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YESIM NAZLAR:

Good morning, good afternoon, and good evening to everyone. Welcome to the At-Large Consolidated Working Group call, taking place on Wednesday, the 2<sup>nd</sup> of December 2020, at 13:00 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 Justine Chew, Cheryl Langdon-Orr, Holly Raiche, and Vanda Scartezini.

From staff side, we have Evin Erdogdu and myself present, and we're expecting Heidi Ullrich to join us shortly as well.

As usual, we have Spanish and French interpretation, and our interpreters on the Spanish channel are Veronica and David and, on the French channel, Aurelie and Jacques.

Just 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 kind reminder is for the real-time transcription link. I'm going to share it in the chat. Please do check this service.

With this, I would like to hand the floor back over to you, Olivier. Thanks so much.

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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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OLIVIER CREPIN-LEBLOND: Thank you very much, Yesim. Welcome to this Consolidated Policy Working Group call. Indeed, transcription is very useful, so I look forward to reading things as they get told.

We've got a short agenda today, based on the agendas we've had in the past. We'll have an update. Unfortunately, Justine Chew is not going to be able to join us for the Subsequent Procedures today, but she has sent a slide deck, so Jonathan and I will go through the slide deck. Then we'll have also a policy comment updates. In fact, as the policy comment updates are dealing with the ALAC advice to the ICANN Board on Subsequent Procedures and a potential ALAC minority statement on the SubPro PDP final report, we'll probably deal with all of that in one go in the policy comment update. Then we'll have AOB afterward.

I should ask, I guess, if there are any additions or amendments to the agenda as we are at the moment, just bearing in mind that, in the policy section, recommendations for ICANN's root name service strategy and implementation will not be led by Martin Hannigan. But I guess we'll probably find someone else to write something on this. Any comments or amendments to the agenda?

I'm not seeing any hands up, so the agenda is adopted as it currently is on your screen. That takes us to the action items from our last week. The action items are nearly all complete. There's just one that remains to be done, and that's for Justine to deal with the upcoming public consultation on domain abuse activity reporting. So that's going to be around for a while.

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Has there been any response from John Crain as to when we'll get this topic arriving on our desktop? Evin?

EVIN ERDOGDU:

Olivier, thanks. I have not reached out to him specifically for this yet, but it's scheduled to be opened this month—the last month of this year. But he has also been invited to the next ALAC monthly meeting, so he'll also be presenting to the ALAC then. So, as soon as it opens, I'll mark Justine's interest and also note this to John Crain. Thanks.

OLIVIER CREPIN-LEBLOND:

Okay. Thanks for this. Then I also note the letter to the ICANN Chief Technical Officer that Maureen has been working on will be sent shortly. That's the letter regarding this Mozilla public consultation on DNS over HTTPs. The letter essentially asks whether ICANN is going to file a comment. It's somehow encouraging, to say. I think our community thinks that it probably would be a good idea to file a comment. But, of course, that's all in the hands of the ICANN CTO.

I'm not seeing any hands up on any of the comments, so thank you. Let's move on then. We can therefore move swiftly across to Agenda Item 3. That's the work group updates. In fact, what we'll do, as we'll mention earlier, is we'll probably pull this into the policy comment update, unless there are any other working group updates. I'm, of course, looking in the direction of Alan and Hadia, if there is any update on the Expedited Policy Development Process, which is the other big working group out there. If there isn't, then we can probably move to the policy comment updates. Okay. Then let's go to Agenda Item 4.

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JONATHAN ZUCK: Hadia has her hand up, Olivier.

OLIVIER CREPIN-LEBLOND: Yes, I just noticed. It just came up now. That's a bit late. Hadia Elminiawi, you have the floor.

And you're muted at the moment, Hadia.

HADIA ELMINIAWI: Oh, sorry. Thank you so much, Olivier. I would just like to note quickly that, for everyone who would like to follow the work of EPDP Phase 2A, you can join now as an observer. You need to send an e-mail to GNSO staff for that. I have sent an e-mail including this information, and I can forward it again. Thank you.

OLIVIER CREPIN-LEBLOND: Thanks very much for this reminder, Hadia. Very helpful. Question for you. Has the timeline for this new phase been published already? When is this supposed to start? Is it going to start already this year, or is that likely to wait until next year?

HADIA ELMINIAWI: I don't have a definite or concrete answer. I assume that we won't be able to do anything this year, but then I don't know.

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OLIVIER CREPIN-LEBLOND: Okay. Thank you for this.

HADIA ELMINIAWI: Thank you.

OLIVIER CREPIN-LEBLOND: I'm not seeing any other hands up, so that means we are definitely moving on to, then, the public comment updates—oh, no. Chokri Ben Romdhane? Chokri Ben Romdhane, you have the floor.

CHOKRI BEN ROMDHANE: Thank you, Olivier, for that. I have a question in relation to the EPDP observer. Hadia, are we going to give the opportunity to the observer to join the call of the EPDP working group [inaudible] the last phases, the observer didn't have this opportunity. Are we going to have the opportunity to join the EPDP call? Thank you.

HADIA ELMINIAWI: Thank you. Observers are allowed to join. Whoever wants to be an observer should send an e-mail to [GNSO-SECS@ICANN.org](mailto:GNSO-SECS@ICANN.org). I will put this in the chat. So observers basically observe the work of the EPDP, but they're not allowed to participate. So, yeah, that's possible.

CHOKRI BEN ROMDHANE: So finally they will have the opportunity to join the call without participating.

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HADIA ELMINIAWI: Yes. And my understanding is that this was available before as well.

CHOKRI BEN ROMDHANE: I think it was possible in Phase 1, but in Phase 2, we didn't get anymore this opportunity. But thank you for your answer.

HADIA ELMINIAWI: You're welcome. Please join if you're interested.

CHOKRI BEN ROMDHANE: [inaudible]

HADIA ELMINIAWI: Thank you.

