CLAUDIA RUIZ:	Good morning, good afternoon, good evening to everyone. Welcome to the Consolidated Policy Working Group call taking place on Wednesday the 2nd of September 2020 at 20:00 UTC.
	Due to the increased number of attendees and in order to save time, we will not be noting the attendees. However, the attendance from both the Zoom room and the phone bridge will be noted after the call.
	I would however like to note the apologies. We have received apologies from Priyatosh Jana and Maureen Hilyard.
	From staff, we have Evin Erdogdu and Heidi Ullrich. Our Spanish interpreters for today are Mariana and Paula on Spanish and Camila and Isabelle on French. We have myself and Michelle DeSymter on call management today.
	I would like to remind everyone that we also have real-time transcribing provided for today's call. I will put a link to the stream in the chat so that everyone can follow if they wish. And a friendly reminder to state your name when taking the floor so that the interpreters can identify you on the other language channels as well as for the transcription purposes, and to please keep your microphones muted when not speaking to prevent any background noise. Thank you very much, and with this, I turn the call over to you, Olivier.
OLIVIER CRÉPIN-LEBLOND:	Thank you very much for this introduction, and welcome, everyone, to this Consolidated Policy Working Group call which is going to be a little

bit different from our usual ones. The format remains the same but some of the topics will change. This week, we'll have first a presentation on human rights by Joanna Kulesza who is the vice chair for outreach on the ALAC and is going to provide us with some background details on where we are and then also consolidating an At-Large position on the proposals that are being made at the moment with regards to human rights impact assessments.

Then we'll go into our working group updates with our expedited PDP phase two updates being concluded in the blink of an eye, and then spending more time on the subsequent procedures with Justine Chew. That will be the bulk of our call today. We then follow up on the policy comment updates after that with Jonathan Zuck and Evin Erdogdu who has returned from her break. And in fact, welcome back to the number of people that have been on a holiday break. And we'll finish off the call with Any Other Business. And in there, I note that Yrjö Lansipuro will be spending some time speaking to us about the policy topics for the ALAC-GAC meeting at the forthcoming ICANN 69 meeting.

So, that's where we are. Are there any additions, amendments to the agenda that anybody would like to have or to make at this point in time? I am not seeing any hands up at the moment, so the agenda is adopted as it currently is displayed on your screen, and we can swiftly move on to the action items from our last call.

Now, there's an action item that's there at the moment for Joanna Kulesza and Ali Almeshal to work together on the At-Large mentorship program. There's a query as to whether this would actually be in the Organizational Finance and Budget Working Group, OFBWG. So let's

shelve this for the time being. I gather this is happening as we speak. Good to see that things are moving. And I would therefore suggest that we can move then to the next agenda item. We are pressed for time today.

And with a very warm welcome to Joanna Kulesza, the ALAC vice chair for outreach, ICANN and human rights. Human rights group, a group that is not really a chartered cross-community working group but it's a work party, and there are a lot of people from the GNSO working in this group, and only a handful of people from At-Large involved in this group that has made a number of very good proposals and some real progress when it came down to the ICANN bylaws and the cross-community working group on the IANA stewardship transition and ICANN accountability, all of these processes a few years ago. Now we're faced with a human rights impact assessment tool, and Joanna is going to speak to us about this. You have the floor, Joanna.

JOANNA KULESZA: Thank you very much, Olivier. I realize we just have 20 minutes. You will see a presentation. It is also linked in the agenda. The presentation has the background that Olivier mentioned. I will try however to go through it quite quickly. For us to arrive at the concluding slide that has a few policy questions that thanks to the kind invitation coming from Olivier and Jonathan, I would like to hear feedback on today.

So I will start off with a little bit of background, because I do realize that there are some working group members who have not followed this process closely as it unfolded throughout the years. But I would

encourage those of you who are seeking more information to go through the slides and follow links that are mentioned therein. So I will refer to work that has been done by the community earlier, but I would rather not waste time elaborating on it in more detail.

The purpose of this brief—I hope—intervention is for us to get an understanding where At-Large stands with regards to human rights, and the reason for that is because Jonathan and myself and Olivier having worked on the program for the coming meeting would like to get a joint session together with the NCSG to figure out if there are human rights positions that we could share and build upon. Because the human rights impact assessment tool is the current discussion point, this would be the point of departure for that session. So we will likely discuss the human right impact assessment tool, and for us to be able to present the At-Large position, today, Jonathan and Olivier decided to devote 20 brief minutes to that discussion.

So that is the purpose of this brief intervention for us to get an understanding on where we stand in that process, should we meet during ICANN 69 for the purposes of that session. But I will start off with a very brief background just to make sure we avoid the usual concerns and comments with respect to tying human rights into ICANN's policy agenda. If I could have the following slide, that would allow me to cut off all of that philosophical discussion that usually accompanies human rights.

We could have a separate capacity building session to try to figure out what human rights actually mean. This is something I do not want to start a discussion on today, so for the purpose of this very brief

intervention, I'm going to assume that the point of departure is the document that you can see here on the slide, that would be the universal declaration on human rights. Even though it is nonbinding as such, we have a body of universal customary human rights law that we will use for this purpose as our point of reference.

If I could have the following slide, you will see another assumption I have made for the purposes of this brief intervention. I'm going to assume that human rights are end user rights. To make sure that this discussion is rooted in ICANN's policy remit. Next slide, please. I'm certain that most of the participants of this call are well aware that this is the case, but just to be sure, human rights are indeed mentioned among the core values. You can see the reference to the bylaws here.

The community and all the parties taking part within the community are expected to respect international recognized human rights as required by applicable law. I'm certain we all agree that that can be a very ambiguous term, and we have learned that the hard way with the GDPR being the applicable law. But this is not to discuss human rights as such. Let's please continue to the following slide to get up to those pending policy questions.

Those of you who have followed this process are aware that human rights are not directly applicable to the community, to the contract that it is governed by. Rather, we need, as you can see in section 27, a framework of interpretation. Now, work on that framework has been done within the theme of accountability. If we could move to the following slide, I will try to link this directly with policy work that has been done already.

