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YESIM NAZLAR:

Good morning, good afternoon, good evening to everyone. Welcome to the Consolidated Policy Working Group call taking place on Wednesday the 25th of November 2020 at 17:00 UTC.

We will not be doing a roll call due to the increased number of attendees as well as for the sake of time. However, all attendees both on the Zoom room and on the phone bridge will be recorded after the call.

We have received apologies from Marita Moll, Yrjö Lansipuro and Anne-Marie Joly-Bachollet, Jonathan Zuck, Vanda Scartezini and from Alberto Soto.

From staff's side, we have Evin Erdogan, Herb Wayne and myself, Yesim Nazlar, and I'll also be doing call management for today's call. Our interpreters are Claudia and Paula on the Spanish channel and Claire and Camila on the French channel.

Before we get started, a kind reminder to please state your names before speaking, not only for the transcription but also for the interpretation purposes as well, please. And one final reminder is for the real-time transcription. As usual, let me share the link with you here on Zoom chat also. Please do check the service. And with this, I would like to now leave the floor back over to you, Olivier. Thanks so much.

OLIVIER CRÉPIN-LEBLOND:

Thank you very much, Yesim. Welcome to this Consolidated Policy Working Group call. On today's agenda, we will

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

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have Justine Chew speaking to us about subsequent procedures, and immediately after this, we'll have policy comment updates with Evin Erdogan. I'm not sure if Jonathan will be able to join us by then, but as you've heard, he is an apology for the early part of this call at least where we will have to be looking at just one public comment that's undergoing a vote. There is one public comment for decision that's to do with the ICANN root name service strategy and implementation.

And finally, we'll have Any Other Business with mention—or short discussion—about the Mozilla public consultation on DNS over HTTPS. Are there any amendments or additions to be made to the agenda?

I'm not seeing any hands up, so the agenda is adopted as it currently is on your screen. Just reminding you that you can click on the real-time text link Yesim has kindly put in the chat, and you have real-time text transcription in case you missed any of the discussions that are taking place, or you sometimes drop out. This is the way that I've managed to catch up with things when I drop off the call.

Right. The first agenda item is of course the action items from our last call. They all pertain to a proposed and finalization of ALAC statements. They are all marked as done. Well, they don't all work with ALAC statements. There's one that of course speaks about today's scheduling, but apart from this, all the other ones are done, and I think that we might even say a few words about some of them when we reach the policy consultation parts of the call. Sébastien, you have the floor.

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SÉBASTIEN BACHOLLET: Yes, sorry, it's just to [inaudible]. I will say in French, Herb Waye is not staff and I don't think we need to put him in this category. I'm sorry, we need to keep—he's ombudsman and he's outside of staff. Thank you.

OLIVIER CRÉPIN-LEBLOND: Thank you very much for this, Sébastien. That's a good point. So our ombudsman is a participant. Thank you. Let's continue. I'm not saying any comments on the action items, so we can go swiftly into the working group updates with Justine Chew who will take us through some details from the subsequent procedures final report, and a discussion on a potential ALAC advice to the ICANN Board on various points that are currently [on a comment on on the] Google doc. So Justine, welcome, and I hand the floor over to you for 45 minutes of subsequent procedures entertainment and enjoyment. Thank you.

JUSTINE CHEW: Thank you, Olivier. I don't know about entertainment, but yes, so this is part two of the subsequent procedures PDP update regarding the review of public comments received from the last public comment period in relation to the SubPro PDP final report or draft final report.

The approach I'm taking is similar to last week where the purpose of the updates is to draw attention to the public comments review in respect of treatment of ALAC comments that were submitted. Also drawing attention to other comments of interest that may be of interest to CPWG and ALAC, and also possibly the leanings of SubPro PDP working group in terms of certain directions that it's taking, whether it's to do with crafting additional draft recommendations or implementation

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guidance for areas where there wasn't any, or refining or improving or amending any draft recommendations or implementation guidance that were in the draft final report.

And the purpose of these updates is to establish from this group any potential action to be recommended to ALAC in respect of, say for example, ALAC advice or minority statement to the final report, whether there should be comments made back to the ongoing discussions of SubPro PDP working group where opportunity arises or if we choose to take no further action or if there's any other approach that this group might think of taking as a creative measure.

So last week, I asked for 20 minutes and I exceeded that time very much so. So this week, I asked for 45 minutes hoping that the reverse will happen, that I will take less than that amount of time. Anyway, moving on.

ALAN GREENBERG: Justine, if I could make a very quick comment.

OLIVIER CRÉPIN-LEBLOND: Go ahead, Allan.

ALAN GREENBERG: Thank you. In terms of number one and two, advice and minority statement, if we are going to give advice to the board, we are in a very weak position if we didn't at the very least make a minority statement to the report. So although those are two different things, and a minority

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statement does not necessarily mean it's severe enough that we choose to give advice, but in the other direction, I think we're in a very weak position if we make a position to the board to reject something but haven't said it very publicly and clearly in the PDP output as well. So just a thought as we go forward. Thank you.

JUSTINE CHEW:

Sure. Thanks for this, Alan. I think in most cases, if we're going to provide ALAC advice, then you're right that there's probably going to be a parallel ALAC minority statement that goes together with that. But I did put it as two separate options because they probably have to go in two separate documents because of the two different recipients.

So yeah, moving on to slide three, please. Yes, there are two separate documents but they're linked because they address the same issues. But as I said, it's a separate document because of the fact that they're going to two different recipients.