OLIVIER CREPIN-LEBLOND: Thanks for this. Did I hear that Chokri Ben Romdhane was saying that observers could not join the call in Phase 2? Was that the case? I was under the impression that this was open to observers as well.

CHOKRI BEN ROMDHANE: [inaudible]

ALAN GREENBERG: Can I qualify?

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CHOKRI BEN ROMDHANE: Okay. Go ahead.

OLIVIER CREPIN-LEBLOND: Yeah, go ahead, Alan. Alan knows it all. Alan, you can jump the queue.

ALAN GREENBERG: Observers have always been allowed. Observers in Phase 1 did not have the opportunity of joining the same Adobe Connect calls as everyone else did. Or maybe Zoom towards the end. I can't remember. But they were always allowed and allowed on the mailing list as observers. In Phase 2, they were allowed to join the standard meeting room, but silently. So that's the only difference. Thank you. It makes it a lot easier to participate as an observer now that it did before because, before, you couldn't see the chat and things like that. Now you can.

CHORKI BEN ROMDHANE: Okay. Thank you.

OLIVIER CREPIN-LEBLOND: Thanks for this information, Alan. Chokri, is that—yeah. That answers your question.

CHOKRI BEN ROMDHANE: Yes, for sure. Thank you. But what I have to mention is, in Phase 2, personally I have a lot of problems to join the call of the EPDP. I always

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mention this to the EPDP, to ICANN staff, and I've got some response from ICANN staff. But I still have some problems to join the call in Phase 2. So sometimes we have a problem, like a sound problem, and it seemed that we are not using the same room as the one used by the active members of the group. I hope that in this phase we will have [it] better.

ALAN GREENBERG: Olivier, it was a different link but the same room.

CHOKRI BEN ROMDHANE: Okay. I hope that it will be of better quality [inaudible]. Thank you.

OLIVIER CREPIN-LEBLOND: Thanks for this. Let's go down the queue. Over to Greg Shatan.

GREG SHATAN: Thank you. I just want to suggest, if it hasn't been done before—maybe it has and I just missed it—that perhaps the observers and the delegates, representatives could set up a common Skype or WhatsApp backchannel. Those who are observers—I hope to be one in this round—could provide some backup on certain things to the representatives and perhaps some chance for a broader discussion on certain things. I found this to be very useful in another context—or really in the same context—in the IPC, where there's a backchannel that was set up that I had been participating in. Sometimes we were off



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doing assignments to backstop our representatives, and other times we were just providing aid and comfort. Thanks.

OLIVIER CREPIN-LEBLOND: Thanks for this suggestion, Greg. I guess a Skype channel is easy to organize.

Let me down the queue, and we'll go back to Alan afterwards. Yrjo Lansipuro is next.

YRJO LANSIPURO: Thank you, Olivier. I have a question to Alan and Hadia. At the joint ALAC/GAC meeting at ICANN69, it was decided that the topic leads on [EPDP] from both the [inaudible] ALAC should meet at some point before or at the beginning of Phase 2A. So my question is, really, when do you think that sort of intercessional meeting with your GAC counterparts would be needed? [inaudible]. Thank you.

OLIVIER CREPIN-LEBLOND: Thanks, Yrjo. Alan Greenberg?

ALAN GREENBERG: Thank you very much. On Yrjo's question, the answer is probably now. I thought someone had a takeaway to actually set up a meeting, but if they did, it didn't happen. So sooner rather than later because I'm assuming that the process will start sometime soon. But we don't know when at this point.

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In terms of Greg's comment, we did have such a Skype chat at the beginning. It was never, ever used. We just stopped doing it but are glad to start again.

OLIVIER CREPIN-LEBLOND: Thanks for this, Alan. Next is Hadia Elminiawi.

HADIA ELMINIAWI: I just wanted to agree to what Alan just said—that we need to have it as soon as possible. We definitely need to have it before our first EPDP Phase 2A call or meeting so that, from the very beginning, we can align our thoughts. Thank you.

OLIVIER CREPIN-LEBLOND: Thanks very much for this, Hadia.

I'm not seeing any other hands up, so let's then now move on to our policy consultations. So I can hand the floor over to Jonathan Zuck and Evin Erdogdu.

EVIN ERDOGDU: Thanks, Olivier. As noted earlier, we have a short section today, but there was one statement that was recently ratified by the ALAC, which was the recommendations for early warning for root zone scaling. And there's several upcoming public comment proceedings that are in the pipeline. You'll note that it still says November on the agenda, but those potential ICANN public comments may or may not move to December

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or later. Justine has already volunteered in advance for the domain abuse activity reporting 2.0 public comment, which is set to open later this month. Currently, it was briefly discussed on the Technical Issues Working Group of At-Large, which is archived but mailing-list-only now—the ICANN public comment on recommendations for ICANN’s root name service, strategy, and implementation—but it seems that, as it currently stands, there won’t be an ALAC statement on this. But one of the members has reviewed and may submit comments as an individual.

Otherwise, we are working on the ALAC advice to the ICANN Board on Subsequent Procedures, and the ALAC minority statement for SubPro PDP final report. Justine has been working on this, and the draft was circulated as a Google Doc and is also on its workspace for comments. She’s an apology for today’s meeting, but she has sent through a presentation which Olivier and Jonathan will kindly go through. So I’ll turn it over to you, Jonathan and Olivier. Thanks so much.

JONATHAN ZUCK:

Thanks, Evin. Jonathan Zuck here for the record, along with Oliver, hopefully. We’ll just try to sort through this.

Next slide. Just by way of background, the Subsequent Procedures Working Group is currently going through the public comments that were received on the final report for Subsequent Procedures. So they’re trying to incorporate comments and trying to make changes. One of the most hotly debated topics right now relates to private auctions. The ALAC took a pretty strong position against them, but there are a few

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folks within that working party that are still trying to preserve them. So that's a big topic for discussion. So those things are going on.