So accountability has been looked into in Work Stream 1 and Work Stream 2. Work Stream 2 seems to be the latest unveiling. For those of you wishing to get more information, I encourage you to look into the results of the work that has been provided with Work Stream 2 thus far. I know we have At-Large members on this call and I'm looking forward to their comments on how human rights fit into Work Stream 2. Next slide, please.

I would provide you with a little bit more background indicating where Work Stream 2 looks into human rights, and you can see this right here, the work that has been done on accountability includes Work Stream 2 which includes various themes, among them, human rights. Next slide, please.

You will see that this work currently, as indicated by Olivier, is being done within the cross-community working party—as opposed to working group—on human rights. There is a website I encourage you to research if you're looking for updates on the progress that has been made thus far. Next slide, please.

You will see that this work most recently has been collimated by a report on ICANN and human rights. This report was outsourced to a company whose business is dealing with human rights and business. So they have provided us a report that includes a human rights impact assessment tool, the usual practice for business when they do engage with human rights, because human rights, the treaties that we have bind states, but they are not directly applicable to businesses. So business willing to show, to prove that they do respond human rights use this human rights impact assessment tool. To briefly answer Glenn's

question, you will find that report on the work party's website, and I will share a direct link after this presentation.

If we could move to the following slide, please, you will see that this human rights impact assessment tool that is included in the report thus far has been implemented by the Org. You will see a report, and we have seen reports on progress throughout meetings. ICANN Org has undergone the impact assessment and they have done trainings when it comes to human rights.

But this is not the purpose of that exercise. If we progress to the following slide, you'll see that this is indeed more complex. So this is just an example of how this human rights impact assessment tool has been used for just one policy within the GNSO. This was to be a case in point, you're trying to figure out whether this actually works.

I do not encourage you to look closely into this specific slide. You will see the link in the agenda. That will take you directly into this very complex table. But this is what the human rights impact assessment would look like for individual enterprises, whether it would be a contracted party, whether it would be a specific policy that we're trying to verify if it is human rights compliant. So this is what we are discussing right now in these 20 minutes. I believe I still have roughly five of those left.

Next slide, please. I would like you to think about and possibly give a very brief feedback on these questions and concerns that have come up when we think about human rights impact assessments and their practical applicability to protecting end users' interest online.

My overall general question is whether we have a consolidated position as At-Large on human rights, whether we have a position on implementing human rights obligations within the ICANN community. If so, would we agree or disagree that the human rights impact assessment tool as it currently stands is an appropriate tool to do that? How easy would it be for end users, especially those with commercial interests, those business-oriented, to use this tool? How do we know that this tool is being used correctly? It refers to a very fluid, one could say intangible, framework of human rights. Who does the impact assessment? Would each company offering services within the DNS domain need to acquire a service to have their policies assessed as being human rights compliant? Would this be something we could do ourselves if we offer online services? Where is the end user in all of these discussions? Is this an effective tool to protect end user interests? Is this a verifiable way of making sure that end users are effectively protected? What would be the cost of a human rights impact assessment? Who would carry it?

If we do have opinions on those quite specific questions, I'm curious if we would like to get more involved in that process, and if so, how would we do it? I'm glad we have Yrjö on the call. We have discussed this issue previously with the GAC. I know we have members of At-Large who have been involved in this process. This is my one but last slide. I see Jonathan's hand is up. I would love to hear from Jonathan and from everyone else on this call if we do have apposition and how best to represent it. I'm going to stop here and let Jonathan add or amend anything I might have misinterpreted here. Thank you.

JONATHAN ZUCK: Thanks, Joanna, for that presentation. That was great. I don't think you've misinterpreted anything, and I'm not an expert on this effort by any means, and I think there are others whose participation in the At-Large predates my own on the Work Stream 2 discussions that took place. Just to provide a little color on why we're having this conversation, the NCSG proposed a session on human rights impact assessment as a plenary for ICANN 69, and it was not chosen, and so it occurred to me they might do it anyway, so I put out a kind of olive branch, and now that Ayden is gone from the NCSG, once again tried to mend fences with them and suggest that we might do a session together to discuss this issue, and I explicitly said I can make no promises about where we would stand on this issue on two fronts. One is how expansive our definition of human rights would be, and second, that we would be adamant about non-registrant end users being a part of any impact assessment. And Stephanie was still interested in doing something together, so I asked Joanna if she'd be interested in shepherding this activity.

So that's what it is. It's preparation for a joint session with the NCSG at ICANN 69 with the ALAC and the NCSG running it and getting speakers, etc. to get a discussion going. So I think Joanna's purpose here is to see if there is some consensus on what the At-Large positions, or I guess technically the ALAC positions on the human rights impact assessment are or were so that she can be an effective advocate for those consensus decisions rather than just winging it from her own perspective. So this is Joanna's diligent attempt to be a team player and understand where we're all coming from on this as we step into this potential lion's den of an issue. So that was just a background, and after

that, I will pass the microphone on to the others that have been working for this issue in At-Large longer than I have.

OLIVIER CRÉPIN-LEBLOND: I was just going to suggest that we close the queue after Greg, because we're under real time constraints and there are quite a few people in the queue. So, Alan, go ahead.

ALAN GREENBERG: Thank you very much. A couple of things. Declaration of human rights applies to governments. Governments may choose to enact laws that pass those responsibilities or requirements onto nongovernmental entities. The origin of human rights in ICANN is when we were under the jurisdiction of the NTIA, the US department of commerce, the concept was that, should we do something that grossly violates—or violates in any case—human rights, the NTIA as a government has responsibilities and would step in and intercede.

With the NTIA out of the picture, there were people who felt that we could not remove the obligation altogether and it was inserted in the bylaws as Joanna pointed out. The bylaws say that as required by applicable law, and that's a very key statement and it was a very key statement to the drafters who put it into the bylaws. My question is, to what extent do we understand what applicable laws there are in any of the jurisdictions we operate in that would apply human rights to us?

