
CLAUDIA RUIZ: Good morning, good afternoon, and good evening to everyone. Welcome to the At-Large Consolidated Policy Working Group call on Wednesday, the 17th of February, 2021, at 17:00 UTC.

Due to the increased number of attendees and in order to save time, we will not be doing a roll call. I will, however, like to note that we have received apologies from Holly Raiche and Sylvia Herlein Leite.

From staff, we have Heidi Ullrich, Evin Erdogan, and myself, Claudia Ruiz, on call management.

We have Spanish and French interpretation on today's call. Our Spanish interpreters are Claudia and Veronica, and our French interpreters are Isabel and Jacques.

Another friendly reminder that we do have RTT services available on the call. I just put the link to the stream in the chat. You can follow along if you'd like. Please state your name when taking the floor for the transcription purposes and also so the interpreters can identify you on the other language channels. Keep your microphones muted when not speaking to prevent any background noise.

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

OLIVIER CREPIN-LEBLOND: Thank you very much, and welcome, everyone, to this Consolidated Policy Working Group weekly call. Today's agenda is going to be a little different from our usual agendas. We'll have a joy of having a

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.

presentation on the EU NIS2 directive with Mason Cole, the Chair of the ICANN Commercial Business Users Constituency. Elena Plexida, the ICANN Vice President on Government and IGO Engagement, is joining Alan Greenberg and providing two presentations. Quite some depth in this. We'll spend 30 minutes on this topic. Then, after that, we'll move to the At-Large priorities with Jonathan Zuck, the work group updates, with Hadia Elminiawi and Alan Greenberg providing us with a quick update on the Expedited Policy Development Process, and an update from Justine Chew—a one-minute update from Justine Chew—on the Subsequent Procedures. Following that, we'll have our public comment updates with the consultations currently being addressed by the ALAC and by this group, and, finally, Any Other Business.

At this point in time, I'd like to invite everyone to check the agenda and to let us know if there are any additional points to be added to the agenda or any amendments.

Absolute silence. It sounds like the agenda is adopted as it is currently displayed on your screen, which takes us straight to the action items from our last call—the three action items being done and relating to the preparation of this week's CPWG call. So I think that we can swiftly move on, as I can't imagine anybody would want to comment on these concluded action items and go to Agenda Item #3; the presentation we've all been waiting for: the EU NIS2 directive. Goodness gracious. "A proposal for a revised directive on security of networks and information systems." It sounds like quite a plan. For this, we have Alan Greenberg first to take us through a presentation. As I mentioned a moment ago, Mason Cole and Elena Plexida will be helping him out on this. Alan, you have the floor.

ALAN GREENBERG: Thank you. Can I ask staff, is Mason and Elena on? I know Mason had an Internet failure and he'd be on the phone. I've given a staff a phone number if he hasn't already called in.

CLAUDIA RUIZ: Hi, Alan. Yes, Mason is on audio only, and Elena is on the call as well.

ALAN GREENBERG: Excellent. Thank you very much. Could we have my presentation up first then?

CLAUDIA RUIZ: Yes. One moment.

ALAN GREENBERG: The plan is I'm going to do a very brief overview of the parts of NIS that are relevant to the EPDP. There are also other parts relevant to ICANN that we may chose to comment on, but that's not where we're looking at at this very moment.

Thank you very much. Just give me a moment.

OLIVIER CREPIN-LEBLOND: And just to let everyone know that the presentation is also linked from the agenda. So, if people have a difficulty with Zoom or seeing the slides on Zoom, they can open the presentation directly on their advice. Thank you.

ALAN GREENBERG:

Yeah. Thank you. And Mason and Elena also have presentations, which I presume either are linked or will be linked shortly.

All right. Next slide, please. The formal title is, “A Proposal for a Directive of the European Parliament and the Council on Measures of High Common Level of Cybersecurity across the Union,” replacing a previous one. Now, some of the key words here are, first, this is a proposal. So it’s not something in fact, but it will be going, presumably following consultation, to the European Parliament. If adopted there, it then goes to the individual European governments to enact legislation concerning it. So it’s not a fact right now, but it’s likely to become real relevant in the relatively near future. Elena may have some insight as to just how quickly that might happen.

The other thing is it doesn’t change GDPR, but it does give some direction as to how the parts of GDPR should be enacted or should be adopted or not adopted, as is more relevant in this case.

Next slide, please. The document is a large document, but it has a large number of where-as clauses as recitals that talk about it. I’m going to go over a couple of them that are relevant to this subject. The first one is 61. The keywords are, “Registries and entities providing domain name services”—now, that presumably means registrars, resellers, and things like that, but it’s not well-defined—“for TLDs should establish policies and procedures to collect and maintain accurate and complete registration data.” Accuracy, of course, has been one of the major issues that we have focused on going into this whole thing. There has been

strong debate within the EPDP on whether accuracy just means the data subject has to be happy with the accuracy or it has to be truly accurate.

Next slide, please. Recital 62 is a long one. I, again, highlighted some of the information. “Registries and registrars”—using the shorthand—“should make publicly available”—that means published, not just when you request it—“information that falls outside of the scope of GDPR, such as data concerning legal persons.” One of our key points of the EPDP going all the way through in Phase 2A is that ICANN’s regulations allowed registrars and registries to redact information on legal persons—that is, not differentiate. Of course, the information must be information that does not contain personal information, even if it’s a legal entity. This says that you cannot redact the information that is not protected by GDPR.

“Registries”—in the second paragraph—“and registrars providing registration services should respond without undue delay to request from legitimate access seekers for the disclosure information.” Now, these are terms that are going to be subject to great debate. What does “undue delay” mean? The current policy that we put into SSAD allows, I believe, up to several weeks to implement, to respond to queries. Is that undue delay? Good question.

The last paragraph talks about providing harmonized practices across the Internet market. “The commission may adopt guidelines for such procedures without prejudice to the confidence of the European Data Protection Board.” I would really love if Elena could tell us what that sentence means because I don’t quite know what it means. But clearly harmonized practices are important, and right now our policies allow

each registrar to set their own policies. But the last sentence intrigues me, and I really would like more insight as to what it means. So, if Elena or anyone else can tell me what it means, I'd be delighted. Thank you.

Next slide, please. This one makes it clear that network security issues, including providers of security technologies and services, should constitute a legitimate interest in the data controller concerned. So what that says is it makes it really clear that security issues are a legitimate concern for getting access to information. That has been implied many times—that it has not been. Then it goes into some detail, saying, "This includes things like e-mail addresses," and doesn't say redacted e-mail addresses or pseudonymized e-mail addresses but says e-mail addresses. So this one strengthens significantly our claims that security is an issue, and the implementation of GDPR under the EPDP has to address these issues.

Next slide. Now, those are the whereas. The actual article that is relevant—there's a number of articles relevant to ICANN, but the one that is key on WHOIS is this one. It makes it clear you maintain accurate and clear information. You must contain relevant information, including the points of contact administering the domain names. That's an interesting wording because that implies that you must maintain the information even if there's a privacy-proxy service because the contract administering the domain name, not just registering it, must be listed there. So that one, again, is one we may want to be looking at. The third one, again, talks about accuracy.