So anyway, since the last time I made an update last week, the SubPro PDP working group has gone through another seven topics, I believe it is. So if you see on screen, the ones indicated in blue have some activity still ongoing in terms of for example some ongoing discussion or some revisiting that's being done through the SubPro PDP working group, and I propose to just do a recap of what we discussed last week as well as touch upon some other topics that is indicated in yellow highlights. And what you see in red are the ones that will be marked as requiring ALAC advice and a minority statement.

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Moving on to slide four, recap of what has been discussed and the status of what we have resolved to do, predictability, in essence, no particular further action for now, depending on what happens with the output from the SubPro PDP working group, but I guess what we decided was that if the access or membership to SPIRT would be extended to include say for example formal representation from an AC, which GAC potentially asked for by way of a GAC liaison, then the same should apply for other ACs, and in particular, ALAC.

But at the moment, as far as I know, the membership to SPIRT remains open as in the call for volunteers would be an open one, but obviously subject to expertise. So anyone who volunteers would have to have certain amount of expertise or some background in subsequent procedures. And in terms of objections, in particular, ALAC standing for community objections, the resolution was to require that ALAC have equal standing as with the independent objector, or at least in simple terms, ALAC to have automatic standing to file community objections.

Moving on to slide five, in terms of registry commitments in the form of public interest commitments or registry voluntary commitments, this topic as a whole is still a moving target, I would say. We have had a bunch of recommendations within the draft final report, but there have been robust discussions still on this topic based on comments received from many parties, including the ICANN Board, ICANN Org to do with enforcement issues, possibility of conflict with the bylaws if either for example a commitment were to refer to something that is interpreted to be beyond ICANN's mission, then that could bring questions around enforceability. Of course, nothing is set in stone at the moment. They're still looking at things.

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The last SubPro PDP working group call, we had the board liaisons to SubPro, we had the discussions with them, and what I can say is they have confirmed that the board comments pertaining to bylaw conflicts or commitments which may venture outside of ICANN's mission being unenforceable, those are comments which they are seeking answers for. They're not positions that the board is taking at this point in time. So that's something that I should reinforce here.

I see Cheryl's note. There are clarifying questions. That's what I was trying to get at. Well, I said comments because they were put in as comments to the public comment. Anyway, so yes, they should be termed as clarifying questions for the working group. So that's still going through the motions. So we'll wait to see what comes out of it in the next call or the next few calls from the SubPro PDP working group. So we'll definitely be circling back to those.

The particular issue on DNS abuse—

OLIVIER CRÉPIN-LEBLOND: Justine, did you want to take questions at the end? You go through all the slides and then you'll take comments, or did you want to go page by page?

JUSTINE CHEW: I just want to finish this page before I take comments.

OLIVIER CRÉPIN-LEBLOND: Okay. Excellent.

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JUSTINE CHEW: Okay, so just on the area of DNS abuse, we did resolve to reinforce our position that was included in the ALAC comment, and that should be taken up by way of ALAC advice and ALAC minority statement. Okay, so I'll stop there and take comments. Olivier, go ahead, please.

OLIVIER CRÉPIN-LEBLOND: Thanks very much, Justine. I'm not sure whether you're aware, but there's been an article from a rather high-profile organization called the Electronic Frontier Foundation, the EFF, a publication where they basically say ICANN can stand against censorship and avoid another .org debacle by keeping content regulation and other dangerous policies out of its registry contract. And what this article basically has in its crosshairs is the RVC and the voluntary PICs and is basically asking for these to be scrapped altogether. Is this the sort of discussion that is going on in the group or the kind of thing that's being pushed by others in the group?

JUSTINE CHEW: From recollection, I believe there was at least one public comment received that implored the elimination of PICs and RVCs. I could be wrong, but my recollection seems to suggest to me that there was at least one comment. But the overall PDP working group position is to retain PICs and RVCs, so I don't think that's going to change because there isn't enough of a consensus to change that, really. And I don't know whether attention has been brought to the working group on this



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comment per se, this article that you mentioned, but we are working off public comments that were received from the community.

OLIVIER CRÉPIN-LEBLOND: Thanks, Justine. I've just forwarded it to the CPWG mailing list.

JUSTINE CHEW: Yes, and I see that Matthias has put the link in the chat as well. So yeah, we can certainly have a look at it, and if this group decides that it wants to take this up, then by all means. Alan, you have your hand up.

ALAN GREENBERG: Thank you very much. To be honest, I think it would be more in character if we went in the exact opposite way. And in fact, we have a problem right now where we do have PICs and RVCs but there have been some very clear messages from the ICANN Board that many of them that may have any even vague implication of content may not be enforceable. So we're in the rather interesting situation that we are writing contracts which we know ahead of time will never be enforceable, which sounds like something we wouldn't want and certainly goes against the GAC advice and things we've said before when we're talking about specifically highly secure domains or highly sensitive domains. We have made very strong statements saying that we expect that if there are restrictions, that they be enforced.

So if indeed we are going to agree with this kind of advice, then we are in direct opposition to what we have said before and what I hope we would say in the future. That is, we want contracts to be enforceable. It

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comes down to all the other sorts of domain abuse. And moreover, my recollection is—and I'll stand corrected if I'm wrong—the EFF has also taken the position that any spam filtering is content regulation and should never be done. And I don't think, given the environment we're living in today, to recommend that we cease all spam filtering across the world would be in the interest of Internet users. Thank you.

JUSTINE CHEW:

Thank you, Alan. As I said, the PDP working group works off public comments received, and as Cheryl puts in the chat, we don't look at general press clippings per se when we're doing policy development. So yeah, to the extent where this article exists, that's fine, but I'm not sure whether we really want to look at it per se.

Avri, if you have access to audio or a microphone, would you like to make a comment about what Alan just said in terms of some commitments being possibly unenforceable?