The human rights impact assessment, the trial one, has all sorts of interesting things in it that could be construed as related to human

rights, but it's not at all clear that there's any applicable laws that would say that they're enforceable or actually applicable. And I guess I'm a little bit worried that if we look for every possible place that could potentially have an impact on human rights, regardless of the fact that there may not be any laws associated with it, we're going to have our hands full doing just that and not doing any of the work we're here for. And I wonder to what extent can we identify what we are really obliged to do under applicable law, and perhaps more important, how we can recognize the things that are truly important and not put all of our efforts into an exercise which is interesting but not necessarily yielding a lot of benefits to the end users that we care about. Thank you.

JONATHAN ZUCK: Hadia, go ahead.

HADIA ELMINIAWI: Thank you, Joanna, for the presentation. Thank you, Jonathan. I think this is a very interesting session. I was wondering—you had some questions. You did mention that we are particularly concerned or would be interested in commercial end users. My question is, why especially commercial end users? And then the other comment I had, what if we actually decide to use the human rights impact assessment tool? What do we do with the results that we get? How do we benefit the end users from whatever results we get from this assessment? What do we do with the results?

JONATHAN ZUCK: Thanks, Hadia. I don't know that that's determined yet. Like I said, this was meant to be a way to reach out to the NCSG, and I think that if they were going to do the session on their own despite it not being chosen as a plenary, that it would probably overfocus on the rights of registrants, which [seems] to be their focus, so I think our job would be to broaden it. I don't know the long-term implications of this, and I suspect that this one session is not going to dramatically change that fact, but in fact, these kinds of questions could be raised about the applicability, the practical aspects of it, etc. that both you and Alan have raised. It's just something that's in the works. And forgive me, I may have made a mistake reaching out to Stephanie to do this, but it felt like something that there was interest in among our community and in particular, interest in making sure that the scope of it, both in the definition of human rights and in the definition of humans, so to speak, was sufficiently broad to incorporate our entire constituency that I thought it was a good opportunity to partner. But I don't know that this one session is going to dramatically change the status quo, but it may be an opportunity to bring up some great questions.

Next is Gunela.

GUNELA ASTBRINK: Hi everyone. Firstly, apologies for not having been active in these meetings due to family illness. Just a few points. I was able to input into the tool last year in regards to the UN convention on the rights of persons with disabilities, and the rights to ICT accessibility for persons with disability.

So I suppose there are other aspects to this that can benefit a large number of end users, and also, I think Yrjö's point about the GAC and its human rights and international law working party is important here as well. They have also taken an interest in accessibility for persons with disabilities.

So I'm looking at it from the point of view of, rather than maybe being obligatory under the ICANN bylaws, ICANN is a good corporate citizen, and using this type of tool can be useful going forward in a number of ways. I certainly would wish for this conversation to continue and also to have further discussion at ICANN 69. Thank you.

JONATHAN ZUCK: Thanks, Gunela. Greg, please go ahead.

GREG SHATAN: Thanks. I was one of those who was involved in Work Stream 2 and specifically in the human rights subgroup, and then drafting of the materials that came out of that, the bylaw and related things. I have not been involved in the CCWP HR, in part in protest. This is not a chartered multi-stakeholder group. It is only a committee of the NCSG with a misleading name and participation by some people outside of the NCSG. But it is entirely an NCSG—and to some extent Article 19—driven exercise. It would be nice if there was a truly multi-stakeholder chartered supporting organization and AC chartered group that was doing this work. The end result would be, I think, somewhat different. Not necessarily a lot different, but basically, the work that we've looked at and some of the criticisms that people have made of it or critiques I

think relate directly to the fact that this is an essentially uni-stakeholder approach that has been taken. And I'm still loath to give it credibility, although I think it maybe gained credibility just through sheer laziness of other people who assumed that because it's a CC something, that it has the same sort of validity as the CCWG on accountability and the like. And it's interesting that the Internet governance group got its wrist slapped for being a CCWG but that nobody has gone and told the CCWP that it should call itself something else.

That said, these are important issues and there does need to be a framework, and human rights impact assessments are inevitably part of the implementation of this. That doesn't mean that this human rights impact assessment prepared by this vendor under the supervision of this NCSG committee is the human rights impact assessment that we all need and want.

So if this goes forward as an event at the next ICANN meeting, then we certainly should not stay away from it if it's a public event as opposed to a working meeting of the work party, but at the same time, I think our participation would have to be carefully gauged so that we're not accidentally legitimizing this as a multi-stakeholder effort. It's a worthwhile effort, as any—this very group that we're involved in here, the CPWG, but we don't hold ourselves out as being a cross-community group of anything even though there are people in this group, including myself, who have been or currently in other parts of the community.

So I guess I would say that we need to tread very carefully because we don't necessarily endorse either the process or the end result by which things currently stand in regards to this particular human rights effort.

At the same time, these efforts are necessary to be done, but they should be done correctly and it's kind of unfortunate that no one has grabbed the bull by the horn to take this in any direction that ultimately would make it more legitimate. Thank you.

JONATHAN ZUCK: Thanks, Greg. We need to move on because there's so much else to cover, but thanks for everyone's feedback on this. We'll continue the conversation but if there are those who participated in the discussions during Work Stream 2 that have information or if staff could help us pull up any positions that we took on these things, etc. so that Joanna is armed with them if this session comes together, then that would be helpful as well. But that's all we want to do, is to just sort of put it out in front of people and raise awareness to the fact that we may be jointly presenting this sessions and we may need to be hard nosed about the positions we take in it based on what people are saying. But let's see what happens. Thanks, everyone. Olivier, I'll pass it back to you.

OLIVIER CRÉPIN-LEBLOND: Thanks very much for this, Jonathan. We are now on the working group updates, agenda item four, with Hadia Elminiawi and Alan Greenberg speaking to us about the EPDP phase two for a very short five minutes. What's the latest update, please?

ALAN GREENBERG: My slides from a previous meeting are on the screen. I'm not quite sure why. I don't think we have anything to report at this meeting, but we

wanted an opportunity, if anyone has any questions and follow-ups to our previous things, to have an opportunity. Hadia has her hand up, and she may have something specific to say.