Next slide. Number 4 talks about publishing information without undue delay if it contains no personal data. One of the key issues under

discussion is, how do you recognize something that doesn't contain personal data? I could register a domain name which says, "IBM's domainnameregistrationauthority@gmail.com." Even though the name implies it's a function, I could register that as my personal domain e-mail address. How do you recognize an e-mail address that is personal versus one that is not personal? Really difficult question. And it goes on to say, "Member states shall ensure that TLD registries and those providing registration services provide access to specific domain name registration data upon lawful and duly justified request to legitimate access seekers." Again, we talked about who those seekers may be. And, again: "without undue delay." A definition of what "undue delay" means is going to be—not definition, but a functional definition of it—a key part of this.

Next slide. As I said, there are other parts of this proposal that have strong implications for ICANN that we may want to look at. We're not going to discuss them today in any great detail, but we may want to look at them because they talk about the importance of the reliability, security, and stability of the domain name system and all players in that whole resolution chain.

That's all I have. At this point, I'll turn it over to ... I'm not sure. I think Mason is coming next, talking a little bit about how the Business Constituency is viewing this and what they may do going forward. I will turn it over to Mason.

OLIVIER CREPIN-LEBLOND: Alan, I'm just jumping in. You mentioned earlier that Mason had a presentation. We can't find one. So, Mason, do you have a presentation, or you just going to speak over the [inaudible]?

ALAN GREENBERG: Let me forward it. I thought it went to staff, but it may have only gone to me. Hold on. My apologies for that. Let me get—

OLIVIER CREPIN-LEBLOND: In which case, could we just go, in order not to lose time, to Elena? Then we'll go to Mason. Is that okay?

ALAN GREENBERG: Sure.

OLIVIER CREPIN-LEBLOND: Or does that throw a spanner in the works?

MASON COLE: That's fine with me.

ALAN GREENBERG: As long as Elena doesn't use up all the time, I think that'll be fine.

OLIVIER CREPIN-LEBLOND: Elena Plexida, you have the floor with your presentation and following up on Alan's presentation.

ELENA PLEXIDA: Thank you, Olivier, and thank you, Alan, for the interesting presentation. I think you put it very well with respect to those provisions that touch on registration data in NIS2.

So let me start by thanking you all for inviting me to the discussion. I think it's exactly what the community should be doing. We have a proposed legislation here that is relevant to the DNS and to DNS registration data. Although it's still a proposal, we definitely have to look into it and see how it might affect ICANN once it becomes legislation and what might be the interplay with the work the community is doing in the context of the EPDP.

If we can go to the next slide, please. Just very quickly, we have a number of initiatives that the commission announced last December that are relevant to the DNS. You see the full list here of those initiatives and we've added arrow to all those that include DNS provisions. So that [inaudible]. The NIS is part of the EU cybersecurity policy package, which also includes a strategy that has actions to take with respect to the DNS.

Next slide, please. Now, NIS2 has a lot of DNS, as Alan mentioned. Really, a lot of DNS. Given Alan's explanation, also we'll focus on the WHOIS provisions. But it might be of interest to you if I give you a quick helicopter view of the rest of the DNS [in NIS2], and the possible implications, as well as some information on what to expect

process-wise and timewise out of the EU decision-making process in which NIS2 has now officially ended.

So, first some context regarding this NIS2 directive. As mentioned by Alan already, NIS2 is a proposal to reform the existing directive. The existing directive sets out cybersecurity requirements for services deemed essential, such as hospitals, the public transport system, etc. In that context, there was a list of what would be essential sectors. DNS was already included there, but what happens in the existing NIS directive is that member states have to identify within the DNS those operators they think are essential. Indeed, some member states have identified operators of essential services within the DNS, whereas others haven't. The fact was that member states used very different criteria for identifying the operators for essential services. So one of the declared roles of the review of the 2016 NIS was to harmonize the criteria that allowed a DNS provider to qualify as an operator of essential service.

Next slide, please. How does NIS2 achieve this harmonization? It simply removes the identification system by member states. So, under NIS2, all DNS providers/operators will automatically qualify as essential services. But let's take it from the beginning. NIS2 identifies two categories of service providers: essential and important. Before, we only had important. If you're an important or you're an essential operator, you have different sets of obligations. NIS2 applies to all providers of DNS services—I want to highlight that—along to DNS resolution chain, including operators of root name servers, TLD nameservers, authoritative name servers for domains, and recursive resolvers. So, really, everything. It's quite wide. It's not just registries and registrants.

All DNS services qualify as essential services, and as we said, they're automatically under scope. The EU member states do not need to identify them anymore.

Moreover, we have the extraterritorial effect of the GDPR here. So, if DNS providers are offering services in the EU, regardless of whether it is established in the EU, it's under scope and it has to designate a representative. To widen the coverage even more, the small and micro exemptions to do not apply to DNS providers.

So, as you see, the scope is, I would say, very, very wide when it comes to DNS. This is actually something that was raised. We had a webinar on these initiatives and an initial exchange of views on the 27th of January. That was something about the scope that was already raised by some community members.

If we can go to the next slide, please. Just to conclude this discussion, what would it mean if an operator is under the NIS2 scope? What would it mean for the DNS operator? They have to implement appropriate and proportionate technical organization measures. They have reporting obligations, which means, in case of an incident that is deemed important, they have to report to authorities. They have to provide contact details for the registry of essential services to ENISA. Of course, in addition to all those DNS provisions, we have the registration data related to provisions that Alan already talked to you about.

On the ICANN Org side, we are still analyzing, but I can share some considerations if you're interested. With respect to the scope, it seems to be very, very wide, as I said. It seems, for example, that even private

resolution services that someone has on their personal laptop, the way this NIS2 is drafted, it could be under scope. Perhaps that was not actually the intention of the commission. Particularly, if one looks at the impact assessment, that substantiates the proposal. I think of the impact assessment as an explanatory memorandum to the proposal. So we're considering whether it is worth raising this in the public consultation that is open, as you know, from a technical perspective, of course. For the registration data provisions, I can say that, from ICANN Org, our first reaction is that we welcome the provisions.

If one looks at Article 23 and what it foresees, it seems to aim to complement the [asset] that is put forward by the community. It doesn't attempt to replace it. It attempts to [inaudible] collection maintains and obligation to provide the legal basis for contracted parties for providing access. So I'd say it's sort of acknowledgement that, of course, the ICANN community is there. It does intend to develop policies for registration data, but at the same time, there's certain things that really pertain to public policy, such as providing a legal basis for processing. That is not something that the community can come up with. So we see a good intention, as Alan said. It is a direction. I couldn't agree more with the word that Alan used. Definitely, we collectively look into that as we look to implement the SSAD.

Now, a piece of information. Assuming, of course, this will go through the legislative process, it might not stay as it is. The draft might change. Assuming it stays as it is, it does provide the possibility for processing under Article 6.1(c) on the basis of a contract. That would mean that contracted parties can rely on 6.1(c) and not 6.1(f). I think that would be a good development. And a piece of information we'd like to share with

you is that actually the commission did confirm that that is the intention that they had with this writing there.

Now, that said, as Alan said, there are a lot of undefined terms there, like what is a legitimate access seeker? Was it lawful and duly justified requests? What is undue delay, as Alan mentioned? There is a dedicated database facility. Is it meant that contracted parties are responsible for that or something else? Again, as Alan mentioned, how do you recognize personal and business registrations so as to publicize what is not personal? All these are considerations there.