AVRI DORIA:

We're not so much predicting anything about what is enforceable or what isn't in the new recommendations. What we're trying to understand is for any recommendations made, what is the consensus understanding on how they are enforceable and why they are enforceable? So we're really leaving that burden of proof at this point until we get recommendations on ... If you're going to make a recommendation on them—and I don't see any reason why you won't—how can they be enforced, what makes them enforceable. So we're asking those questions of ourselves, we're being asked those questions

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by people, and we're turning around and asking the PDP those questions. Thanks.

JUSTINE CHEW: Thank you, Avri. Olivier, go ahead, please.

HOLLY RAICHE: Thank you very much, Justine. I'm glad that Avri has explained the question that is being asked. My personal feeling on this is that this is not just a matter of opinion, it's a matter of legal advice, and if you are going to have specific points listed in a contract by two parties signing that contract, then the fundamental contract is whether under US law, whatever is in that contract, is that enforceable? Is that part of the contract, are both parties able to sign a contract that has those things inside it even if one of the parties has clauses in its bylaws that it doesn't deal with content? That's a fundamental question, and I wish that ICANN Legal or whatever legal advice would be able to tell us about this, because we've gone around the pot a number of times on that and I don't think we've got a real answer on this. Thank you.

JUSTINE CHEW: Noted. That's a good point. Perhaps we should try and emphasize on that. Christopher, please go ahead.

CHRISTOPHER WILKINSON: Good evening, everybody. Thank you, Justine. Very briefly, I'm fairly close to what Alan just said, and I think if there are PICs concerning

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content—content, by the way, evaluated and defined by whom—those should be enforceable. And finally, I haven't read the Electronic Frontier Foundation's article, but I've noticed that it's there. But I think that people who are saying that ICANN should have no role in this context should also indicate who, which other organizations or authorities should take the responsibility of enforcing notably decency and legality. Thank you, Justine.

JUSTINE CHEW:

Thank you. Alan, go ahead, please.

ALAN GREENBERG:

Thank you. In response to Olivier, it's not a matter of whether they're enforceable under law. If they're in a contract and they're not, in their own right, illegal, then they are enforceable under law. The question is whether ICANN Org as one of the parties to the contract chooses to try to enforce it or not. And the answer has been no, in many cases it hasn't. And we have that in other areas, not necessarily related to content, that we know Compliance and ICANN Legal have chosen not to enforce things. And in relation to content, there is a strong prohibition, as viewed by at least some people, on enforcing anything related to content in the contracts. And there is an exclusion for current PICs but not for future ones. So in my mind, the way to fix that is to change the bylaws. Whether anyone has the interest in doing that or not is a different issue altogether.

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JUSTINE CHEW: Thank you, Alan. Michael.

MICHAEL PALAGE: Thank you. I just want to comment on two things. First, to I think Alan's comments, as someone that has worked as a consultant with a number of registries, particularly community registries such as .bank, .insurance, I think the importance there is to recognize that they have specific needs that they have incorporated into their contract and people should be respectful of those contractual commitments that registry operators have made. So that's point one.

Point two, as someone who's worked with different registry operators, there is a provision in the ICANN contract that says all contracted parties need to comply with local laws. And I can tell you that some contracted parties have different procedures to comply with local laws. And we're not just talking about GDPR. There are other instances where a contracted party's actions are dictated based upon those local laws. So the concern I have about the EFF article is while I think it is well intentioned, I think it potentially takes us down a slippery slope of trying to adopt a lowest common denominator. So I guess for those that when they read it, that would be the suggestion that I ask people to keep in the back of their mind.

To Olivier's comment about enforceability, just knowing JJ and ICANN Legal, I would not hold out breath for getting specificity on that particular question, and that's just not a fault, that is just how ICANN has done. But the more important legal point that I would raise is the concept of third-party beneficiaries. So most of the ICANN agreement

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actually has a provision. This appears both in the ICANN contract as well as in a lot of the registry and registrar contracts, which talks about no third-party beneficiaries.

So this is a mechanism, while even if there is a provision, the ability for a third party to exercise that is limited. And in fact, this has actually been raised in the context of the Facebook Namecheap WhoisGuard litigation where in that particular case, there was arguments over whether Facebook was a third-party beneficiary and whether they could exercise that. For anyone that wants to look into that, I downloaded a copy of that opinion that was recently issued from Pacer, but I think that that is important from a legal standpoint, to appreciate that third-party beneficiary clause in the agreement. So hopefully, that was not too boring, but I just wanted to kind of put those data points out there for everyone.

JUSTINE CHEW:

Thank you for that, Michael. That's quite interesting. I'm having difficulty, to be honest, garnishing all the comments and making a recommendation or taking a step to how we move forward with this, because there are still [weak parts,] there are still comments coming in. So I don't know. I think I might take this offline and figure out a way of galvanizing our next step and perhaps bring GAC into the picture because we did say that in terms of this particular issue, some kind of joint advocacy with GAC would be very helpful to strengthen our position. But there are base points that we want to make or reinforce, which is that all PICs and RVCs which go into the contract must be enforceable. I realize that that is the bottom line.

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So in terms of the two areas where we have resolved there should be ALAC advice and an ALAC minority statement, I would refer you to the link that's on the agenda Wiki. There is a Google doc that has been set up by staff on which I have been doing some work, which is to craft some text outlining what would be in the advice and minority statement. Yesim, can you click on the Google doc link please?

Okay, so the way it's set up now is it's just one whole document to consider both channels, we could use that word, for both the ALAC advice and the ALAC minority statement. The reason why I'm using the same document is just that it's being treated as a whiteboard at the moment so everything goes onto the same thing, the same space so that we can look at the context for both documents.