HADIA ELMINIAWI: I would urge everyone to raise any questions or clarifications that they would like to know about. Another quick thing, as you might already know that there will be a GNSO council EPDP webinar tomorrow at 20:00 UTC for 120 minutes. The current chair and staff will present phase two final report recommendations to the GNSO council. Observers are welcome, but they will not be allowed to speak even during the Q&A session. And basically, the council leadership is recommending to the council that recommendations from 1 to 18 are considered as one package, and the recommendations covering priority 2 items are considered as a separate package.

As you all know, in the EPDP on gTLD registration data, not all issues had the same importance or groups. Alan and I focused on the relative value of issues which we were trying to reach conclusions In that regard, and that is why we ended up with a report which included recommendations that we would only agree to in the presence of some other recommendations.

We were thinking about what we could achieve as a group. We may [inaudible] so that we can all gain. So having said so, the work which has been done so far is good. It's not complete. Some of the chartered items were not finished. And those are priority 2 items, and some other recommendations need clarification.

Partly, this is due to the time constraint and not being able to have face-to-face meetings during which we usually reach better agreements and understanding to each other's position. So I see we have the presentation on the screen, it's linked to the agenda, and we could all take a look at it after the call.

OLIVIER CRÉPIN-LEBLOND: Thank you very much for this, Hadia. I'm not seeing any other hands up, so yes, tomorrow, Thursday is this presentation. It will be, I guess, it's open to observers, so you can all log into it and Hadia has sent all the details for connection to the mailing list.

We can move to the next item. Thank you, Hadia and Alan for this. I gather there's not much else to talk about until tomorrow, and maybe we'll have some more discussion next week. But in the meantime, we have Justine Chew who has joined us to speak to us again about the subsequent procedures on three particular topics. We've got the objections, ALAC, and independent objector, we've got the limited challenge and appeal mechanism, Annex F, and we have the applications assessed in rounds, different top-level domain types, and application queueing. Very interesting stuff. I note that we've got 40 minutes, so it's a bit tight. Over to you, Justine. You have the floor.

JUSTINE CHEW: Thank you, Olivier. Whoever is running the—Michelle I think it is, I think you miss one presentation which is the objections one. Yeah, that's [being called up.] I just want to go back to the particular topics on objections in relation to ALAC just to hone in on the element which

piques people's interest the most, which is to do with standing of ALAC to file objections, community objections at least. If we can go to slide six, please.

Last week, I talked about some of the recommendations or affirmations from SubPro PDP working group about recognition of certain communities or certain parts of the community in ICANN being defined as an established institution, and ALAC is one of those established institutions. Now, I also said that there was a little bit of confusion. I thought there was a confusion in the way that the text in the AGB— applicant guidebook—is set out which causes questions around whether ALAC should have standing or not.

So the idea is since ALAC is now defined as an established institution and affirmation 31.4 says the parties with standing should continue to be able to file for objections, which includes community objections, so the question then is, does this mean that ALAC has standing, therefore no ALAC-filed community objection should be dismissed on the grounds of no standing? This is one of the queries that was raised last week on the discussion of this topic.

[inaudible] in 2012, ALAC filed three community objections against the .health string. It withdrew one of them, so two went ahead, and although the panelists did not actually say in the determination that ALAC does not have standing per se, it did question whether it does in fact have standing. It's kind of complicated, so I'm trying to make it easy to follow.

Okay, but you see—maybe we can go to the next slide, seven. Sorry, I'm struggling a bit today. Okay, so as I said, the way I read the applicant guidebook, there could be some confusion between what is actually eligibility and what is actually standing. So if we have a look at certain sections of the AGB, section 3.2.1 talks about the grounds for objections, 3.2.2 refers to standing to object. And then it says community objection, standing to object is an established institution associated with a clearly delineated community.

Then 3.2.2.4 says in the [inaudible] community objection, establish institution associated with clearly delineated communities are eligible to file a community objection. So in the earlier part, it already talks about standing, and now it talks about eligibility. So there is a little bit of confusion there.

And then the second bullet says, to qualify for standing for community objection, an objector must provide two elements: That it is an established institution, which the affirmation already confirms that ALAC is an established institution, and then the second element, that it has an ongoing relationship with a clearly delineated community.

So the impact of this that I see is that if ALAC is an established institution, then it should not be required to provide verifiable evidence that it is indeed an established institution. Then does ALAC have an ongoing relationship with a clearly delineated community for which opposition is expressed?

Now, in the case of 2012 round where ALAC filed a community objection against .health, it invoked a different community, if I could use

the word loosely, which is an association of health professionals, if I could put it simply, as the community being affected. So in that context, moving forward, there could be two scenarios for consideration, and we'd like to see what we would like to have it as.

Scenario one is if ALAC's objection cites the At-Large as the community that is affected, then obviously, there shouldn't be any questions about being eligible and have standing to file community objections, because obviously, we are At-Large and we are At-Large via RALOs which is a clearly delineated community, and the outcome would be there should be no dismissal for an ALAC community objection on the basis of no standing. So the question is, does this need to be made clearer somehow? I don't necessarily think so at this point in time.

The second scenario is if ALAC's objection cites an adopted community, for example, in the case of 2012 where we invoked an association of medical professionals as the community, then in that case, standing may not be automatic and may not be readily shown. So the question then is, should we rectify this? Is it justifiable to say that ALAC's objection should not be questioned on the grounds of standing regardless of which community we invoke?

If we can move on to slide eight, I'll just show you—so for community objection to succeed, it needs to meet four tests. This is what's in the applicant guidebook at this point in time. The first one is that the community invoked by the objector is a clearly delineated community. So the question goes back to, what community are we invoking if ALAC were to file an objection? Is it At-Large, or is it someone else?

The second test is that the community opposition has to be substantial. The third is there's a strong association between the community invoked and the applied for gTLD string, and the fourth is you have to show that there is a likelihood of material detriment to a significant proportion of that community to which the string may be explicitly or implicitly targeted.