Also, we have, I would say, the national data transfer issue, which we will face as we try to implement the SSAD. I don't see Article 25 trying to address this. We're still analyzing, of course, on the ICANN Org side.

If I can have the next slide, please. Very quickly, what to except out of the EU decision-making process [which the NIS has entered?] The European Commission has the legislative initiative, as it is called. That means that they are drafting the legislation. They do consultations in the process. They do impact assessments. They evaluate existing laws if we're talking about [an update.] Now, once a proposal is approved by the college of the commissioners, the proposal is tabled to the council and the European Parliament. It sort of leaves the hands of the commission. The ones who will decide if the proposal becomes law. [Its final draft are the council and the parliament.] That is why they are called co-legislators—the council and the parliament. At first, each of them examine in parallel the proposal of the European Commission and that is exactly where we are now. So we are in this parallel examination. The parliament assigns the proposal to one of its committees. It's called

the [lead committee. For NIS2, it's [ETRA]. The lead committee appoints a rapporteur. That is a MEP who is leading all the internal preparation and also the negotiation with the council. He drafts a report. The report is the European Parliament position. On the side of the council, the council appoints a lead working party. For the NIS2, it's the working party cyber, and they work on the common approach under the lead of the council presidency, which of course rotates. Now we have Portugal.

Now, the European Commission is present in all these processes, but to give information and analysis. It does not decide. Once the parliament has voted on its report and once the commission has approved its common approach, they are ready to get together and negotiate. So we have the so-called trialogues. They're called trialogues because it's all three parties together—the commission, the parliament, and the council. Again, of course, the commission does not decide. It operates in a mediator fashion between the parliament and the council.

Now, if everything goes slowly, we could have to adoption of NIS2 in mid-'22. Then, as Alan mentioned, we have the transposition. It's a directive which means that the member states have to transpose international laws. So they have an extra 18 months to do that.

Next slide, please. As you already know, there is a consultation that is open from the European Commission. Actually, this is a complete novelty by the European Commission. They are doing consultations when legislation, a proposal, is still in their hands—so when they're preparing for the consultation. Now we are step ahead. That is why they have said that every feedback that they will receive will be given to the parliament and the council.

To answer the question of what ICANN Org has done or is doing on NIS2, well, as I said, we're still analyzing. We had a webinar to discuss, as I said, and we have set up a webinar that is coming up with the European Commission. I think that would help answer all the questions that all of us have. All of us will come out of it more informed, including the European Commission, and I think that the feedback that we get from the community will be really important in the context of this discussion. Please note that we will have on this webinar not the usual people that you see in the ICANN context. Of course, we have the commission and the ICANN community. On this webinar, you will have, aside from those people, the people that are actually involved in the proposals, that have drafted the proposals. We can also make questions in advance to help prepare that.

What we'll do next is we are considering submitting a contribution on the basis [of] the considerations that I shared with you, and we will look for more opportunities such as [the assembly] with the European Commission. Of course, we will keep monitoring the developments.

That was it from me. Now, if I can quickly respond to what Alan asked about the guidelines that the commission can adopt, Alan, frankly I don't know what they mean by saying they want to harmonize practices in these procedures. But I do know that, indeed, the European Commission has the right to approve guidelines. They already had it under NIS2—the existing NIS, but they never used it. I think this is an excellent question to submit to the commission for the upcoming webinar.

I'll stop here. I hope I was quick. I tried to be quick. Thank you.

ALAN GREENBERG:

Let me tell you how I interpret that sentence. When you say you do something without prejudice, it means, if you—I don't know—not pay a fine but pay some penalty and do it without prejudice, you're not admitting that you're guilty and you're not stopping anything from happening in the future. So the way I read this is the commission may adopt guidelines on such procedures, but the European Data Protection Board may override them and change that. They may not agree because they are the ultimate authority and therefore the commission's guidelines may in fact be overridden by the data protection board. That's how I read that, but I'm not sure that's correct.

ELENA PLEXIDA:

Okay, Alan. Thank you for the clarification. Now I understood your question much better. So I said I don't know what sort of harmonized practices they mean, but in the—I don't know how to say it—Brussels bubble language, “without prejudice” means that, if they adopt guidelines, it would be on issues that are not under the competence of the European Data Protection Board. So it's not that the European Data Protection Board will override them. It's that the European Commission will not even touch something that is not in its competence. Thank you.

ALAN GREENBERG:

Okay. Thank you. Olivier, back to you.

OLIVIER CREPIN-LEBLOND: Thank you very much, Alan, and thank you for this presentation, Elena. Someone just tried speaking?

CLAUDIA RUIZ: Yeah. Sorry. I just wanted to point out to Elena that there was a question from Joanna in the chat directed to her.

OLIVIER CREPIN-LEBLOND: Can we just go for the questions afterwards? I was going to try and get the three presentations and then afterwards we'll open the floor and we'll start with Joanna's question in the chat when we'll open it. Is that okay?

We'll do it this way. I'm just mindful of the time. That's all. So following on Elena's excellent presentation ... By the way, she mentioned the ICANN stakeholder assembly on February the 26th, the details of the registration have already, I think, been in your mailbox. But if you've missed it, there is a link from her presentation that is linked to the agenda. So you can go and access it from over there.

If we can prepare now Mason Cole's presentation, that would be great. Mason's presentation is also now added to the agenda page. So, if you have an old agenda page that doesn't have this presentation on it, you can reload and you will have Mason's presentation. Over to you, Mason Cole. And I'm not seeing the presentation yet up.

MASON COLE: Thank you, Olivier. I'm sorry. Did you say it is up or it's not.

OLIVIER CREPIN-LEBLOND: It should be up.

MASON COLE: Okay.

OLIVIER CREPIN-LEBLOND: Oh, here it is.

MASON COLE: Very good. Thank you very much. Well, first, thank you to the ALAC for inviting me to today's call. I appreciate this very much. The objective of my discussion today is to talk a bit about the background of the NIS2 directive comment opportunity and then to provide some perspective on the direction of comments not only from the BC but from some other sources as well and to maybe assist the ALAC a bit in helping form its own comment.

May I go to Slide 2, please? Forgive me for being on the phone today. There's an Internet outage in my region, so I'm unable to see the Zoom room. But if we're on Slide #2 now, this is just a bit of background on what the NIS2 directive is. It's been covered a bit by Elena and by Alan. But you'll notice, on the middle point, this is a proposal that's part of a package of measures to improve further the resilience and incidence response capacities of public and private entities, competent authorities, and the Union as a whole in the field of cybersecurity and critical infrastructure protection. So you can read into that any number

of angles in terms of having applied to this proposed directive. But it's important that cybersecurity is [finally] there—and so is infrastructure protection—because those are critical elements, obviously, of the Internet. And they're critical elements of why access to WHOIS is needed for legitimate purposes. So, on Point #3, what you can see there is that, through these various updates, this objective seeks to address cybersecurity, harmonized supervisory measures, and other tasks, including addressing domain name registration data.