Yes, if staff could actually put it as comment only with no restrictions. I notice that in the past, in practice whenever staff puts up a Google doc, it puts up a comment-only link but whoever clicks on the link needs to be given access. So I'd suggest that there be an automatic thing where it's just open to anyone who has access to the link but in comment mode only.

Anyway, when that's been done, I would invite folks to go in and have a look at the text. Please provide improvements. You're welcome to add comments or suggestions as to how to improve the text that's there at the moment. I haven't drafted anything for the ALAC advice on DNS abuse. I thought I might leave that in the capable hands of Jonathan Zuck, but he's not on the call so maybe I'll reach out to him privately.

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Okay, I'm looking at hands. Alan, please.

ALAN GREENBERG:

Thank you very much. I guess I'd like some feedback from this group. The issue related to enforceability came up on the PDP call yesterday or two days ago. I can't remember which. The question came up of if the bylaws don't allow us to enforce these PICs, then what's the point? And I raised the issue of changing the bylaws. And Avri made a very rational statement saying the board's not likely to initiate that themselves. However, if the PDP says PICs and RVCs must be enforceable, and if that requires a bylaw change, then that should be done, then that could well result in a change.

And the question is, is the ALAC willing to make that kind of statement both to the PDP while it's still going, and afterwards, before—again, if we don't say it during the PDP process at all even though it's rather late in the timing, then we're not on nearly as strong a ground saying it later. And I would strongly advocate and I'm prepared to—I and somebody else are prepared to—draft something to say the PDP should be making that statement. And the question is, are we willing to?

So I'd like feedback over the next couple of days. The PDP will not be meeting until the beginning of December. I'd like to be able to present a statement to the PDP at that point saying that is what we should be recommending. If PICs are important enough that we're including, then we need to say they have to be enforceable, otherwise they're a sham. Thank you.



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JUSTINE CHEW: Holly, you're next.

HOLLY RAICHE: We're still stuck with third-party [beneficiaries. It's been something that I'll probably say until I'm blue in the face.] the problem with contracts, the problem with PICs is, who has standing? Normally in contract law, the parties who contract would be ICANN and the registry or the registrar, whatever. But if you're a third party and you're supposed to be benefiting from PICs, then you don't have standing under the contract. Then you look at the contract itself, does it give you standing? I'd like that really carefully explained, because if you don't have standing, then you can't initiate the enforcement. And it's left up to ICANN, and according to what Avri is saying, ICANN is reluctant.

So Alan, we've been down this rabbit hole before and we haven't come out very well. And I think we might still be in the rat hole unless we can deal with that. Thank you.

JUSTINE CHEW: Thank you, Holly. I'm not too sure whether that is entirely the case, because we have had two PIC DRPs taken up by third parties, and so that hearing has taken place, and there has been determination out of that which ICANN [has then taken onboard and enforced] or whatever. So that third-party beneficiary argument is a little bit ... may not necessarily be accurate per se, or the limitations against third-party beneficiary, but it's certainly something worth looking into. I'm not sure what point you want to make out of it. Perhaps you can give us some

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further hints in the chat as to how to approach that. Christopher, you're next.

CHRISTOPHER WILKINSON: Thank you. Very briefly. I think you concluded on the important point that you were just discussing now. Just to recall that in the PDP, I did make clear that I consider that the bylaws are not immutable. In my experience over the last 20 years, they've been changed quite often. And I certainly agree with Alan's point about stating clearly that it's necessary to update and amend the bylaws. That should be done. And if ALAC can make that recommendation for the PDP, so much the better. Thank you.

JUSTINE CHEW: Okay, so we have one support for Alan's suggestion. By all means, if other people support that approach, then please indicate so.

CARLOS RAÚL GUTIÉRREZ: Justine, I'm on the phone.

JUSTINE CHEW: Yes, go ahead, Carlos.

CARLOS RAÚL GUTIÉRREZ: Thank you very much. I'm happy to discuss it with Alan by e-mail to check it with LACRALO, but I'm certainly interested in this proposal by

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Alan. I can talk only for myself right now, but I will contact Alan and I will check it with my RALO.

JUSTINE CHEW: Thank you, Carlos. Alan.

ALAN GREENBERG: Thank you very much. Two quick points. One, on that issue, I would appreciate hearing positive things, not just silence from people if they are interested. We are proposing to change a fundamental bylaw which requires the active approval of the empowered community. I truly believe it'll be a lot easier to do that through the empowered community than it would have been to change what came out of the accountability CCWG, because the mechanism is far better defined here, but we're talking—this is not another routine bylaw change like we've made thousands of over the years. This is a change to what are ICANN's now fundamental bylaws which has a completely different process for changing than we've had before. So I want to make sure that people understand this is a big thing. It's not just another bylaw change.

In terms of third-party beneficiaries, Justine is right. The PIC DRP is sort of a form of third-party beneficiaries, but third-party beneficiaries technically are clauses written into a contract saying that third parties can cause that contract to be enforced. That is something that, to use not quite legally accurate words, I think there's something in ICANN's and its contracted parties' DNA which objects to third-party beneficiaries, and I'm not going to hold my breath waiting to see [inaudible]. Thank you.

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CARLOS RAÚL GUTIÉRREZ: [inaudible]

JUSTINE CHEW: Olivier, you're next.

OLIVIER CRÉPIN-LEBLOND: Thank you very much, Justine.

CARLOS RAÚL GUTIÉRREZ: [inaudible]

OLIVIER CRÉPIN-LEBLOND: Someone needs to mute.

SÉBASTIEN BACHOLLET: It's Carlos Gutiérrez. Carlos, [inaudible].