So what's likely to happen, as Evin mentioned, is an ALAC minority statement within the Subsequent Procedures final report, as well as, most likely, separate ALAC advice to the Board with respect to Subsequent Procedures. So the idea is to look at how those [ALAC] comments are being received by the Subsequent Procedures Working Group, highlight some other comments of interest, and suggest where the working group appears to be headed, currently at least.

Next slide.

OLIVIER CREPIN-LEBLOND: If I should just jump in whilst we still see this slide, you'll note that Justine has now put a nice color-coding from 1 to 5 for the process going forward for the ALAC. So each one of the slides will be marked with the current position as to what we're looking to be doing.

JONATHAN ZUCK: So these are the topics that are being covered currently. Justine has highlighted some of the things that we have particularly focused on. So we didn't do a broad-spectrum comment across everything that was in the Subsequent Procedures Working Group report but instead focused on those things that we thought had the most impact on individual Internet users. So things like string similarity is still being discussed because of the potential confusion that it results in. These private resolutions of contention sets[/]so-called private auctions is an ongoing

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discussion. We came out very much in favor of a Vickrey auction, but by the time the Subsequent Procedures final report came out, it was very, very watered down, and we certainly recommended that it be a pure Vickrey auction, which essentially means that everybody has to put in their bid for a domain name up front, and then the second highest bid is used as a price for the highest bidder. That prevents, in theory, a lot of gaming that might otherwise take place.

Christopher Wilkinson, I see your hand up. Go ahead.

CHRISTOPHER WILKINSON:

Thank you. [Actually], I was going to wait until you'd finished your introduction, but since you've given me the floor, I'll make one very specific point. I take serious exception to the concept of an At-Large minority report. If we want to write minority reports, they can be individual. But, as an advisory committee, per se, I don't think that there's any basis on which ALAC should volunteer to describe itself as a minority. I think this is a dangerous error of language. We can report as At-Large, but if we want to make minority reports—in the case of geographical names, I'm pretty close to that myself—they should be individual. It is completely undermining the political standing of the advisory committees vis-à-vis GNSO to voluntarily describe what we're doing as a minority. That's wrong. Thank you.

JONATHAN ZUCK:

Hmm. Well, I guess thanks, Christopher. I guess I consider that sort of a term of art within the Subsequent Procedures operation. I think a minority expressing a divergent viewpoint, whether we describe it as a

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minority report or not, within that statement seems worthwhile. It seems worthwhile to find every opportunity to express our [dissent] with the ultimate report of the working group. So it might come down to semantics. I mean, I see your point, but it seems like we should take every opportunity to get our points across. But we'll take you under advisement.

CHRISTOPHER WILKINSON: If I may very briefly.

JONATHAN ZUCK: Sure.

CHRISTOPHER WILKINSON: As long as these things are described as minority reports, there's a substantial so-called—which I contest—consensus in the SubPro group—essentially the GNSO participants—to ignore minority reports. No, this is bad tactics. Thank you.

JONATHAN ZUCK: [inaudible] Thanks, Christopher. Alan Greenberg, go ahead.

ALAN GREENBERG: Thank you. A couple of points on that. Number one, PDPs in theory make decisions based on consensus, which is a stronger support than even majority. So it could be a majority report but still not reach

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consensus. So the term “minority report” is, as Jonathan said, a term of art. It is the term used within PDP works.

This was actually a substantive discussion held during the EPDP of, should they be called minority reports, or should they be called statements from participants or one of the participatory groups with the PDP because, in the case of the EPDP, they’re actually appointed to represent their groups? The decision was that they are called minority reports because that’s what they’re called, and they don’t indicate that it’s necessarily a small group making that statement. It may be a very large substantive group that has not held sway. I believe that we are in a much stronger position to give advice to the Board if we make it clear in the final report that we were one of the groups that vehemently disapproved of the outcome of the PDP in a particular area.

In the more general sense, I think we have to be really strong in making these kinds of statements. Remember, the whole concept of the PDP is we will come to consensus as a group, and no one will be very happy but we’ll all walk away equally unhappy, or something like that. We know the PDP does not work when there are groups who either are willing to accept the status quo and others who vehemently believe it has to change or things like that. This PDP went forward saying, if we cannot come to consensus, the status quo lives, which may have been determined through a Board decision or may have been from a previous PDP. It still doesn’t address the issue that we aren’t coming to consensus and we’re forming consensus policy based on lack of consensus. That’s inherent in the PDP right now, and we have to deal with it in an imperfect way.

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I believe making these minority statements and then following up with advice to the Board is as good as we're going to get out of this. It's not a perfect way of proceeding. It doesn't always make sense, but it's probably the only way we have. Thank you.

JONATHAN ZUCK: Thanks, Alan. Marita Moll?

MARITA MOLL: Thanks, Jonathan. I'm with Alan and you, Jonathan. I'm not agreeing with Christopher on this. "Minority" in this context does not mean we're describing ourselves as minority. It means that we disagreed strongly with some parts of this report. One of our ways of registering our disagreement—we definitely need to do that [inaudible] in as many ways as are available to us. And this is one of the ways. So [inaudible] minority report [inaudible] [and the advice] to the Board. Thank you.

OLIVIER CREPIN-LEBLOND: Marita, you're breaking up. If you speak a bit closer to the mic, please.

JONATHAN ZUCK: I think she was agreeing with Alan that we need to continue to speak up and be a part of minority reports [if] created.

Greg Shatan?



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GREG SHATAN: Thanks. Can you hear me?

JONATHAN ZUCK: Yes, sir.