Next slide, please. I'm on Slide #3 now. The problem being addressed—I know At-Large is very well-educated about this—is access to WHOIS data for legitimate purposes. So, if you saw the Interisle study, which was published just at the end of January, their finding was that 86.5% of registrants cannot be identified via WHOIS. The same study details that only 11.5% of domain names under a natural persons registration are subject to GDPR. So, we're having a problem. When I say "we," I'm talking about cybersecurity researchers, intellectual property owners, law enforcement, and others who have legitimate reasons for accessing WHOIS data, who are unable to get that data. In fact, the European Parliament noted in a question last year to the commission that approximately 75% of requests for access were made unanswered, and almost of all of those requests that received an answer were denied.

Next slide, please. I'm on Slide #4. So the European Commission recognizes the criticality of elements of the DNS, and they so note in there where-as clause #15, where they talk about upholding and preserving a reliable, resilient, and secure domain name system as a key factor in maintaining the integrity of the Internet on which the digital economy and society depends. So what we have is recognition by the

commission of the criticality of the Internet as a piece of infrastructure and the need for the ability to access data when warranted to protect that infrastructure.

You can see, in Point #2, as the council of the EU stated more than 10 years ago, the EU and its member states notes the concerns raised by law enforcement authorities, cybersecurity organizations and intellectual property rights holders about the negative impact of limitations of access to WHOIS data on their work. Finding a workable solution for access to non-public WHOIS data should be treated as a matter of priority. This is the direction from which the BC is coming with some of their comments. And so are others.

Next slide, please. I'm on Slide #5. There is opportunity, obviously—this is why we're talking today—for an At-Large comment on the NIS2 proposed directive. As Elena pointed out, the comment will be summarized by the European Commission and presented to the parliament and council with the aim of feeding into the legislative debate. So that's what we can expect over the near term from the European Commission.

Next slide, please. I'm on Slide #6. This is sort of the payoff slide. The direction of various comment sources. So this is where the BC is starting to come from in terms of forming its own comment, as are others who are putting together their comments. I'll just run through this quickly. It's important to ensure the scope of the NIS2 directive specifically covers all relevant actors in the DNS—that is, not those not specifically enumerated. Alan alluded to this in his presentation. For example, the language talks about registries and those providing domain name

registration services. It's important, for example, that we consider adding privacy and proxy service providers to that definition or potentially resellers. So we want to educate the commission on the totality of the domain name registration service spectrum so that they can make intelligent decisions on how to form that policy.

Further, we're striking the provisions concerning lawful access to domain name registration data. Thirdly, enhancing the public interest basis for a timely access to WHOIS data. So, in several places, you may have seen, in the recent past, that the European Commission and the European Data Protection Board and others who are in a position of authority on GDPR recognize that WHOIS is in the public interest. So we want to further establish that fact to the European authorities so that that's well-understood as they form their policy. Fourth, we're going to make suggestions regarding the refinement of Articles 4 and 23 and Recitals 15, 61, 62, and 69. Now, as Alan mentioned, this is a very long document—the proposed directive—so you can cut out a bit of time by concentrating on those areas in terms of forming your comment. And those are the parts that address the DNS specifically.

Finally, I'll say that we've prepared a draft of the suggested comment basis that I'll be able to provide ALAC very shortly as a way just to suggest to the ALAC some potential helpful language and a direction to take the comment that doesn't necessarily mirror that of the BC but it's areas that we anticipate are going to be helpful in terms of educating legislators and European authorities and others who are in a position to help form this policy. So it's not quite ready, but it will be soon. Olivier, I'll be glad to provide that to At-Large at the appropriate time. And that'll be just in the coming days.

Next slide, please. I'm on Slide #7. This is just a quick tactical outline of what to expect. Comments need to be submitted by 18th March. Following that will probably be outreach to relevant audiences within the commission and the parliament following that comment so that education can take place for those who may not be as literate with the domain name system as others are. And then we do plan on outreach to relevant audiences on the ICANN Board as well to make them aware of ongoing concerns about WHOIS and GDPR.

The final slide is just my summary. So if there are questions or ideas or thoughts, this is my contact information. I encourage you to contact me directly. I'll be glad to assist the At-Large however I can.

Olivier, thank you very much for the opportunity to present. I turn the floor back over to you.

OLIVIER CREPIN-LEBLOND: Thank you very much, Mason, for this presentation. Thanks to all our panelists today. We're now going to open the floor for questions, comments, etc. I know that Joanna Kulesza was first in line, but I'll give the floor to Alan Greenberg because he might add a few more things now that we've got the three presentations that were just passed. Alan, you have the floor.

ALAN GREENBERG: Thank you. I was going to ask a question, so why don't we let Joanna go first, since she was early in line than me.

OLIVIER CREPIN-LEBLOND: Okay. Thanks very much. So go ahead, Joanna. I know you've just written. Every question is important, so please proceed if you can.

JOANNA KULESZA: Thank you, Olivier. This is just directly—thank you. I'll be very brief. Thank you, Alan, and thank you, Olivier. It was just directly linked to what Elena was explaining. There was concern about the language, and I was curious if some of that language could have been cleared by references to the general principles in terms of undue delay, etc., etc. So as much as I share the overall concerns—thank you to everyone who presented on those brilliant and specific presentations; I'm certain there is a lot for the At-Large to comment on—I was just trying to bring some optimism and trying to link that presentation to the overall body of legal language we have with regards to that specific concerning phrase.

So the question was whether there is some background that would help us clear up the language that was presented in the presentation by Elena.

OLIVIER CREPIN-LEBLOND: Thanks for this.

ELENA PLEXIDA: Thank you, Joanna. Can I add something to it?

OLIVIER CREPIN-LEBLOND: Yeah, please

ELENA PLEXIDA: Joanna, there are legal terms that of course are there and should not be explained as such, but on the other hand, Alan mentioned before—he's quite right—we do have the general legal terms. But then what does it mean in the context of the EPDP or in the context of access seekers? What is the period? So there are such questions. To be frank, I hope that the EC proves me wrong, but I think we will not get a very clear answer on that. There was a high-level Internet Governance Group meeting—this is the EU member states and the commission—recently, and there was a related question. The commission replied there that their intention with the NIS2 was to regulate the operators, not to provide further details on what a legitimate access seeker is or due or undue delay. Thank you very much, Joanna.

OLIVIER CREPIN-LEBLOND: Thanks for this, Elena. Alan Greenberg?

ALAN GREENBERG: Thank you. Just to elaborate a little bit more on that, it all depends on who you are and where you are. From a cybersecurity researcher view, one of the reasons we were looking for automated SSAD processes is, when you're trying to address a problem that is operational, seconds count. A ten-day response is not quite what you're looking for. From the point of view of a registrar that is being inundated with requests—maybe a small registrar; it may not be GoDaddy; it may be a two-person operation—saying you have to respond within an hour or within 24 hours may be deemed to be unreasonable. So it all depends

on where you are and how you're looking at this. That's where the difficulty of coming to terms is, coming to agreement.

My question is on one of the issues that has come a lot in discussions. Let's assume all of this goes through. So, 36 months from now, we have NIS adopted and legislation in the countries. Are we likely to see penalties? We know that there's been privacy legislation in Europe for a long time, as in many other jurisdictions, but there haven't been penalties. Until there were penalties, it wasn't often taken seriously.