OLIVIER CRÉPIN-LEBLOND: Thank you. So it's interesting because this whole thing about the fundamental bylaw would require the empowered community to agree, and that then goes into the thresholds of the empowered community. I for one—and this is just an opinion, but I can't see the GNSO agreeing to this. So, what would the threshold be?

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JUSTINE CHEW: Alan, would you like to respond to that?

ALAN GREENBERG: Olivier, you cannot pass a fundamental bylaw with more than one of the five groups objecting. If only one of the five groups—and I'm talking specifically about the GNSO—objects, and everyone else agrees to it, or at least most of the others agree to it actively, then you can pass it. So yes, the GNSO is not likely to agree to it. That's not necessarily a show stopper if other people do agree to it.

OLIVIER CRÉPIN-LEBLOND: Does an abstention count as a no in this case?

ALAN GREENBERG: I believe, for a fundamental bylaw, you need three yeses and not more than one no. I think. I have to check the details though.

OLIVIER CRÉPIN-LEBLOND: Thank you.

JUSTINE CHEW: Right, so again, Alan's asking for support on his suggestion to take this as a fundamental bylaw change through the empowered community mechanism. So if people want to support that, please indicate. As he said, it would be nice to indicate positively rather than just keep silent as a way of not objecting.

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In the meantime, as you see on the screen, the proposed text for the ALAC advice and ALAC minority statement on the two issues of ALAC standing and community objection and DNS abuse is available for comment or improvement. By all means go to the Google doc link and post your comments. Olivier, did you want to add to this particular area before I move on?

OLIVIER CRÉPIN-LEBLOND: Yes. Thank you very much, Justine. Just speaking here as a co-chair of the Consolidated Policy Working Group, this group would not be able to determine whether it wants to proceed forward or not, it's for the ALAC, of course, to decide. But certainly, the text could be drafted and then the procedure would not be within our hands as to whether this community wants to proceed forward or not. That's all. Thanks.

JUSTINE CHEW: Thank you for that guidance, Olivier. Yes, I would defer to your guidance on that. My role is just to make sure that anything that ALAC or At-Large wants to say or input into the SubPro PDP process, that that is done in an expeditious way and appropriate way.

Okay, so I'd like to move on to go back to the slides and just finish up on a couple other topics. Let's move to slide six, please. So I mentioned about community applications and CPE last week where we were waiting on SubPro PDP working group's revision of the draft final report in terms of draft recommendations and implementation guidance on community applications and CPE. And recently, we have been given a revised copy of the final report in draft form still which purports to

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incorporate a lot of the comments that the ALAC and At-Large has given in terms of reform to the CPE process, criteria and guidelines. And you see a whole bunch of them on the right side of the slide.

I would need to take some time to examine or scrutinize them further. Upon first reading, I think some of them may pose some ... not so much difficulty, but they possibly lack completeness or they don't completely address the point that we're trying to make. So these are the ones highlighted in red. I have also posted an extract of this topic on the agenda Wiki so you can download that and examine the actual text revision that's been proposed by SubPro PDP working group leadership and staff. And I would ask for comments if there's any by way of e-mail to me if people have comments on this in terms of what the PDP working group is proposing to add to with community applications and CPE. So I'll leave it at that for now and move on to slide seven.

Okay, applicant support. Applicant support, I haven't addressed this last week, so this is so-called new. Where we're up to is that the SubPro PDP working group is fixed on recommending a dedicated IRT, Implementation Review Team for the implementation of the applicant support program and subsequent procedures. And it's taken a position that a lot of comments that were received on applicant support have been considered in the past by the working group, so it's not looking to add to anything further in the draft report.

I would point out that in this situation, the dedicated IRT would be tasked with looking into aspects covering education awareness and a range of nonfinancial support. There's also this question about criteria for determining what is willful gaming, and the further implementation

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details for the [bit] credits and multiplier that would be given to applicants that qualify for applicant support should they go into a string contention by way of an auction.

And the concern that we raised in our ALAC comments is that many of these details are shunted off to the IRT. Is that really a good thing? Because we have effective community participation in the IRT given that IRT is now being asked to do a lot of minutiae and detailed things in implementation.

Also, there was a question to the community on reduction or elimination of registry fees, and the conclusion that the PDP working group has come to is that there appears to be no consensus to allow this, so again, there won't be a recommendation put forward to propose the reduction or elimination of registry fees for applicant support qualifiers.

Many of the suggested metrics that ALAC put forward in their comments has been included into the draft report for consideration by this dedicated IRT during implementation phase. And the last comment that we put forward was that in terms of when an applicant puts in their application and they are applying for applicant support, and also for purposes of CPE, community priority evaluation, there is this term, community. So they're expected to put their application to address how they would benefit a community in order to qualify for applicant support, among other things, obviously. But at the same time, there are also references to community for the purposes of CPE.



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So what we said was there is disparity in how the community is put forward in both ASP and CPE, or there's disparity in how the panelist for the ASP views community against how the panelist for the CPE views community. And that causes problems for the applicant and also inconsistency.

And the SubPro PDP working group's response was that they are meant to be different. So they're not accepting what we put in as a comment as that, I guess. So in terms of this, at least the three areas of dedicated IRT, reduction or elimination of registry fees and the use of community in ASP versus CPE, I would pose to this group, what further action would you like to consider taking or recommending to ALAC to take? Is there anything that requires intervention in terms of ALAC advice, ALAC minority statement? Do you want to take further action, or is there anything else that you want to consider? Can I have feedback on this, please? Go ahead, Holly.

HOLLY RAICHE:

If the terms are not supposed to mean the same thing, can we at least ask for clarification and clear definitions of community in the way they're used in different ways so that it's very clear that they don't mean the same thing? If they don't mean the same thing, we should know that and it should be very clear. Is that not the least we can do?

