back to you.

OLIVIER CREPIN-LEBLOND: Thanks very much, Jonathan. I was just going to mention on thing, though, that is on the agenda, which does say there are two webinars. One happened a few hours ago for the ATRT3 final report. The other one is on the 16th of July, which is in a few hours' time. I know it's 7:00 UTC. So, if anybody is interested in this, they could have a look at that.

So we're now into Any Other Business.

I am, at the moment, not seeing any hands up, so—

JUDITH HELLERSTEIN: Olivier, I just wanted to remind everyone that we have the ITI webinar coming up this week or next week.

OLIVIER CREPIN-LEBLOND: The ITI webinar?

JUDITH HELLERSTEIN: Information Transparency Initiative. There's two webinars. Please sign up if you're interested in finding out more about the Information Transparency Initiative program. [inaudible] to find on the web.

JONATHAN ZUCK: That's right. They're demoing the new version of the ICANN website, basically.

OLIVIER CREPIN-LEBLOND: Perfect. Thanks very much. The two other things of note, of course, are the post-ICANN68 policy report that you can read at the link on the agenda and also the consensus playbook, which was updated and which can be downloaded from the link that's also on the agenda. And there's, of course, the At-Large PDP 3.0 workspace, which, if you haven't read it already, you can read through.

I guess, with two minutes to spare, we need to check out when our next meeting is going to take place.

CLAUDIA RUIZ: Hi, Olivier. The next call we have scheduled is for next Wednesday, the 22nd of July, at 13:00 UTC.

OLIVIER CREPIN-LEBLOND: 13:00 UTC. Thank you. I usually turn over to Cheryl because there are times when we certainly end up in sync with something that's terrible

that will take away a number of people from our call. Are we in sync or out of sync?

CHERYL LANGDON-ORR: No, you're overlapping beautifully. That's okay. We're all very used to it.

OLIVIER CREPIN-LEBLOND: Okay, Cheryl. I've given up. Thank you—

CHERYL LANGDON-ORR: As did I, months and months and months and months ago. We just have to do multiple calls at once. That's all.

OLIVIER CREPIN-LEBLOND: As someone who's done two today, not all ICANN-related, I certainly find it enjoyable after a while.

Thanks, everyone, for those updates. As you know, we will follow up with Marita next week on the remaining elements of Work Track 5. Of course, we'll follow up with everything else, especially looking forward to the EPDP follow-up work with Hadia and with Alan. So thanks, everyone who has attended this call, and of course to the transcribers that have done an amazing job, and also to our interpreters. Today, for once, we're not too late. Great. We had about an hours' worth of call, and we've managed to fill 93 minutes. So we're not doing too bad. Thanks, everyone. Have a very good morning, afternoon, evening, or night, wherever you are.

[END OF TRANSCRIPTION]