GREG SHATAN: I agree with Alan and Marita. If we don't submit a minority report, we say nothing at all about our position in opposition to the consensus or to the statement of the majority. So there really is no alternative within the working group to making that. And I think it is more powerful. If it is indeed the position of At-Large, then it should be stated as such. GAC members may submit individually minority statements, or they may submit them in small groups because of the difficulty the GAC would have in getting behind a minority report or minority statement in a working group. We don't have that issue. I think it is a necessary predicate, frankly, to going to the Board. I think it would be harder to go to the Board with a dissent, if that dissent wasn't formally registered within the PDP working group. And it would be [inaudible] also the [compartment] of it is made part of the larger report.

I see Alan knows that there was at least one occasion where the GAC as a whole was able to authorize a minority report. So the exception may not prove the rule, but there are at least exceptions in that case. Thanks.

JONATHAN ZUCK: Thanks, Greg. I guess, to some extent, the point Christopher is making is a rhetorical one. I suppose we're frame to have a little bit more

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message discipline as we talk about our position as being a dissenting opinion or even a majority point of view or something like that that didn't make it into the final report. We don't need to constantly talk about as a minority report as we discussed it—

GREG SHATAN: Well, but it is the minority inaudible]—

JONATHAN ZUCK: But it's the technical term. So I guess we can play around with how we talk about it, perhaps.

Christopher Wilkinson, go ahead.

CHRISTOPHER WILKINSON: Thank you for giving me the floor back. I don't want to take more time on this occasion, but, first of all, Greg, I'm not proposing to delete the report. I'm proposing to delete the word "minority." The concept of At-Large being a minority on the Internet and in the ICANN context, to my mind, is repugnant and an unnecessary weakening of our basic position and interests. For the rest, I suggest, if leadership wishes to, they can put this back on the agenda in the weeks to come, but right now, we're discussing the drafting of a document. Please delete the word "minority." Thank you.

JONATHAN ZUCK: Thank you, Christopher. Sebastien?

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SEBASTIEN BACHOLLET: Hello. Thank you for giving me the floor. I would like to support Christopher. My suggestion is that we don't need to tell that it will be a minority report. It is an At-Large position/point of view report—whatever you want. At the end, the people who will receive this will decide to put either that in the report itself or other minority statements. But it's not for us to put it [in] and to tell that it is [this] name. It's the At-Large position about the report we have in front of us, and we can send it like that because the people who will get it will put it somewhere in the document. Then [they] say, "We received a statement. That's a minority point of view." Then [they] put it in the minority report. Thank you.

JONATHAN ZUCK: Thank you, Sebastien.

Greg, is that an old hand or a new hand?

GREG SHATAN: Kind of a semi-new hand. I do agree with Sebastien in the sense that we don't have to title it a minority report unless we send it in and they say, "Well, we can't put it in unless you say what it is." It will be what it is based on our position vis-à-vis the consensus, but we certainly don't have to self-identity, or we can even be more rhetorical and say that it's a minority report from the majority of the world's Internet users.

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JONATHAN ZUCK: Thanks, Greg. Alan Greenberg?

ALAN GREENBERG: Thank you. Just for the record—there’s some noise in the background—

JONATHAN ZUCK: Everyone else should mute if they’re not speaking.

ALAN GREENBERG: Thank you. Just for the record, what Sebastien and Christopher suggested in their last interventions is exactly what we did in the EPDP. We did not call it a minority statement. We called it a statement. It was put in the section called “Minority Statements.” What we label the discussion here is rather moot. I do support what they’re saying—that we don’t call it a minority statement—but it still falls under the category of minority statements from the GNSO’s point of view. Thank you.

JONATHAN ZUCK: Thanks, Alan. Roberto?

ROBERTO GAETANO: Thank you. I tend to be more pragmatic and would like to have our voice heard rather than avoiding doing it.

Now, in the rest of the discussion, I understand that we want to present the statement and then just not call it a minority report. However, I would like to include in the statement itself a sentence that addresses

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this and makes clear that we don't feel this as being a minority position but a legitimate position of one of the components of the ICANN ecosystem. Thank you.

JONATHAN ZUCK: That's great, Roberto. That appears to be where the conversation is heading and, as Alan said, what we did during the EPDP phase. Where they choose to put it in the report is up to the GNSO, but we can keep our rhetoric as direct as well as possible.

ROBERTO GAETANO: I understand this. What I was suggesting is that we make it clear within the report itself that it's not to be considered as a minority.

JONATHAN ZUCK: Right.

ROBERTO GAETANO: Anyway, I think you got the points.

JONATHAN ZUCK: All right. Thank you, Roberto. Alan, I'm assuming that's an old hand.

Great. All right. Thanks, everyone, for the discussion. There's also a very big ongoing issue around registry voluntary commitments, which are the public interest commitments/the registry voluntary commitments and what's in and out of scope for enforcement by Contractual

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Compliance. The Board has recently expressed the possibility that ICANN shouldn't be in the business of enforcing commitments that are outside of ICANN's normal scope. So that's a pretty controversial discussion that's going on as well.

Then, as always, there's the discussion of IDNs (Internationalized Domain Names) as well.

Next slide. In terms of ALAC's advice, ALAC was pushing for a stronger position for communities. So the resolution is to advocate for an automatic standing so that an objection can be considered on the merit without the risk of dismissal on lack of standing being an impediment to the ALAC/At-Large role vis-à-vis individual end users. So we're trying to push for standing to bring about community objections.

On the issue of registry commitments, we maintain the position of the need for Subsequent Procedure recommendations on DNS abuse. This has gone back and forth. The work group has suggested that, because this is a global issue, it should just be handled outside of the realm of the Subsequent Procedures Working Group, but it has been our position that it should come up in every context that it can. But more specifically, the New gTLD Program is one of the rare points of leverage for the community vis-à-vis the contracted parties, and it makes sense for the new contract to have more stringent DNS abuse portions because there's a desire, there's a financial motivation, to adopt that new contract and therefore those new practices. So that continues to be our position there as well.

Roberto, I see your hand up. I'm assuming that's an old hand.

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Yeah. Okay, thank you. Olivier, please feel free to jump in whenever you like.