JUSTINE CHEW:

Yeah, I don't know how to answer that question at this point in time. I'll take that under advisement.

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HOLLY RAICHE: Yeah, but if they're saying community doesn't mean the same thing, then why can we not go back to them and say, "Well, if you're saying they're not the same thing, then what on earth are the differences?" And at least have an articulation to say if you use the term in this context, this is what we mean, and if we use the term in another context, this is what we mean. I don't think it's good enough to say they don't mean the same thing and just leave it. Just a thought.

JUSTINE CHEW: Okay. Point taken. Olivier.

OLIVIER CRÉPIN-LEBLOND: Thank you very much, Justine. I was so troubled by what I just heard that I actually read the transcript in a few seconds to check that you had actually said what you had said, and indeed, you had said that the response was that community was not the same community as community. And I'm troubled because, I'm not a lawyer but having dealt with a lot of legal documents and contracts and things, usually you define words and words then mean one thing in a contract, otherwise you end up with some real ambiguities that make things completely unworkable. And I'm really concerned about this now. If community doesn't mean the same thing depending on what it pertains to in the same document which is going to be the applicant guidebook, we need to have some kind of understanding of what we're talking about, and perhaps even use another term if that's so different. Thanks.

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JUSTINE CHEW: I see Cheryl is next in the queue. Perhaps she can provide some clarity. Go ahead, Cheryl.

CHERYL LANGDON-ORR: Thank you, Justine. I don't know about clarity, but I'll have a go at depth and color. The term "community" in the applicant guidebook and indeed as we are proposing should be continued to be applied in the applicant support program is the concept that I believe most the average person would understand and accept. It is a broad concept of community, it's an almost dictionary definition if need be. And of course, various dictionaries actually have slightly different guardrails to what it means, but that's neither here nor there.

When it comes to community priority evaluation, as experience showed with [all of the] significant issues that were found to come into play last time, it came down to the very specific—and one could argue, and many have—and I'm trying to be really careful here because of my hats I wear—very particular and narrow definition of community, and in the case of the assessor, in the prior experience, it seemed to have a particular financial business basis to the assessment of what is or is not community. In other words, a sliver of what many people would assume is the term "community" and would be applied in the applicant support program.

So the recommendations and guidances that so far are being discussed in the PDP working group regarding CPE are very much focused on giving higher degrees and clear and unambiguous identifiable criteria

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for what community and how it is defined for use within community priority evaluation—in other words, the CPE assessor, assessors should be using.

So if we continue with CPE? Then CPE needs to be done more effectively, more efficiently, more predictably, and that includes clear, unambiguous, publicly available definitions of what their criteria will be that they will be measuring and then making recommendations on. So that's the situation, but what Justine said is absolutely true, the two things are in fact not the same. But it is not doom, gloom and despair, fear and loathing, as some of you might be thinking. At least not in my view. Thank you.

JUSTINE CHEW:

Thanks, Cheryl. Alan, please go ahead.

ALAN GREENBERG:

Thank you very much. I won't attempt to say it nearly as eloquently as Cheryl did, but I have not one iota of concern that the definitions are different. And the reason is the community objection really says, "I'm sort of involved in something related to that TLD or that string and here's why I object." The community priority evaluation is granting an absolutely huge—and I've said before, I find it quite unbelievable that ICANN even contemplated it to begin with, that it is a huge public interest issue that they're giving priority to a community group over all sorts of people who are willing to pay lots of money and commercial entities.

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It is a huge benefit, and it's not just measuring, are you a community, but are you sufficiently the community that can justify allocating you this TLD over other competitors? So it's not only saying, are you a community, but it's saying, are you a really good one? And as Cheryl pointed out, we blew it last time and hopefully we'll do it better this time, but it's a qualitative measure, not only an absolute yes/no. And I have no problem with them being different. And clearly, we have to be very specific on the CPE. The other one, I think we have to be rather general because we want other people who believe they have an interest to file an objection—the objection may be refused, it may be accepted, but I think it's in our benefit that they be two different definitions.

Is it unfortunate we're using the same word, community, in both? Yes. But that's nothing new in ICANN. Thank you.

JUSTINE CHEW:

Okay. Well, you have an emphatic answer from Cheryl and Alan. So then we move on to the last two topics. Contractual Compliance. Okay. Alan in its statement had requested that Contractual Compliance introduce or publish thresholds against which they assess registry, registrar practices, and to include guidelines on how each threshold is derived and applied. And the goal was to identify patterns of good versus lax behavior in the practices of registries and registrars. So this in effect increases transparency.

And I'm happy to report that it was accepted. So we just need to see revisions to recommendation 14.2 on this uptake. There was one

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comment received from GAC which proposed financial penalties for noncompliance. And I would like to find out if we would like to take this into consideration in any action moving forward. Do I have any comments? I'm not seeing any hands or any remarks in chat.

So, okay, moving on to the last slide, which is on internationalized domain names, IDNs. I'm going to talk about the last two first, which is that we advocated for some treatment for IDN variant TLDs which is that IDN gTLDs which are identified as IDN variants of existing applied for gTLDs should be offered to registry operators of the existing gTLDs by way of activation or minimal fee application so that you don't force them to go through the normal application or standard application and be forced to pay the standard application fee.

The idea is because this particular category of IDNs will invariably lead to confusion, they're going to be part of a bundling process anyway so they'll, more likely than not, have to be handled by the same registry operator. And it's also another way of promoting more IDNs. So it would be necessarily unfair to deter the uptake of such TLDs by making designated registry operators apply for them and apply at full fee.