So in terms of test two, three and four, that would, I guess, depend very much on the circumstances, the facts, and also the string involved, because you have to obviously show certain connections and show likelihood of detriment, for example. But in terms of test one where it is the community invoked by the objector has clearly delineated community, that is back to the question of, does it matter how ALAC structures its objection, whether it is invoking the At-Large or whether it's invoking another community that is not necessarily clearly associated with At-Large?

The question then is, do we then want to do something about making it clear whether we think ALAC should not be questioned on its objection based on standing? Comments, please, or questions for that matter. I see a yes from Jonathan, so I assume that is an affirmative answer to my question about—yes, Jonathan, go ahead.

JONATHAN ZUCK: Yes, sorry, I was trying to be efficient, not vague. I think in both instances, you were asking for whether or not it's worth adding clarity on standing, and I would suggest that it is, because lack of clarity was one of the biggest issues in the last round. So I think clarity around our

own standing as a community and some clarity that we have a fluid mechanism by which to associate ourselves with a particular application has got to happen.

JUSTINE CHEW: Goruping.

JONATHAN ZUCK: Because obviously, we're an established community, but establishing our connection to a particular string is going to continue to be difficult. So clarity around how we go about doing that, whether it's through another organization or just simply declarative on our part, I think it's worth asking for that clarity and specificity on how we would go about doing that.

JUSTINE CHEW: Great. Well put. Thank you, Jonathan. Holly?

HOLLY RAICHE: I have to agree with Jonathan. I think that when we look at the last session on [PICs,] one of the unresolved issues is—well, it comes from the extent to which we actually can define community, and that was one of the issues, but then once you try to get over that one, what standing does it have to particular groups that want a particular name for a particular community? And what we represent is a broader community. So I just think that's one of those issues that registry needs to be thought through, because it's just one of those issues in terms of

what right do we have to say anything. We just haven't clarified that. Thanks.

JUSTINE CHEW: Thanks, Holly. Alan.

ALAN GREENBERG: Thank you very much. Two comments. Number one, we are a community. We are the At-Large community as defined in the ICANN bylaws. We are "a community." The "community" word used in this slide is the community associated with the TLD. I would really avoid referencing us as a community because it confuses the issue and if we claim that our community is the one that's applying for the TLD or associated with it, we're almost certainly going to lose on that, because it's going to be a tenuous connection at best. So I would avoid using the term "community" in relation to us.

My belief is we can file an objection like the independent objector, not because the independent objector is a close friend to the people who are filing or applying for the TLD but because the independent objector has been named as someone who has the standing to file objections. And I believe that we are in the same position. So presumably, we should file them based on our community of end users and the concerns we have for them, but let's not try to pretend we're the community that is applying for the application. It's a different community and we're never going to win on that one. I think we need standing because we have been given standing, because we have been allowed in the applicant guidebook to file objections.

Whether we're going to get agreement to say that, the last applicant guidebook did not say that, and there was some question whether we had standing in the minds of the panelists who were judging these things. As it turned out, they didn't end up saying yes or no because they rejected the application for other reasons, but there was question in their mind whether we had standing or not. My preference is that we should clearly have standing and to say so in the applicant guidebook. Whether we're going to get that or not, I don't know, but we should definitely be pushing for that. Thank you.

JUSTINE CHEW: Thank you, Alan. And I think I'm going to cut the queue off at Olivier.

OLIVIER CRÉPIN-LEBLOND: Thanks very much, Justine. Just to add to what Alan has mentioned, I was the person who filed the objections back then, and I was on the receiving end of the responses and queries of the examiner, and it was clear that the interpretation was left so wide open that the examiner felt that the interpretation of the community needed to be the exact affected community that needed to file the objection or whatever it was, and if that was not the case, it would be thrown out.

So we have a real problem here if we use the same basis as what there was in the last round, because although the ALAC would have the ability to file community objections, it would never be seen or determined to be the community to do it. Why? Because if it's one, two, three, five of our At-Large structures that are actually members of that specific community that asked the ALAC to do this, there are—I don't know how

many ALSes there are now, let's say if we took 200, it would be five of those 200 ALSes, or 300 ALSes, and we'd be told, "You don't represent the community." And that would be thrown out.

So we have to really think of this one. Thanks.

JUSTINE CHEW: Okay. Thank you very much. I think I know what to do already. And just for good measure, we have raised in the next topic under grounds for appeal the grounds of standing as a possible ground for appeal. Just in case, just to cover our bases. Can we move on to limited challenge and appeals mechanism, please?

In the 2012 round, there was no challenge or appeal mechanism. Next slide, please. Recourse was strictly by way of the existing accountability mechanisms, which proved to be clearly insufficient to properly facilitate challenges on [two decisions] on evaluations as well as objections. And the reason for this is because many of the accountability mechanisms focus on process rather than substance.

So if you file, say, a request for reconsideration, it points to—the basis of your argument would be that ICANN did not do something, or ICANN did something that was detrimental to you. But in the case of evaluations and objections, it wasn't actually ICANN that was actually doing anything or not doing anything, it was a third-party evaluator or a third-party panelist that was hearing objections. Therefore, that procedural element would always fail in an RfR.

In terms of the questions around this PIC, there would be, as you see on screen, who's eligible to exercise this recourse? Who would preside over them? What would be the processes handling any of these challenges or appeals? What would be the remedies? The question of costs, to always try to keep costs low without sacrificing the quality of the parties hearing it, and how is ALAC affected by all of this. Next slide, please.

This touches on what ALAC statements have said in the past, the key of which would be that we did support a need for a limited appeals process, as it was called then, anyway, and to highlight that CCT recommendation 35 also proposes to introduce a post-dispute resolution panel review mechanism. Next slide, please.

This one is a bit wordier. Let's see what we have here. Okay. So in essence, if I could just summarize, let's focus on recommendation 32.1. So the long and short of it is that the SubPro PDP working group is now recommending that ICANN establish the mechanism that would allow specific parties to challenge or appeal certain types of actions or inaction that appear to be inconsistent with AGB.