OLIVIER CREPIN-LEBLOND: Yeah, I was going to jump into this. There's actually a couple of slides about this further down. But just to mention this is a recap of the discussions we had last week. These positions will effectively go both to the ALAC advice to the Board and the ALAC statement to the EPDP. So that's how it's going to go.

JONATHAN ZUCK: That's right.

OLIVIER CREPIN-LEBLOND: But, yes, there's more discussion on the next pages.

JONATHAN ZUCK: Okay. Next slide. You're saying I shouldn't just be winging it as I go along in the slides, I see.

OLIVIER CREPIN-LEBLOND: We both are.

JONATHAN ZUCK: There's this notion of predictability. So there's this committee that's designed to keep the process predictable for everyone, but there's

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definitely an emphasis on keeping it predictable for applicants. And there was definitely CPWG support for liaisons to SPIRT.

Then, in terms of emergency situations, we supported adding a recommendation acknowledging the Board's and ICANN's ability to take narrow action in emergency situations in a reference to service and service obstruction, etc.

Community applications. We submitted comments as well on that.

Next slide. On this issue of registry commitments, this is one of the issues that we had in a conversation with the GAC and where we've reached some common ground there on this issue and we may pursue joint advocacy on this issue of ICANN's enforcement of registry commitments.

Greg, I just noticed your hand. That might have been on the previous issue. Go ahead.

GREG SHATAN:

Thanks. A couple quick points on the prior points. First, with regard to the voluntary PICs or now registry voluntary commitments, as they may be called, I just wanted to draw people's attention to an EFF piece that they wrote opposing voluntary PICs, at least from the point of view that they could be deemed to be content regulation. I don't necessarily agree with their analysis overall, but I thought it was worthwhile for this organization to recognize that this was written and to think about that and also to think about what this might mean in the context of future



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interventions by EFF. They do cite to the .org situation in their discussion, [for what that's worth].

Secondly, on the DNS abuse front, I think it's a very good point that we have, which is a point of leverage, given the nature of the need to find [contracts]. But I'll note that, right now, the only working definition of DNS abuse that is out in the ecosystem by and large is the one that's proposed by the contracted parties and which is, to my mind, a very cramped definition of DNS abuse. So, right now, I think the contracted parties recognize just as well as you do, Jonathan, that this is something that's going to be showing up in the contract, and they are taking their steps to make sure it shows up in the contract in a way that's favorable to them but not favorable, in my mind, to victims of DNS abuse. Thanks.

JONATHAN ZUCK:

Thanks, Greg. Yes, definitely this definitional issue is going to continue to proceed. I guess one of the benefits—one of the points that we have taken quite a bit over the past year—is that the definition of DNS abuse and the frameworks and techniques that we have in place for combatting it can be somewhat separate from each other. In other words, the definition of DNS abuse can evolve in the community via a PDP or another mechanism. These enforcement mechanisms then will have a broader scope as a result. So that does mitigate that [definitional] issue at least to some extent because I think many of us would be happy if there was even better enforcement on the definition that was provided by the contracted parties. So that's one of the contrasting perspectives on your point.

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I also agree on the EFF statement. Their suggestion is that registries can run their registry any way they want to, but the actual active participation in the enforcement of these commitments constitutes regulation. I think that's a stretch in terms of logic. But it has been our position all along that, if it's in the contract, it has got to be enforced.

Alan Greenberg, go ahead.

ALAN GREENBERG:

Thank you. Yes, that has been our position all along, and I think we need to reiterate and do it stronger. I personally believe—I said this last week—that I think we need to submit a statement to the PDP while it's still running to that effect. We've had discussions with the Board representatives on the PDP. They're not speaking on behalf of the Board, of course. They're speaking as individuals. But nevertheless, the Board is not likely to act to change the bylaws on its own. But, if there is a strong statement from the PDP, that is a different issue altogether. Nobody wants ICANN to be regulating content in its own right. All we're asking is that the contracts be enforced. If there's something in it related to content, then so be it. We still have to enforce our contracts. Otherwise, having contracts that are not enforceable is meaningless. And it also has an impact on DNS abuse because DNS abuse clearly also has an import associated with what is on the website or how the content is being presented or what content is being presented.

So I think, on both of those, we need to act very quickly before the PDP finished to make a statement to the PDP. We need to then include it in our statement in the final report—because it's not likely to get very

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strong support at this point—and then in advice to the Board. So I think we have a three-pronged approach in that particular issue, and I think we need to move on it very, very quickly. Thank you.

JONATHAN ZUCK:

Thanks, Alan. Evin, so that this is enshrined, let's make sure that we raise this issue with Justine about a statement back to the PDP. Obviously, it's in our comments that we submitted as part of the response to the final report, but if you think there's another form of communication we should address to the PDP itself, let's bring that up with Justine to see her thoughts on that.

Olivier, go ahead.

OLIVIER CREPIN-LEBLOND:

Thank you very much, Jonathan. The points that we're discussing here sounds like points we've discussed during the last call and before. We're kind of repeating ourselves on these points.

I wonder how much traction we have in the wider ICANN space regarding this. I have real concerns that, although this community—the At-Large community—has been involved and concerned about DNS abuse for quite some time and has had ... We're talking years of discussions on this topic. It's a fundamental issue as say what ICANN does with this type of topic—DNS abuse. We don't even agree with what DNS abuse is. Some say it includes content. Some say it doesn't. Some qualify anything as being content so that they can dispense of it and say, "Well, we don't have to deal with it." It's really a fundamental

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problem. I really wonder if, just by itself, the ALAC has the do things or we're just spinning our wheels at the moment and spinning our wheels in a vacuum of nothingness out there.