So, again, it's a question to Elena based on what her understanding of it is. This is not a guarantee. Are we likely to see penalties associated with this? That is, if you are a registrar and don't publish information about legal entity registrations, are there going to be penalties? Because, to be honest, right now, everything focused on liabilities and costs. Thank you.

OLIVIER CREPIN-LEBLOND: Elena, do you wish to provide a response?

ELENA PLEXIDA: Thank you, Olivier. Yeah, I'll try. If the question is in particular about penalties in case you do not publish the information of a legal entity or if you publish information that is not 100% accurate, from my experience and from what I see so far, I do not expect that we will see such penalties. So you will be fined if you do publish private information that that you thought were not, you thought was from a business. But if you do it the other way around—that is, you stick with the approach, the very safe approach—I don't see any penalties there. That's the whole

problem, if you will, with the GDPR that we're facing—you, most of all; you know very well—in the context of the EPDP.

Just to continue the discussion a bit further, the accuracy discussion has been there for you, and you have been having it for quite a long time. Then we had, in the context of the GAC and the comments that have been submitted on the report of the EPDP, the statement there is saying that accuracy is not only a right of the data subject but you could also be found to be in breach, non-compliance, with GDPR if you don't provide accurate information. So that's something that would go to your point, Alan. That could imply that there could be penalties if you don't have accurate information. That's something we tried to clarify with the commission. We asked the question twice, in fact, and we didn't get a clear answer.

There was a question, again, in this meeting. I mentioned to the commission the EU member states. The commission answered there that their intention was not to interpret the GDPR but just add some context with respect to the security and stability of the DNS.

I will conclude by saying, again, at the upcoming webinar, I do hope that this question will be reiterated again and these questions will be answered by the commission. Thank you.

OLIVIER CREPIN-LEBLOND: Thank you. I was thinking that these might be exactly the type of questions we might wish to ask when we have this webinar taking place.

Next in the queue is Michael Palage.

Michael, you might have to grapple your microphone and turn it on.
There you go.

MICHAEL PALAGE:

Hi. So, Elena, I just want to follow up on your response to Alan. Specifically, I was reading Article 31 that talks about the 2% of up to ten-million-euro fines. Then I also believe there's potential non-compliance fines set forth in Article 33, which are separate from 31. So that's something I've been looking at. I've been reading it in a little more depth. But perhaps your insight on the applicability of Article 31 and 33. I would really find insightful, if you could maybe not today but in the future or in the upcoming webinar ... I think that would be really helpful to the broader community.

Specifically to Alan's point, fines tend to get people's attention and is a great motivator. That's why I've been focusing on those two articles. Thank you.

OLIVIER CREPIN-LEBLOND:

Thanks very much for this, Michael. Let's try and go through the queue since I see that Alan is also in the queue. So we can go with Greg Shatan and then Alan can respond to some of the points that are being made. Greg Shatan, you have the floor.

GREG SHATAN:

Thanks. Hopefully, you can hear me.

Yes?

OLIVIER CREPIN-LEBLOND: Yes, absolutely. Go ahead.

GREG SHATAN: Very good. Thank you. Just wasn't sure I'm using a different setup than before. In any case, I understand clearly that there will be penalties for non-compliance with GDPR, but unfortunately or fortunately there are no penalties for over-compliance with GDPR, unless there is some sort of countervailing law or directive. My hope was that the NIS2 directive would lead in that direction because, by keeping things secret that shouldn't be secret, you're decreasing accountability, transparency, security, stability, and all of those other things. So the balance these days is entirely in one direction since there's essentially no problem with, say, keeping legal-person information or non-EU-data-subject information from being read, regardless of the consequences of that. That's a key concern of mine.

I guess one of the things I'm curious about and I don't know is whether NIS2 would lead to any sort of private right of action. Clearly, there are private rights of action under GDPR, which has also gotten ... GDPR has wildly caught the attention of many over any prior data protection or privacy law. So it's a question of whether there's any private right of action or any idea that there'll be, in essence, something more mandatory about keeping public the information that should be public.

One last point on accuracy. There was a big debate in the EPDP, if I characterize it correctly—it's a debate that may be had elsewhere as well—as to whether accuracy in the GDPR refers to objective accuracy or

accurately conveying the information that the data subject has provided. Of course, in the Mickey Mouse world of WHOIS, that's a huge difference. Thanks.

OLIVIER CREPIN-LEBLOND: Thank you, Greg. Alan Greenberg is next.

ALAN GREENBERG: Thank you. On accuracy, the GDPR makes it pretty clear, I always thought. But not everyone agreed with me. It says it must be accurate for the purposes for which it is used. Clearly, if someone is requesting contact information, that's a use of it. If they're requesting contact information, it's probably to contact the entity. Therefore, if it is not sufficiently accurate to actually make contact, then it's not accurate.

So, that being said, there are a lot of people that claim that accuracy is only in the perception of the data subject and, if they're happy, then everyone should be happy. But GDPR seems to imply otherwise. It would be nice if we had some clarity on that one day, but we never seem to be able to get clarity.

I thank Michael for reference to Articles 31 and 33. I hadn't actually noticed that. They make it actually pretty clear. If I can quote just a little bit from 31, "Member states shall ensure that imposition of administrative fines on essential and important services pursuant to this article in respect to infringements of the obligations laid down in this directive are, in each individual case, effective, proportionate, and dissuasive." That implies to me that, although GDPR and its fines are

applied by the data commissioners, other entities within each of the member states will have an obligation to apply fines or penalties if these directives are not followed. That sounds as if there will and have to be some sort of penalties. Whether they'll be effective or not is a different issue. But that puts some teeth into these directives which I hadn't noticed before. Therefore, they may in fact be something that we could use effectively. Thank you.

OLIVIER CREPIN-LEBLOND: Thank you very much, Alan. In fact, Michael Palage has also quoted in the chat Article 31, Paragraph 4, which speaks of fines of at least ten-million-euros or up to 2% of the total worldwide annual turnover of the undertaking. Blah, blah, blah. Yes, it looks rather expensive to us.

We are somehow running out of time already on this great topic, but we've got Christopher Wilkinson in the queue. So we'll have Christopher and then we'll close the queue and see what action items we can have from this very interesting discussion. Christopher, you have the floor.

CHRISTOPHER WILKINSON: Thank you very much. Thank you very much to our panelists for an excellent education in this complicated subject.

I would just like to put on ICANN's agenda the question of the geographical scope of this new legislation. Of course, the United Kingdom is out of the European Union now, though I believe there are quite a few DNS operators in the United Kingdom who are providing

services to the European Union. How the legislation deals with this peripheral aspect of the geographical scope, as far as I can see, remains to be seen, but it could become quite complicated.

The other extreme, on a smaller scale, is there is the peculiar situation of Gibraltar, where Gibraltar is part of the United Kingdom for various purposes. But I believe currently there is a negotiation in process to try and facilitate Gibraltar continuing to provide financial services and almost certainly DNS services. You'll remember there are quite a few gTLD registries incorporated in Gibraltar.

So are they in or are they out? I don't expect an answer this evening, but I'd just like to put that question on the agenda of future discussions. Thank you.

OLIVIER CREPIN-LEBLOND: Thank you very much for this, Christopher. As a Frenchman living most of the time or a lot of the time over in the UK, this question of being in or being out is something that has been haunting me for goodness how long now—so one of these headaches.