And so that's been kind of acknowledged and it's going to be included in the rationale, so we need to see the revision in due course. And the metrics that we've proposed for assessing the IDN program have also been accepted for consideration by the dedicated Implementation Review Team. So that needs to go into the revised implementation guidance.

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Now, many of the recommendations under this topic have got a technical element, and so there could be potential overlap with the IDN scoping team. What's happened is that GNSO set up an IDN scoping team to consider many issues pertaining to IDNs, and as a result of that, they could be initiating an EPDP on IDNs to address those issues. So there's a little bit of unclearness as to how subsequent procedures or at least the implementation of subsequent procedures would take place in parallel with this EPDP going on for IDNs. So there could be dependency on the outcome of that particular EPDP. So that's being looked into, and the SubPro PDP working group is supposed to circle back on finding out the status of this IDN EPDP and also checking with the IDN team in ICANN Org as to how to handle any potential overlap. So that's it for now. Olivier, do you have a question? Or I see your hand up.

OLIVIER CRÉPIN-LEBLOND: Thank you, Justine. Actually, it was too late into commenting about the previous thing, the Contractual Compliance. I don't know whether you're still taking comments on that as well.

JUSTINE CHEW: By all means. Go ahead.

OLIVIER CRÉPIN-LEBLOND: So again, a personal comment on this. First, I'm delighted that the standard threshold in assessing complaints has been taken up and accepted. That's great news. Now, on the whole thing about giving financial penalties, I'm a little more concerned about, because financial

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penalties would probably not affect any maliciously intended party that would be repeated offender and so on to the same extent as a small community-based contracted party that might be very negatively impacted by a financial penalty, sometimes on things which are genuine errors and not something that they were doing in any malicious way possible.

We've heard in the past of some contracted parties complaining of being constantly hounded for small things which were sometimes just oversights on their part, and more flexibility on this. So I'd be a bit concerned about financial penalties. Thank you.

JUSTINE CHEW:

Thank you for that, Olivier. Cheryl, please go ahead.

CHERYL LANGDON-ORR:

Thank you, Justine. And going back to the IDN slide, if you wouldn't mind. Thank you, Yesim. Just on what was mentioned then with regards to what we trust is forthcoming and quite probably after its scoping an expedited style of policy development process relating to IDNs, the subsequent procedures PDP co-chairs and most importantly the GNSO council liaison to the SubPro PDP took pains—and I do mean pains—in their update to the new GNSO council on Friday of last week to make sure that the GNSO council was aware of the potential—not necessarily known yet, but the potential is there for some, if not dependencies, then certainly effect of the yet to be enacted IDN work and what will be of course work well and truly completed by us before they begin. So we've made sure that everyone knows about it. Thank you.



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JUSTINE CHEW: Thank you, and on that note, I have commandeered way too much time again, so I will hand the floor back to Olivier. Thank you.

OLIVIER CRÉPIN-LEBLOND: Thank you very much, Justine. And thank you again for taking us through these very great slides with great detail and generating some interesting discussion. I hope that people will follow up with you on that Google doc which has been shared today.

Now, the policy comment update is next with Evin Erdogan, and I understand that Jonathan Zuck is also with us. Over to you.

EVIN ERDOGDU: Thanks so much, Olivier. I'll turn it over to Jonathan after this brief update. So recently ratified by the ALAC since the last CPWG is the proposed amendment 1 to the .jobs registry agreement. So thanks for that. There are also—just to note—two ALAC statements ratified by the ALAC, but that was through the Operations, Finance and Budget Working Group.

So for upcoming public comment proceedings, you'll see there are three left for November and two in December, and you can click on the agenda to see the different topics that are upcoming. There's currently one ICANN public comment out for decision by the ALAC, and it's on a topic that is usually not commented on by the ALAC, but that is the recommendations for ICANN's root name service strategy and implementation, and it closes on the 8th of December.

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And in addition to this, there's currently just one ALAC statement being shepherded by the CPWG that is currently out to vote for the ALAC, so that's in a near final form, and that's recommendations for early warning for root zone scaling. Abdulkarim and Holly have finalized the statement and it has been submitted to public comment, it's just undergoing the ratification vote.

So with that, I'll just turn it over to Jonathan if there's anything further. Thanks so much.

YESIM NAZLAR:

Jonathan, if you're speaking, we can't hear you.

OLIVIER CRÉPIN-LEBLOND:

Let's open the floor in the meantime for comments on this. I have a question with regards to the recommendation for ICANN's root name service strategy and implementation. Could this be sent to the technical issues working group that has a number of techies on there, for them to have a quick browse over it? I suppose that this is coming from the office of the CTO and it's been well put together. Certainly, from the quick browsing that I've had over it, it looks like it's a good plan for formalizing a number of ways to have a stable root server system. And as you know, this all comes along as a follow-up, I guess, to the warming up of relations with the Root Server System Advisory Committee implementing a number of things through ICANN that used to be done pretty much informally or semi-formally outside of ICANN before. So it might be that just a support from At-Large could be the kind of thing that would be needed there, just to show that we're watching this. I'm

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not seeing any hands up on any of the other comments. Okay, Jonathan, one more chance to chime in.

No? Okay. So that's what we have for today's policy consultations. And then finally, I guess we can move on then if there are no further comments on this, we can go into Any Other Business, and there, we do have something that's been brought forward recently, and that's the Mozilla public consultation on DNS over HTTPS, otherwise known as DOH. Holly Raiche, did you want to say a few words on this? There's a link in the agenda that mentions the consultation. It's a blog post in Mozilla.

There have been concerns expressed by some people that this is effectively creating a policy discussion outside of ICANN on something that could touch on Internet identifiers. Over to you, Holly Raiche.