So I would say, definitely, having to work with other parts of the community is something we need to do. And we need to, I think sooner rather than later, find out the position of each part of the community so that, if it comes down to the crunch, we don't end up being the only ones advocating for stronger enforcement while everyone else just pulls back and say, "Oh, well, this is just the ALAC, isn't it? They're just a bunch of idiots. They don't even understand that ICANN doesn't deal with content." [But anyhow], this sort of thing. Thank you.

JONATHAN ZUCK:

Thanks, Olivier. Marita, go ahead, please.

Marita, you seem to still be muted—oh, there you go.

MARITA MOLL:

Okay, sorry. I think I hear that we're saying no voluntary commitments. What I see here on the status is that all PICs and RVCs must be enforceable. We could be even stronger, saying there should be no voluntary commitments at all. Would that work?

JONATHAN ZUCK:

Marita, this is another recurring issue of vocabulary. The registries volunteer to make these commitments, but once they've made them, they're no longer voluntary. That's where the voluntary piece comes

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in—the willingness to make the commitment in the first place. But once it's in the contract, the contract is enforceable, and it's no longer voluntary that they adhere to them because, very often, they are the result of an objection that took place. In the first round, it might be a commitment that was made to respond to a GAC objection, for example. So it's not voluntary at that point. It's that they volunteered to amend their contracts to appease the GAC or someone else or to make their application stronger. At that point, it's in the contract and it ceases to be voluntary. At that point, it is in fact just a contract provision. So that's an important distinction, even though we keep using the term "voluntary." The voluntary part is only at the very beginning.

MARITA MOLL: So—

JONATHAN ZUCK: Alan, go ahead—oh, go ahead.

MARITA MOLL: Thanks for that, Jonathan. That's a really huge confusion when [we're going] on enforceability an unenforceability—

JONATHAN ZUCK: Yeah. The unenforceability isn't about the fact that they're voluntary. It's just literally that the Board's concern and EFF's concern is that ICANN shouldn't be enforcing contract provisions that fall outside of its normal remit. That's the issue. It's not about the fact they were initially

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voluntary commitments. But it has been our position that, if it's in the contract, it needs to be enforced. Otherwise, that mechanism shouldn't be able to be used by applicants to appease the concerns that are raised by objections and others.

So it's our position that there should continue to be registry voluntary commitments and that they need to be enforced, and we need to find a way to do that within ICANN's remit because it is just a contract and there has to be a way around the circular logic that's taking place otherwise.

Alan Greenberg, go ahead.

ALAN GREENBERG:

Thank you very much. Just to be clear, there were some voluntary commitments last time, where the commitment included text saying, "And we may change this in the future." That doesn't alter the fact that, until it's changed, it's a commitment that should be enforceable.

I'll point out it's not just content. ICANN Compliance has an aversion to enforcing certain types of things that involve a judgement call. They really don't want to do that. In the PICs, they have instead used the PICDRP, which only works if you can show harm. So they traded one failing in for another. Contracts should be enforceable, period, regardless of whether someone is harmed in a particular instance or not by it. So I think we have to go forward on this. Thank you.

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JONATHAN ZUCK: Exactly, Alan. And there's a litigation budget built into the application fees, so go ahead and make judgement calls if you need to, but enforce the contracts.

Greg Shatan, go ahead.

GREG SHATAN: Thanks. I think this is one ... I've been meaning to draft a statement, perhaps from an At-Large or maybe just from a group of participants, on this particular point because it is problematic. I think changing the name to "registry voluntary commitments" is bad because it still used the word "voluntary," which will perpetuate the confusion that Marita had and which everyone has had at one point or another because it's just so counterintuitively phrased.

But I think the idea that certainly that these have to be enforced is beyond Compliance [inaudible] registry voluntary commitments and with areas of judgement calls. I think there is a general aversion by Compliance to [accept] with exception any bad actors to engage in real enforcement action. They strongly prefer—they've said this over and over again—to try and solve problems with soft methods behind the scenes that the community doesn't get a chance to see, as opposed to enforcement actions. To my mind, that just makes this look more like a trade association engaging in self-enforcement. I sometimes wonder whether this should be an independent enforcer, so to speak, for contracts if ICANN somehow doesn't see itself as sufficiently divorced from the interest of the contracted parties in their commercial success. Thanks.

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JONATHAN ZUCK: Thanks, Greg. It's an ongoing issue, for sure. Olivier, go ahead.

OLIVIER CREPIN-LEBLOND: Thanks, Jonathan. I'm reading the chat and seeing the questions/points that Avri is making in regards to, can the Board sign a contract in which there are clauses that it could not enforce and that they could not enforce because of the bylaws that it operates under? This is a real question. Has legal advice been asked about this?

I'm asking this because I think that, in some jurisdictions, it might well be that, if an organization signs a contract, the contract is enforceable, even though it might actually go against the bylaws of the organization signing the contract. In others, the bylaws actually overrule any contract and basically make the contract invalid if it goes against the bylaws of the organization. So it's quite a fundamental thing. I have no idea what the answer is in this context.

JONATHAN ZUCK: Thanks, Olivier. I don't know if there's been a legal consultation on this particular issue. There are certainly plenty of history in contract law itself where courts have determined that there are provisions in the contract that are in fact unenforceable. But I think right now we have a decision by the Board that would suggest that ICANN does not intend to enforce commitments that seem to be outside of its remit. So that's something that certainly needs to be addressed. I don't think it's something that's addressed directly in the bylaws.



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Greg Shatan, perhaps you can illuminate.

GREG SHATAN:

Thanks. I'll mention that, while I am a U.S-trained and -admitted lawyer, I am not providing legal advice. But I would say that the intention of parties should always be that every part of the agreement is to be enforceable. Later on, if may be found that a part of an agreement is unenforceable reasons. But, unless something is specifically a hortatory or words of encouragement or has something that essentially makes it unenforceable on its face in terms of something like saying, "will endeavor" or "encourages" or something like that, everything is supposed to be enforceable.