Alan, I turn over to you because I guess you're leading the charge on this. We really have to look at now what our next steps are. I understand that the closing date for a potential comment is the 15th of March, 2021. So what are the next steps on this and what is recommended? I guess, based on the discussions that we've had today, we have to see what to do next, if anything, of course, keeping it as open as possible.

ALAN GREENBERG: Thank you, Olivier. I can't say I have something written, but my intent is, for next week's meeting, to put out some notes on what I think the ALAC may want to comment on. Mason said he'll try to be providing the BC version to me before then. So although we clearly don't want to be a carbon copy of them, any thoughts they have may give us insight into doing it. I don't know if we have a wiki page open. If there isn't a wiki page already open on it, then I ask staff to do that immediately. Anyone else who has thoughts, even before I post anything, on what we might want to say, please post your thoughts there and I'll take that into account.

OLIVIER CREPIN-LEBLOND: Thank you very much, Alan, for this. There is a wiki page that's already open for this.

ALAN GREENBERG: And I see there is a wiki page, yeah.

OLIVIER CREPIN-LEBLOND: Yeah. There is a wiki page. What I would also ask would be that there would also be a copy of these three presentations that we've had today on that wiki page, perhaps even a link to today's call for anyone who has missed the call to be able to find the recording of the call and also the presentation easily because I think quite a few people will be interested in the topic.

I note that Sebastien Bachollet has put his hand up, so, Sebastien, you have the floor.

SEBASTIEN BACHOLLET: Thank you, Olivier. It's a question. I understand that Alan was talking about ALAC. I just wonder if the group thinks that EURALO may have a specific role, as it is in our place where all that is happening. If not, that's okay. If yes, just let's talk about what we can do. Thank you.

OLIVIER CREPIN-LEBLOND: Thank you, Sebastien. Alan Greenberg?

ALAN GREENBERG: As I said on a previous call, certainly if EURALO has a comment on their own, they are of course within their rights to submit one. We welcome contributions from EURALO on this.

I'll note, as Elena noted, there are extraterritorial implications to this. As you may have a resolver on your own PC, you are probably subject to it, regardless of where you are, based on how the wording is right now. So it is pretty wide, and it's not just covering Europe. But certainly independent action or input from Europe is more than welcome.

I'm sorry. I can't claim to be a European. I'm volunteering. If someone else wants to take over, that's fine. But other than that, I think everyone's input is welcome and will be incorporated. Thank you.

OLIVIER CREPIN-LEBLOND: Yeah. Thank for this, Alan. I note that Yrjo Lansipuro is on the call and is leading the coordination of At-Large Structure input. There is a table in

EURALO of the knowledge of some of our At-Large Structures. Perhaps it would be the right exercise to get in touch with an At-Large Structure, [then] specifically point them to this EU directive page to get their comments.

SEBASTIEN BACHOLLET: Olivier?

OLIVIER CREPIN-LEBLOND: Go ahead, Sebastien.

SEBASTIEN BACHOLLET: Sorry. Thank you, Alan, for your answer. I don't think there is anybody who wants to struggle with you to take the lead. You are doing great, and I think it's linked with EPDP too. Therefore, there is many reasons. Even if you are not yet European, you are quite welcome to do that. And thanks.

But I was more thinking about what Mason Cole told us—that he thinks it will be important and [that] time to have a direct link with the various European [inaudible]. Maybe at that time it could be good to use, as Olivier suggested, our ALSes in Europe and our possibility to join our deputy ... I don't know—it's European Parliament members and the commission and of government—if need be. Thank you.

OLIVIER CREPIN-LEBLOND: Thanks very much for this, Sebastien. Alan, anything else on this topic or it's all fine?

ALAN GREENBERG: No, I think we've done good for a first start at it.

OLIVIER CREPIN-LEBLOND: Okay. Well, I wanted to thank Elena Plexida and Mason Cole for joining us on today's call. It's been very, very helpful. Just reminding everyone that you must have received in your mailbox an invitation for the forthcoming call about the topic that will be, I'm sure, very well-attended, and also to think of any questions you might have in advance. You might wish to bounce them off our mailing list first. So we might be able to put a coordinated set of questions through that we could send before the webinars. At least then we don't get an answer of, "Ooh, I'm not quite sure. I'll have to check this and come back you later."

In any case, I've been incredibly inefficient for this part of the call. So we are 15 minutes late, and thus I shall hand the baton over now to a much more efficient person than me, Jonathan Zuck, for the At-Large priorities 2021.

JONATHAN ZUCK: Thanks. I'll be highly efficient. What I thought I would do is just share a brief report of the meeting that we had with the Contracted Party House yesterday. As I mentioned, we were invited to the meeting of their DNS Abuse Working Group. They're trying to move the conversation out of public ICANN meetings and into more direct communication. I think

there's some value to that. So I think we've had some success in motivating that process. But they've formed a working group and they're doing meetings with a number of different stakeholder groups within CIANN.

Yesterday was our meeting. We had pretty good attendance from the At-Large in the meeting. We just discussed some issues related to the definition of DNS abuse. They're obviously very, very focused on maintaining a very narrow definition. Even though some within the Contracted Party House have adopted a broader one as part of that framework on DNS abuse, the consensus of the stakeholder group appears to be to maintain a fairly conservative definition. So that'll still be an ongoing conversation, and I said that that was ongoing within the At-Large as well.

We talked a little bit about some of the things that we had raised in the past, which included predictive analytics. So we reminded them about that. We reminded them about the success that .eu had seen and, while it might be expensive, it might be something that ICANN could involved in in helping to develop or produce, etc.

They're obviously very, very resistant to any changes to the contracts. So that's a complicated aspect of this. So we pushed them on getting together with Contractual Compliance perhaps using the scenarios session that we did at ICANN66 as the basis for some conversations they might have with Contractual Compliance because there seems to be some real differences of opinion as to what Contractual Compliance is able to do under the current contract. So there was some back and forth on that.

We mentioned the threshold concept that we've brought up at a previous session. Certainly, Gavin in particular was very reticent on that point, just saying that there were too many problems with things that could lead to a high proportion of abuse in terms of size, being a new gTLD, etc., etc. I feel like those are all things that just require more conversation.

As near as I could tell, their greatest concern was anything that triggered something automatic to happen, either on their end when a registration happened, or on Contractual Compliance's end. We tried to emphasize that [with] more of these issues with predictive analytics, with bulk registrations, etc., we weren't talking about prohibitions but more of a hiccup, a pause, that would need to happen to get triggered by these predictive analytics or by bulk registrations, etc.

So I think there's more conversation to be had, but the thing they seemed most reticent to do is change the contract and to have things that are triggered automatically. Those were the basic precepts of the conversation.

I welcome Joanna and Alan Greenberg, John McCormack, and others who were on the call to speak up and add color to this, but I just wanted to, as Olivier requested, be efficient and give you a little bit of summary of those conversations.

Alan, why don't you go ahead?

ALAN GREENBERG:

Thank you. I'll just highlight something Jonathan said. Jonathan, in one of his comments, noted that, in our public meeting at the Montreal meeting, it was quite clear that the contracted parties were saying Contractual Compliance has the tools. Compliance was saying, "No, we don't have the tools." That should have led to something.