This particular sentence is important, that's why it's limited challenge and appeal or appeal mechanism. So basically, the challenge and appeal mechanism means that it's only open to certain parties and is only open on certain types of action or inaction, hence the word "limited."

This mechanism isn't meant to replace the existing accountability mechanisms in the ICANN bylaws. That could still be invoked if the parties decide they want to do that. And in no way would this

mechanism impinge on the access to those accountability mechanisms under the bylaws.

So in terms of evaluation challenges, the challenges would be limited to ten of these grounds, or rather, I should say ten of these areas. Background screening, string similarity, DNS stability, geographic names and so forth, including applicant support and community priority evaluation.

In terms of appeals for objections, there are five groups which cover the four existing objections, and the fifth one is the conflict of interest of panelists. Implementation guidance—a lot of this you'll see when we come up to Annex F.

Moving on to slide five, implementation guidance 32.6, that just means that parties are given the option to choose the three-person panel. If they don't agree, then the default will always be a single panelist. And in terms of implementation guidance 32.7, that refers to the standard applied for challenges or appeals.

In all cases, it would be a clearly erroneous standard of review. The only exception would be for conflict of interest appeals where it would then be a de novo standard of review.

Simply put, clearly erroneous standard review requires that whoever is listening to the challenges or appeals would have to look into the decision that was made by the earlier panelist, and if there is an error, then they would correct it. Presumably, they would propose something to correct it. So that means that clearly erroneous standard requires a review of an earlier decision, whereas with the de novo standard

review, why it only applies to conflict of interest is because in the case of conflict of interest, you are actually challenging the panelist's ability or standing to hear your appeal or challenge to begin with, which is why then it goes to a de novo review standard, which is to say that you disregard any decision that the panelist had made to begin with, and preferably, obviously, such a challenge would be taken up prior to the panelists actually hearing and deciding on the subject matter itself.

On the topic of conflict of interest, this is to guard against any conflict of interest amongst the panelists or the evaluators. So [inaudible] says that we will try to have options in terms of the independent objectors or the evaluators, so as to avoid conflict of interest. For example, in the last round, we only had a single independent objector, therefore, even if you raise conflict of interest, there wasn't an alternate that you could fall back on, so that independent objector would continue to file an objection regardless of whether they are conflicted or not, so to speak.

So the idea is that we should have more than one independent objector so that if one of them is challenged in terms of having a conflict, then the other one could act independent of conflict, presumably.

Okay, we will have a look at Annex F shortly. Slide six, the impact of all this implementation guidance, you could just see the focus on the red box, is that ALAC in particular, implementation guidance 32.8, as before, ALAC will be given a budget for filing community and limited public interest objections. Correspondingly, it will also be given a budget to file any challenge or appeal, including costs awarded.

So now they're instituting a loser pays mechanism so that if ALAC were to file an appeal against an objection that was dismissed, and it loses that appeal, then it will have to pay costs as awarded by the panelists. And that cost has to come up from the budget that ICANN is giving us.

The quantum of the budget has not been decided yet because obviously, that is not something that the SubPro PDP working group has jurisdiction on. I would think that it's something that will have to be negotiated between ALAC and ICANN.

The definition of limited challenge and appeal mechanism would mean also that there is only a single round of challenge or appeal on one issue so that you don't have appeal upon appeal. Otherwise, it will go nowhere or just keep going on.

So let's go to Annex F, which begins on slide seven. This table will clearly show the grounds, who is able to challenge. These next three slides have to do with challenge to evaluation. So these three slides talk about what area evaluation can challenge be mounted, what are the scenarios or the outcomes that would allow an appeal or a challenge, who are the parties that are affected, who are the parties with standing to file a challenge, who would be the arbiter of that challenge, the likely results, and who would bear the costs.

In most cases, these wouldn't involve the ALAC per se because they're not necessarily an affected party and therefore have no standing to mount a challenge to the evaluation. So I'll leave you to go through this table. I'd like to jump to slide 10, which is the table of five slides

connected to limited appeals for objections. Earlier, we were looking at the table for evaluations, now we're looking for the table for objections.

So again, this set of five slides deals with the areas for which an appeal to an objection can be mounted, which is basically, as I said before, the four existing objections as well as the conflict of interest problem. The potential appellant, who would be those potential appellants, would they have standing, what is being appealed, the arbiter who will listen to the appeal, what is the possible results of an appeal if it were to be successful, who bears the costs, and any time limits on when an appeal needs to be filed after a decision on which the appeal is mounted is made.

So again, here, the only two areas which would affect ALAC would be the limited public interest objection on slide 12, and also, the community objection on slide 13, because ALAC only has standing to file these two types of objections. Next slide, please, slide 12. By the way, this table is going to go into the applicant guidebook somehow.

So it says that ALAC has standing to file an objection to a limited public interest objection that has failed, and a different panelist to the one that gave the determination to begin with would need to hear this appeal, and the outcome, obviously, if we were to file an appeal to an objection, would be that the application does not proceed, because originally, if we had filed an objection—we had filed an objection and if we had lost that objection, then we'll want to appeal against that loss, and the objection would be that the application does not proceed to begin with.

Nadira asks why ALAC, on behalf of whom? Because ALAC is the one that's filing the objection. That's why it's ALAC. And we have a process which was utilized in 2012 to actually guide ALAC as to whether to file an objection or not. I'm not going to go into details of that, but feel free to contact me bilaterally if you need to.

Yes, and just note that there is a time limit for which the appeal has to be filed within. Similarly, with community objections, slide 13, again here, it says ALAC has standing. So back to the earlier question about whether ALAC has standing to file an objection, the similar arguments would apply here.

So this is where I have asked for the issue of ALAC not having standing as a potential grounds for an appeal. In case panelist saw it somehow fit to say that, ALAC, you don't have standing to file this objection, therefore I dismiss it. So we need to have that as a ground for filing an appeal. Otherwise, because it's a limited mechanism, if there is no such ground, then you can't file an appeal.