So I think it is definitely bad form to include anything in an agreement which one or both parties believe is unenforceable when it's phrased in terms of enforcement. It really becomes a charade or even a char-ahde that is intended to mollify whoever wants in it in there. But it becomes then voluntary in the wrong sense in the sense that Marita started out with, which is that the registry can decide to deal with it or not to. If the Board can't or won't enforce it, then it really is toothless.

But then it gets back to the question of whether these PICs or RVCs are in fact outside the Board's remit and outside the ICANN mission. That's really where the rubber hits the road because, if they are within the mission, they should be in the contract and they should be enforced, and, if they're not within the mission, they shouldn't be in the contract. If there's any confusion about that, it's obviously better to dispel it beforehand or at least for ICANN to be signing with the good-faith belief

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that everything in the agreement is enforceable, even if some later decision or IRP might find it to be otherwise. But entering into a contract with sections that are contractual obligations that can't be enforced by the party with the right to enforce them is just wrong. Thanks.

JONATHAN ZUCK:

Greg, I guess another question is, are PICs constructed in such a way currently—or registry voluntary commitments in the future—that they represent sufficient commitment that a consumer protection agency, like the FTC, could get involved directly in enforcement of them as opposed to ICANN?

GREG SHATAN:

To the best of my knowledge, there'd be a question of standing in that case as to whether they have standing to essentially enforce a contractual commitment. I think that, by and large, my off-the-cuff answer to that is no, regardless of how they're constructed, pretty much, unless there was a specific almost assignment, if you will, [that] this is governed by the FTC.

Now, the FTC, or whatever consumer safety protection agency might be, can enforce the law, but it cannot come in to enforce the contract. It could come in as perhaps an amicus or an additional party in a contractual enforcement action, but it ultimately it has to come down to whether there's a legal problem and not just a problem between the parties which really amounts to nothing more than a private law that's outside the ambit of any government. The only government that it

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might be within the ambit of would be the California Attorney General because of their overall oversight function for ICANN as a California [inaudible].

JONATHAN ZUCK: Yeah. I guess I didn't mean that they could enforce contract provisions as contract provisions but instead as corporate commitments that then weren't adhered to under fraudulent business practices. That's what I was thinking of.

GREG SHATAN: No. Even there you'd have to have [inaudible].

JONATHAN ZUCK: If .bank started letting in non-banks, that would be them operating differently than the way they had portrayed themselves.

GREG SHATAN: Right. Well, if they continued to say that they were doing that and in fact weren't, you might have a question of unfair competition and basically a [laminax] to claim, as well as some other claims for unfair and deceptive acts and practices. But it would have to be deceptive. Just changing their policy would not be sufficient, I think, to trigger those problems. Changing their practice without changing their policy would be a problem.

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JONATHAN ZUCK: Great, Greg. I guess that's what I think is happening in a lot of the cases. As we say, things are simply not being enforced because changing-their-practices are built into a lot of the [text] to begin with.

Okay. No more questions or comments on this. The applicant support conversation is continuing to proceed apace as well. Part of the discussion that we were supportive of is the idea that, if there is an auction around a contention, there'd be some sort of a multiplier for applicants who had applied for support as well.

I don't know the specifics of the IDN issue. Do you know, Olivier, what's going on with that discussion?

OLIVIER CREPIN-LEBLOND: I do not know either, Jonathan. So I think we can probably leave it until when Justine comes back. I understand that here it just says "pending SubPro Working Group deliberation." So I guess we haven't made a position statement on this so far.

JONATHAN ZUCK: That's right. All right. Next slide.

YESIM NAZLAR: This was the last slide, Jonathan.

JONATHAN ZUCK: Okay. Phew! We made it through. So those are some of the ongoing conversations that continue apace within Subsequent Procedures.

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Justine is in there fighting the good fight during her waking hours. We have to give relief to sleep some of the time, so hopefully we did this slides justice. I'm sure she will listen to this recording and get a sense of this room. But this is just an update. Evin will make sure that we raise the issues specifically that Alan raised of adding in additional outlet for our ire on particular issues and not just wait for a statement as part of the final report.

Olivier, back to you.

OLIVIER CREPIN-LEBLOND:

Thank you very much, Jonathan. There was another statement that was under discussion, actually, that showed that it had drafting team member, Martin Hannigan. [That's the] recommendations for ICANN's root name service strategy and implementation. Martin has said that he actually would prefer to draft something as an individual. So the question really comes back to the ALAC as to whether our community wishes to make a comment on ICANN's root name service strategy and implementation.

I have read the points that Martin made regarding the proposal. The proposal is only 11 pages long, drafted by the Office of the CTO. The point that he raised was that ... One of the things that it talks about there is the autonomous system numbers. The Internet routing is such that it used autonomous systems. That's where the system numbers and that's where peering agreements are recorded. So when you have routing of packets through the Internet, it takes one root or another, depending on what the autonomous systems are and what the weighing

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of these roots is. I should say “route” (R-O-U-T-E). In the U.K., we called it “root.” Of course, “route” with “root” (R-O-O-T) is very unconfusing.

Anyway, the whole problem with routing is touched on here. It mentions finding locations for roots with the shortest routes to main parts of the network. The point that Martin was making was that the autonomous system numbers actually ... Sometimes the best route is not the shortest one. Sometimes routes are chosen according to the cost of the route or how busy it is, etc. So just focusing on the length of a route, the number of hops that it has to a root server, might not be the right way forward. That’s the point that Martin was making. I guess the whole point on how does it relate to end users is just down to how stable the Internet is.

So I’m not sure what we want to do on this one, but I’ve just thrown it out there. We still have plenty of time until the deadline, which is the ... We don’t actually have that plenty of time. It’s the 8<sup>th</sup> of December, so we have a few more days.

Any comments on this?

I see that Lutz Donnerhacke has put his hand up.