Many of you will recall that I've been campaigning for a while to say that the contracted parties and ICANN Compliance should sit down together and either come to the conclusion that there are tools and Compliance knows how to use them or that there aren't tools and develop together the tools that will allow these things to be addressed. Remember, given Goran Marby's regular comments that these are just edge cases, there's only a small number of contracted parties that, really, we need to fix. But Jonathan noted that it ended there. I commented on it. The registries or a number of a people picked up on that and said, "You're right. There should have been some follow-on if we were disagreeing to try to come to agreement."

That's something that we'll look at. So maybe, if nothing else, that one call may trigger what I think is a key thing of the two parties getting together and coming up with a single story so that, if there are indeed things that could be done via Compliance, we do them. Thank you.

Back to you, Olivier.

JONATHAN ZUCK:

Yeah, Olivier, you've got your hand up. Go ahead.

OLIVIER CREPIN-LEBLOND: Oh, it's over to me? Well I need to be less given the floor. Thank you. Jonathan, there is a press release today from PIR launching the new institute to combat DNS abuse. There's a link in the chat, actually, on this. Is there a window of opportunity to perhaps talk to these guys as well as part of our journey into studying this and trying to do something about it?

JONATHAN ZUCK: Thanks, Olivier. That's a great point. That didn't come up on yesterday's call because that's specific to PIR. But they are trying to make it a resource for the entire industry—like a resource library—and develop solutions, etc. In fact, Graeme Bunton, who was the big data monster at Tucows, has moved over to be the fulltime executive director of this institute. He's one of the more measured advocates, if you will, within the Contracted Party House and is very data-driven in his evaluation of things and very analytical. So I think that he'll be a very good head for that organization and make a sincere to make it helpful.

Brian reached out to me separately, but it didn't come up on the call yesterday. So it's still brand new, but I think we definitely want to be supportive. I think there'll be opportunities for us to provide feedback to Brian and others if PIR once that institute gets on its feet.

Greg, go ahead.

Oh, sorry, Olivier. What?

OLIVIER CREPIN-LEBLOND: Thank you. I was just going to ask whether it might be worth perhaps inviting Graeme in a future call to provide a bit more insight. At the moment, all we have is a one-pager release. I gather it's very new. But perhaps in a few weeks' time, ask if we could have Graeme to explain to us a little bit more about what they're thinking of?

JONATHAN ZUCK: Yeah, definitely. I'm sure he'd be happy to come and talk to us about what they're doing because part of it is a PIR effort. I think part of it is to be constantly putting out information about what the industry is trying to do to combat DNS abuse. So I don't think there'll be any shortage of speakers on what they're doing. In fact, that'll be an ongoing interaction, I believe.

Justine, the call wasn't recorded. Again, I think the contracted parties are, at this point, trying to have an informal conversation. So we've participated in that. We made no commitment not to continue to hold public meetings, so I think that we'll have to leave them to their own recognizance on the things that we've brought up and figure out later how things are going and how we want to proceed.

Greg Shatan, go ahead.

GREG SHATAN: Thanks. I agree with you. I think Graeme will be a good, measured person, someone we can talk to, someone who listens to the data.

On the other hand, this strikes me as another effort to bolster the narrow contracted parties' definition of DNS abuse, which is one that

many people in At-Large and other areas don't agree with. Certainly, we agree that everything they put into the circle of DNS abuse—I'm thinking back to your slides, Jonathan—we agree should be in the circle, but things that they place outside the circle of DNS abuse are, to varying degrees, depending upon which ones you're talking about, are things that some of us believe should be in the circle. So that I think is the issue. This is, in some part, about excluding from the discussion certain aspects of abuse using the DNS and limiting it to abuse of the DNS, although obviously there's things like spam. But it's spam that carries one of the actual problems along with it, not spam for spam's sake.

So I think this is something we should look at not with cynicism but with concern that there is further crystallization of the definition of DNS abuse that started, I guess, at ICANN66 or before with the declaration by certain contracted parties of what DNS abuse is and, by exclusion, what isn't. Thanks.

JONATHAN ZUCK:

Thanks, Greg. I think you're right. I think that's something about which we're going to need to be vigilant. Part of our job is going to be go through and do the work to form our own consensus on what we think the contracted parties should be responsible for. I don't know if we need to get tied up in defining abuse as much as trying to figure out what roles we want different organizations to play because it could be that we make a demand that they do something specific and, if they do it, then we're happy and it's not necessarily something that needs to be part of the contract, for example.

I think we need to resolve as the At-Large community what our aspirational outcome looks like. That's the conversation I was trying to have last week, but it was fairly short, unfortunately. But I was trying to inform our conversations with them, but I think we'll be having more conversations with them. But I think we need to do our works ourselves to really define that because I know that you have a more expansive definition of DNS abuse and those in the At-Large community that are in government perhaps have a more expansive definition. Way at the other end of the scale there are those within the At-Large community that think the definition as advanced by the framework actually goes too far. So we need to figure out where we stand, develop consensus, and then try to get to a place where we're all singing from that same songbook. That's the point at which I think we can have a little more influence. Thanks, Greg.

GREG SHATAN:

If I could just respond briefly, I think my concern is that the time is passing where we can have any significant influence and that the ... I'm not saying the war is over, so to speak, but the efforts of those to define DNS abuse within the narrow confines that the contracted parties advanced, which are identical to the ones that the DNS Abuse Institute embraces seems to be at least winning the battle. So we have—

JONATHAN ZUCK:

It's all them talking so far.

GREG SHATAN: Well, right. Well, that's true, but they are dominating the conversation.

JONATHAN ZUCK: Their contracts are written in such a way ... Yes, I agree they're dominating the conversation because, Greg, we don't have a definition of DNS abuse. That's why we need to prioritize forming one. We don't have one. There's no counter-definition out there except for the GAC communique from Beijing, which is the most expansive of definitions. So the GAC have one, but I don't know that the At-Large has a definition of DNS abuse at this point.

GREG SHATAN: I agree we need to crystalize something and figure out where we stand versus other organizations such as the BC, as we've [inaudible], and the GAC, and come up with something that is a reasonable counterpoint to figure out what we can get. Obviously, we're not going to get the widest definition that anybody among the groups or others that I mentioned would possibly want. So it comes back to the art of consensus-building here so that we can advance a position that has a reasonable chance of being a second voice because, if you get a bunch of voices saying slightly different or very different things versus one voice or one group of voices saying the same thing, it's pretty clear which one wins. One sounds like babble, and the other one sounds like a choir.

JONATHAN ZUCK: That's right.

GREG SHATAN: So right now we're in Babble Land, sadly.

JONATHAN ZUCK: Yeah. And that's true not only of ICANN but of the At-Large itself. So the first step is [that]. Thanks, Greg.

GREG SHATAN: We'll get out of Babble Land by bus.

JONATHAN ZUCK: Yeah, exactly. I see Cheryl says, "Sounds like a plan." We'll keep people up to date, but there is my quick update, Olivier. I'll pass the baton back to you.

OLIVIER CREPIN-LEBLOND: Thank you very much, Jonathan. We're going to escape from Babble Land and go into the work group updates, with Hadia and Elminiawi providing us with some information on the Expedited PDP.