The rest of it is pretty much the same in terms of the loser having to bear the cost and the timing for filing an appeal. Conflict of interest panelist is more or less there, moving on to the next slide. The only thing that has not been determined would be who would actually hear the appeal. So that's something that's going to be determined by—has been punted off to the Implementation Review Team.

My apologies for going through this very quickly. I did try to allude to this Annex F last week and suggested that people actually have a look at

it before this call, but if there were any other questions stemming from Annex F, any part of Annex F, I'd be happy to answer those.

Okay, seeing no hands, and I think I've already addressed Nadira's question in chat, okay, time check. Can I still go on, or do I have to stop?

OLIVIER CRÉPIN-LEBLOND: Yes, Justine, you have, I would say, about another five to eight minutes remaining.

JUSTINE CHEW: Okay. I can quickly run through the next topic then because I only have four slides or thereabouts.

OLIVIER CRÉPIN-LEBLOND: And I was just going to add one more thing. I've been in touch with Dev Anand Teelucksingh who was leading the process of the internal objections on this, and he will be listening to the recording of this call and be ready to answer any questions on the process that was used back then. Thank you.

JUSTINE CHEW: Yes. Well, the question that came up during one of the SubPro PDP working group was not everybody was familiar with that process. I happened to be familiar with the process because I was involved in that process back in 2012. So I could attest to the fact that the process that ALAC adopted—and it involved all the RALOs, by the way, which is

fantastic—was actually stringent, because some of the working group members actually did ask, so how does ALAC determine whether to file an objection or not? Is it a willy-nilly process, is it based on the impulse of certain people, or what? In effect.

They didn't use those words, but in effect, they were asking for how ALAC determines whether to file an objection or not, and I said that—I basically attested to the fact that there was a procedure in place for the 2012 round and it was very stringent, and it involved all the five RALOs. So it's not a willy-nilly process, there is a strict process that we abided by. And I imagine that in some shape or form, that process would be adopted again for the next round if we needed it. Okay, so I just used up a few more minutes, unfortunately.

Just slide two, I'm trying to cover three topics here. I should be brief about it. These are the key issues around these three topics, if I could summarize. Application assessing rounds is basically, how do you define a round? When does it start, when does it end? And whether there is any limitations of prerequisites in allowing application for the next round, meaning to say for example if a string has been applied for for this round and it hasn't been resolved, is that string still open for application in the next round?

Topic four, different TLD types, I think we've gone through that before with the Neustar proposal that was talked about many months ago, whether there should be any addition to the existing types of applications and whether priority should be given to any of those categories of applicants or applications. And application queueing, the only reason why I raised it here is because there is some priority that's

going to be given to IDN applications, so because IDN is of interest to us, that is why I raised it.

Next slide talks about what ALAC's existing positions are. I'm not going to go into detail about that. Slide four, the impact of this set of affirmation recommendation implementation guidance would be that applications will continue to be assessed in rounds. They must be assessed in rounds. Recommendation 3.2, in terms of when an application submission period starts, there must be clarity around the timing and/or criteria for initiating subsequent procedures from that point in time.

So if I could frame it, what this recommendation is saying is when the next round happens, say for argument's sake it happens next year, and that application process runs for three months, so it will stop after three months because this is an example, this recommendation is saying that when that round opens, there must already be clarity around the timing for the next round, the next round after the next year, in such a way that ICANN must have published the date for the following round, or the specific set of criteria events that must occur prior to opening up the next round.

So, question is, do we see any issues with that? I am particularly a bit wary about Part A where it says that ICANN must have published the date for the following round because the implication is that you are setting a date for the following round ahead of time without knowing what would happen in the next round. Of course, there is A or B, but there's [still A.] Olivier, you have your hand up.

OLIVIER CRÉPIN-LEBLOND: Justine, I haven't got my hand up. I think it's Marita that has her hand up. Oh, I do have my hand up. I should put it down.

JUSTINE CHEW: Okay, Marita, go ahead, please.

MARITA MOLL: Okay. Thank you. I think it's kind of problematic to be setting a date for a post-next round before a round starts. It kind of puts ICANN into a ... You have to continue to do this, like on a treadmill of having all these rounds. There are even questions right now about whether there should be a round. Plus, there have certainly been questions about, if and when the next round happens, should there not be time included in-between to make sure that the problems that emerge in the applicant guidebook—and they will emerge because you can't kind of predict all the things that are going to come forward—there has to be some time in there to try to resolve or figure out ways to fix those problems. So yeah, perpetual motion machine. Thank you, that's what I was looking for, Olivier.

So [inaudible] that we need to be able to fix the problem, have enough time to fix the problems before yet another round starts. Those are things that come to mind for me. Thank you.

JUSTINE CHEW: Thank you, Marita. Cheryl.

CHERYL LANGDON-ORR: I'd ask some of you to perhaps park your cynicism just for a moment and remember that the Part B is the way of avoiding the "you have to have a date and run with it." But the reason I put—or indeed risks of perpetual motion, and if it's a very slow ticking clock, I personally don't have a problem with it. That said, an awful lot has to happen before a round can start anyway. There is specifics on marketing, there's specifics on outreach and engagement, there's a lot of benchmarks and key elements that have to happen before. So it's not going to be a carousel at all.

Whoever, it is trying to take the pressure off everybody trying to get in on a round because "It's not going to happen for another decade." It's supposed to gain predictability and take the pressure off, including those who wish to watch and perhaps raise any objections such as ALAC will be wanting to. Thank you.

JUSTINE CHEW: Thank you, Cheryl. Greg?

GREG SHATAN: I was kind of prepared to agree with everyone until Cheryl spoke, then I agreed with Cheryl, but I still agree with everyone that there is still a concern here, but I agree that B is the safety valve, and if I were a bettering man, that's where ICANN would go. Although I actually like the idea in a sense of setting the date certain, because I think for the prior round, there was a kind of gold rush phenomenon and a FOMO

problem—fear of missing out—especially for brands. A number of brands bought in in part because they were afraid that everybody else in their space was doing it, and in part because they felt that if they didn't do it now, maybe they'd never get to do it again. So a number of them came in with half-baked plans or quarter-baked plans, and a number of those have thrown their top-level domains back into the pool or into ICANN. It's not really a pool. And many others have not done anything worthwhile with them. And a lot of that was trying to get in on this kind of special one-time offer. This is almost like a late night TV advertisement for Ginsu knives or something at some point, or the Shamwow. You must call in the next 20 minutes.