LUTZ DONNERHACKE:

Yes, routing is difficult. So there is no general rule on how to make sure that we get always the best route. So it never boils down to a single [tutorial]. It’s true. But on the other hand, there’s a few technical issues which is handled by the operators of the ISPs. They all have different backgrounds, different inputs, and different sets of criteria on how to

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choose a route. So I would wisely abstain from any further comment on this technical issue. There is no, again, general solution. Thank you very much.

OLIVIER CREPIN-LEBLOND: That's very helpful, Lutz. Thank you for that. So it might well be that, given what Lutz has just told us, the recommendation would be no statement. I don't see any other points in the proposals that would require a statement of the ALAC.

JONATHAN ZUCK: Thanks, Olivier.

OLIVIER CREPIN-LEBLOND: [inaudible]. Yeah, [it would be good] to hear from you, Jonathan.

JONATHAN ZUCK: We'll ask for objection. If there's anybody that feels strongly that we make a statement on this, then speak up now or forever hold your peace.

Hadia, please go ahead.

HADIA ELMINIAWI: Thank you. I don't know yet if we need to make a statement or not, but I was wondering if, actually, you could give us like a day or something to just read it and decide whether we need to have a statement or not

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because, yes, as Lutz said, it is a technical issue. However, it does have an impact on end users. But, again, I haven't read it, so I don't know what's in there. But, generally speaking, yes, it is a technical issue, but definitely it has impact on Internet users. It's not a matter of only technicalities and infrastructure, but politics definitely gets into it and gets into what [inaudible] routing tables and how you would like to route your data. Thank you. Again, I have not read it, so maybe ... Thank you.

JONATHAN ZUCK: Thanks, Hadia. Lutz, go ahead.

LUTZ DONNERHACKE: Yes, there's a policy issue. Peering between different ISPs or different organizations on the Internet is made by policies—individual policies. We have a problem with such policies that are peering policies simply because there are some larger ISPs which mainly prefer paid peering. So they get paid for that you have a connection to them and you've got a good route to them or, vice-versa, get a good route from them.

So, if you want to make it political, then we can make a statement saying that, at least for the root server services, there must be discrimination-free policy without any payment between both parties. I think that would be a helpful statement for the community, too. Thank you very much.

JONATHAN ZUCK: Thank you. That's an interesting point. Chokri, go ahead, please.



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CHOKRI BEN ROMDHANE: I totally agree with Lutz, but we have to do something like a statement or anything in order to let, here, the voice of end users [hear] about the implementation of the root server. I think that the implementation of the root server is crucial for end users. The proximity of the root would give him more ... I wouldn't say more equality on access on the Internet, so [inaudible] access of the end users to the Internet. So I totally agree with Lutz that we have to do something about the strategy and the implementation of the server for ICANN. Thank you.

JONATHAN ZUCK: Thank you. Hadia, can we take your intervention as a volunteering to take a look at this to see if there's something clear about which we might want to make a statement that you would come back on the list with your position for?

I see your yes. Thank you very much for taking this up.

HADIA ELMINIAWI: Thank you so much.

JONATHAN ZUCK: Okay. And back to you, Olivier.

OLIVIER CREPIN-LEBLOND: Thanks very much, Jonathan. I also thank Lutz for writing points that he was making in the workspace. Of course, anyone else who is

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knowledgeable about this topic, please write your points in that workspace so Hadia can have a look at it and we as a team can put something together.

We are now reaching Any Other Business. Chokri, I believe that your hand is still an old hand. It's not a new hand, is it?

CHORKI BEN ROMDHANE: Sorry about that.

OLIVIER CREPIN-LEBLOND: Okay. No worries. So we're in Any Other Business now. There is still, of course, the discussion on Mozilla public consultation on DNS-over-HTTPS. The discussion is in progress, as I mentioned at the beginning of this call. We are waiting ... Well, the e-mail later will be sent to the Office of the CTO shortly. As you can see, the deadline for this consultation is the 4<sup>th</sup> of January 2021. So there's still plenty of time. I guess that, depending on the response that the ALAC will receive from the Office of the CTO, it will then need to decide on whether it wants to act one way or another.

Secondly, a note in that interpretation is unfortunately not going to be available from the 18<sup>th</sup> of December until, I believe, the end of the month. Is this correct, or is that just the 18<sup>th</sup> of December?

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YESIM NAZLAR: Hi, Olivier. If I may, starting from the 18<sup>th</sup> of December until—just one second year—the next year ... Just trying to check the correct dates. Still Monday the 4<sup>th</sup>.

OLIVIER CREPIN-LEBLOND: 2021.

YESIM NAZLAR: Yes. Until Monday the 4<sup>th</sup> of January, yeah.

OLIVIER CREPIN-LEBLOND: Thank you for this, Yesim. So it's just ... Of course, the holiday period [is] coming up, which means that it looks as though our next meeting will be the last one of the ... no. We still have plenty of time, don't we? We've got another two meetings until we reach this. So next meeting we'll have interpretation.

Then the question I guess is, when will that take place? By the way, I haven't issued the last comment on Any Other Business, but I'm not seeing anybody put their hands up, which looks to me as though there's nothing else to discuss on today's call. Therefore, when will our next call be, please?

YESIM NAZLAR: Thank you, Olivier. Our next call will be next Wednesday, the 9<sup>th</sup> of December, at 19:00 UTC.

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OLIVIER CREPIN-LEBLOND: Fantastic. Wednesday, the 9<sup>th</sup> of December, at 19:00 UTC. Thank you very much for this. And thanks, everyone, for being on today's call.

Jonathan, anything else that you wish to add?

JONATHAN ZUCK: I'm good. Thanks, everyone.

OLIVIER CREPIN-LEBLOND: All right. Well, thanks to our real-time text interpreter, and the interpreters as well. We will all speak to you next week. In the meantime, follow-up on the mailing list. Have a very good morning, afternoon, evening, or night, everyone. Bye.

**[END OF TRANSCRIPTION]**