HOLLY RAICHE:

Thank you, Olivier, and first of all, I appreciate the context, the fact that, yes, we're thinking about commenting on something that actually is not in front of ICANN. It is an important issue, and in fact, as you know, we've had two presentations on this that I've given. And it raises the same question.

Now, if you remember in one of the presentations I've done, SSAC has come up with number 109, and the paper 109 virtually says, if you've [been reading the string that's been followed in ALAC,] it says much the same thing that David Conrad, the CTO, says. And I just want to quote from ... basically, he says, well, depends on who you trust.

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And if you remember, when I was presenting, if you tunneled through what you're doing—put it this way, the DOH addresses the mucking with responses issue, which is essentially—first of all, I'll read the first sentence. You could trust your operating system and run a validating resolver to your local computer, or at least [inaudible] application. This addresses the mucking with responses issue, but it does not help the traffic interception privacy issue. And it's the interception privacy issue where you actually have the tunneling through to avoid the fact that in the lookup process, it's unencrypted, and that's the stage where two things happen. Some of the security things are put in place via ISPs, etc., but also, that's where some of the redirection or [inaudible] data happens.

So as I've said probably twice and as David Conrad is saying, it's a choice. There are pluses and minuses to DOH. So right away, I'm not even suggesting which we choose. I don't know if we want to say, "Look, this is a choice and we should articulate what the choice is because people outside the United States who are using Firefox are being asked." And indeed, I use Firefox and I was asked what I thought.

But it is an issue that users—and we do represent users—will be confronted with if they're using Mozilla and Firefox, and that is, what do you choose? And if we're going to make a comment at all, it ought to be to articulate what the choices are and why there are pluses and minuses both in tunneling and not tunneling. So Olivier, I'm not sure that we have a response that says we choose this or that. If I was going to suggest a response at all, it would be simply an information one to explain what the choices are, because when the issue was put to me by Firefox, unless I had actually talked on the subject, I probably wouldn't

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have known what the choice was. So that's probably the best suggestion I can think of.

OLIVIER CRÉPIN-LEBLOND: Thank you very much for this, Holly. Thanks for framing the topic. Procedure-wise, the ALAC has in the past commented in—not on, but in—public consultations that were run outside of ICANN. A couple of occasions being the National Telecommunication Infrastructure Administration, the NTIA when there were questions about the renewal of the ICANN contract. And so it wouldn't be a new thing for the ALAC to comment on something outside.

That being said, this is something that is completely, one could argue, unrelated to ICANN and more of a completely different forum. I was going to suggest one thing, which was that perhaps the ALAC should—it's [all] of course in the ALAC chair's hands, but perhaps the ALAC could ask the ICANN Board as to whether ICANN Org was going to comment on this, because I think it's particularly important that there is no confusion with anything that's outside of ICANN, that there's no confusion as to who is what. And having a statement from the ALAC and a statement from, say, the GNSO and a statement from another group and so on all going into an outside consultation is ever so confusing for people outside of ICANN.

HOLLY RAICHE: Absolutely. I think that's a great idea, Olivier, because I think it would then say, okay, ICANN has the knowledge, the expertise to understand the issues raised by DOH or DOT. And after things like the SSAC pointing

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out to pros and cons ... Somebody like for example David Conrad or the head of SSAC or somebody drafting something that the ICANN itself could say to Mozilla that what is needed is ... If you're asking people outside of the United States to make choices about do they or do they not want tunneling, I dare say very few people would understand the question and it would be very helpful if ICANN Org said something.

Obviously, that's not stopping anybody in their own personal capacity responding, but it would be really nice to have ICANN Org saying this is an issue, we've discussed it within ICANN and there are pros and cons and they should be more fully explained to the public if you're asking the public to make a choice. I just think that might be a very useful thing. Thank you.

OLIVIER CRÉPIN-LEBLOND:

Thanks very much, Holly. I'm not seeing any other hands up. So perhaps that's one to ask the ALAC chair, Maureen, if she would be—well, she could ask the ALAC whether there would be an interest for her to get in touch with ICANN—and I gather it would probably be the office of the CTO—and ask whether ICANN would be likely to produce a statement on this.

I am not seeing any other hands up, so I guess everyone is pretty tired, but thanks for pointing this out, Holly, and there'll be a follow-up. AI will be for Maureen. Yes, and Maureen had to leave the call. Indeed, I noticed that. That's why we need to have it as an AI. I could certainly follow up with her to explain to her what this is about.

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Okay, and so we continue in Any Other Business. Is there any other Any Other Business than this topic? I'm not seeing any hands up. Which means we can then look at our next meeting.

YESIM NAZLAR: Thanks so much, Olivier. Our next call will be next Wednesday on 2nd of December at 13:00 UTC.

OLIVIER CRÉPIN-LEBLOND: 13:00 UTC it is. Thank you for this. And I wanted to give a last chance to Jonathan Zuck if he had anything to add. I see him on the call. I don't know whether he's able to speak. Probably not. Okay, well, that takes us then to the end of this call, and we just are on time, which is a miracle when I'm chairing. I don't know how it happened, but there you go.

So, thanks to all of you for being on the call until the very end, and of course, we have to thank our interpreters who've done an amazing job and our real-time text transcriber who yet again has saved the day for being able to catch up on some of the points that were made just a few seconds before.

So, thanks, everyone. Have a very good morning, afternoon, evening or night, wherever you are, and continue the work on the mailing list. Bye.

YESIM NAZLAR: Thanks all for joining today's call. This meeting is now adjourned. Have a great rest of the day. Bye.

**[END OF TRANSCRIPTION]**