JUSTINE CHEW: [We get the point, Greg.]

GREG SHATAN: So I think bottom line, we should avoid being cynical, but at the same time, express some concern about this being just a machine to issue top-level domains. There are people that make money off of this, this is their industry, they want this to keep going. That is not the end user position at all.

JUSTINE CHEW: Thank you, Greg. I think I've run out of time, so Olivier, you want to take over?

GREG SHATAN: Sorry about that. Sorry about taking your time.

OLIVIER CRÉPIN-LEBLOND: It's all fine. Thank you very much, Justine, thank you Greg, thanks for everyone who has spoken on this. And now we're going directly to the policy comment updates. And Justine, just in the meantime, we'll probably follow up with you to see if we need any additional sessions, single issue sessions on any of the additional topics and we'll come back to everyone once we've amended the calendar for this. So thanks, as ever, for presenting those issues in such a way that makes it understandable by everyone, and certainly is going to help us in the drafting of the ALAC comment when the time comes. Over to you, Evin Erdogdu.

EVIN ERDOGDU: Thank you, Olivier. Running through the policy comment updates, as was noted last week, the addendum to the ALAC statement on EPDP was submitted by Alan and Hadia. The summary of this addendum is on the agenda. and also, the upcoming public comment proceedings are listed. There are now four that are still standing as August, but that means that they may come later this calendar year, perhaps in September. But two were recently opened in August, one of course being the GNSO new gTLD subsequent procedures draft final report which Justine Chew and the small team are working on, but the other which his currently up for decision is the reference label generation rulesets—LGRs—for the second level, and this closes on the 15th of

October. It's usually not a topic that the ALAC comments on, but it is open for discussion for this group.

Otherwise, it was noted in the chat and I'll copy paste there as well, there's an upcoming webinar on SubPro that will be held by the working group following Monday 14 September at 20:00 UTC, and if you're interested in joining, the GNSO support staff will get everything squared away for you. So I'll copy and paste that information into the chat. Thanks very much, and back to you, Olivier.

OLIVIER CRÉPIN-LEBLOND: Thank you very much for this, and I notice that Greg has his hand up. Greg Shatan.

GREG SHATAN: I definitely don't want to speak any more. Thank you.

OLIVIER CRÉPIN-LEBLOND: Okay. Thanks for this. You see the clock is ticking now on the subsequent procedures, and we're going to have to—well, it's closing in one month. We have a few days remaining until the countdown takes us to the next stage. Now we have Any Other Business, and this takes us over first to Yrjö Lansipuro who is the At-Large liaison to the GAC. Yrjö, you have the floor.

YRJÖ LANSIPURO: Thank you, Olivier. Yeah, we have again a meeting with the GAC at ICANN 69, and I'm putting now together the agenda. There have been two items so far at our joint meetings which have been pretty much the mainstay of the meeting, that is to say EPDP and SubPro, comparing notes on them and trying to find common ground. I have sent messages to our topic leads on these questions, that is to say, to Alan and Hadia on EPDP and to Justine on SubPro, to inquire what we should do on those matters.

Of course, on the SubPro, as you had just said, the clock is running, the time is running out, and the question is whether we actually should have an intersessional meeting before the end of the public comment period because to discuss a common approach at the ICANN 69 would be too late. But actually, at this meeting, what I want to ask the participants is if you have any ideas for other items, additional agenda items for our meeting with the GAC at ICANN 69, please let me know by e-mail because we don't have time to discuss this at this meeting, but please send those ideas to my e-mail, and preferably, this week. That is to say, tomorrow or Friday. Thank you very much.

OLIVIER CRÉPIN-LEBLOND: Thank you very much for this, Yrjö. And I guess, how would that be discussed? Would it be coming over to you, or would there be a Wiki page open for this?

YRJÖ LANSIPURO: I think that we could do that at the next CPWG. Thank you.

OLIVIER CRÉPIN-LEBLOND: Thanks for this. And just reminding you of one more item in the Any Other Business category, and that's the webinar in support of the new gTLD subsequent procedures that's taking place tomorrow. E-mail GNSO secretaries if you are interested in taking part.

So that's it for the time being. I'm not seeing any other hands up, and miraculously, we are nearly on time, which is great. Thanks again to all of the people who have participated in this call. There's definitely some follow-up in human rights, in the subsequent procedures, in the expedited PDP, our main topics, and certainly, some preparation still to go for the next ICANN meeting, which will be of course a virtual meeting. Justine, you have the floor.

JUSTINE CHEW: Thank you. Just two small things. One is with the reference label generation rulesets for the second-level public comment, I believe Bill Jouris has replied to the IDN working group, so he's raised a number of concerns. May I suggest that staff or co-chairs tap Bill for being in the penholders group or the drafting team, if that's possible?

Second point is, I've added to the list of subsequent procedures score cards as you see at the bottom of the agenda. the one on geo names, And I'm working on the one on GAC. Thank you.

OLIVIER CRÉPIN-LEBLOND: Thanks very much for this, Justine. I stand corrected, definitely, regarding the label generation rules where I incorrectly reported in the

chat that there had been no response to your query. So thank you, and staff will add Bill Jouris to this.

I'm not seeing any other hands up, so now we can go into the thanks to everyone, thanks to our interpreters, of course, and to the captioner for very accurate captions today, great to see this. And with this follow-up, let's all follow up on the mailing list. Have a good morning, afternoon, evening or night, wherever you are. Goodbye.

MICHELLE DESYMTER: Thank you so much, Olivier, and thank you, everyone. The meeting has been adjourned.

[END OF TRANSCRIPTION]