ALAN GREENBERG: I have no other information. We are in the process of giving suggestions and commenting on them. There's no meeting this week. The Legal Committee needed extra time, so the Thursday meeting is devoted to the Legal Committee.

All I'll say is there's an online discussion going on on using a new discussion tool on legal versus natural. The comments are rather

discouraging from the registrars, specifically saying we're proposing that, at the very least, for new registrations, they determine whether it be legal or natural or at least have a flag that says it, even if it's no filled in. We're getting a lot of pushback, basically saying, "Sorry. This doesn't follow our normal business practices." I find all that rather curious, given that the whole purpose of a PDP is to change things. But we'll keep on pushing.

I don't know if Hadia has anything to add.

HADIA ELMIINAWI:

Thank you, Alan. No, nothing, actually, to add, apart from, yes, I do agree definitely with Alan that the registrars' comments are very disturbing. Let me say that, actually, the biggest concern is a comment from them saying that we need first to decide whether differentiating between legal and natural persons' data is desirable or not. So if actually it is not desirable, then whatever suggestions we come up with will find no way through. So, yes, the registrars' comments are not encouraging.

We are also working on the unique e-mail contacts, definitions, and some other legal questions. Thank you.

OLIVIER CREPIN-LEBLOND:

The floor is open for any comments or question to Hadia and Alan.

I am not seeing any hands up, so congratulations to Hadia and Alan for having completely broken the party mode that we had just a moment ago. But fortunately we have Justine Chew, who can probably cheer us

up a little bit with the Subsequent Procedures and the announcement of SAC114.

I see Alan has put his hand up. Go ahead, Alan.

ALAN GREENBERG:

Sorry. I have to comment. If you thought my comments were negative, you should be hearing the ones I'm giving on private calls. I'm positively rosy on these calls.

OLIVIER CREPIN-LEBLOND:

Okay. We'll keep this in mind. You're such a great joker. Everyone laughs at them, but I'm not quite sure they work too well here.

Justine, please bring some sanity back to this call. Justine Chew?

JUSTINE CHEW:

Thank you, Olivier. Thank goodness my update is only going to take hopefully 60 seconds because we're at the top of the call already.

Anyway, just a couple of points to update folks on Subsequent Procedures. There is a motion that is being considered. I believe the vote is going to be taken at tomorrow's GNSO Council meeting.

If I can just provide a brief summary on what the motion actually talks about, it's that they are suggesting to adopt the final report of the SubPro PDP Working Group to recommend implementation of each of the outputs that have contained either consensus or full consensus designations. So pretty much the whole report has that designation with

the exception of Recommendations 35.2 and 35.4, which both only received a designation of strong support with significant opposition. Both those of recommendations have to do with auctions and, in particular, private auctions as a mechanism of last resort for resolving contention sets.

The motion also talks about the last round having been over a decade ago in 2012 and that the implementation of the outputs from this report as adopted by GNSO Council should be taken action on promptly without considering any other things that are considered as dependencies, I suppose you could say that. So I guess they're trying to push for a new round to happen ASAP.

They also recommend that, in the motion, they're going to request the ICANN Board to initiate an operational design phase for Subsequent Procedures.

The last point was that they're asking for ICANN Org to be directed to convene an implementation review team for Subsequent Procedures to implement the outputs of these final report recommendations if and when approved by the ICANN Board, obviously.

So that's going to take place tomorrow at the GNSO Council meeting. I'm happy to provide an update next week, once that meeting takes place. That would obviously affect our timeline in some way in terms of our settlement of the ALAC advice that we're going to be providing to the Board on Subsequent Procedures.

I haven't recommended a hard deadline yet because I'm trying to keep the door open for GAC to provide any inputs that they want the ALAC

consider including in our advice. I do suspect, though, that, if that were to happen, it would only happen after ICANN70 through the GAC communique. But I'll rope in Yrjö to work with our GAC colleagues on Subsequent Procedures to see if we can obtain a preview of some sort. But, yeah, we'll work on those.

But in the meantime, there is a new source of information in the form of SAC114. SAC114 is basically the comment by the SSAC on the final report of the Subsequent Procedures Working Group. SSAC basically couldn't meet the deadline for minority statements to go into the final report, so what they've done is they've crafted their comments as advice to the Board, basically.

I'm not proposing to go more deeply into SAC114 on this call because obviously we're running out of time, but I have circulated that document through the CPWG list and the ALAC list. So you would see it there. Happy to insert a link to it in the agenda of this call later.

But what I propose to do is, insofar as the SAC recommendations which mirror or at least do not appear to be inconsistent to what we're proposing to include in the ALAC advice, we could consider referring or adopting the SAC recommendations into our advice.

There are a couple of ones which are not so clear-cut, so I would like to take some time to study it a bit more. I'm proposing to come back next week with a couple of slides to suggest ways to deal with the recommendations out of SAC114. Thanks.

OLIVIER CREPIN-LEBLOND: Thank you very much, Justine. We are somehow rushed for time, but we do have an extension. I was going to open the floor if anybody has a quick comment or a question on the points you've made. But otherwise I was going to suggest that perhaps we move it until next week, since you'll have an extended time, whilst today you've done more than one minute's work of great work.

I see Alan Greenberg has put his hand up.

ALAN GREENBERG: Thank you. Just noting that the ICANN meeting is March 22nd to 25th. So the Board's comment on the PDP ... Once it is approved by the GNSO Council, they have to open a comment period of 40 days. So, given that, in fact, it's the 17th of February right now, it looks like the comment period will probably end sometime after the ICANN meeting. So we should have enough time to factor in our own comments and anything that comes out of the GAC. It might be a little bit tight at the end, but it should be doable. Thank you.

OLIVIER CREPIN-LEBLOND: Thanks very much for this, Alan. I see Alejandro Pisanty next.

ALEJANDRO PISANTY: Thank you, Olivier. Very briefly, hi, everybody. Hope you are all okay. In the meeting, I'm expecting to learn more about the [expectations] of the SSR RT, about the stability, security review and working together with Greg Shatan in the coming days to prepare something for further work. Thank you.

OLIVIER CREPIN-LEBLOND: That's great. Thank you for this, Alejandro. That will be helpful. Hoping to hear some more next week about this then.

Now—

ALEJANDRO PISANTY: Sorry. That was Alejandro Pisanty speaking.

OLIVIER CREPIN-LEBLOND: Sorry?

ALEJANDRO PISANTY: For the record, that was Alejandro Pisanty speaking.

OLIVIER CREPIN-LEBLOND: Yes, thank you, Alejandro. Thank you. Now we've got still policy comment updates coming up, so I guess I have to turn the floor over to Jonathan Zuck and Evin Erdogdu for these. Unfortunately, you do not have 30 minutes, so you'll have to be rather fast. Over to you, Evin.

EVIN ERDOGDU: Thanks so much, Olivier. I've noted I'll be quite brief. Recently ratified by the ALAC was the draft FY'22-'26 operating and financial plan. This was shepherded by the OFB Working Group. So you can see the statement on its workspace there.

Upcoming public comment proceedings are listed on the agenda for your review, and there are currently two public comments open for decision. They were referenced earlier. One is the EPDP Phase 2 policy recommendations for Board consideration, closing on the 30th of March, and one newly opened one on the IANA naming function review recommendation for an IANA naming function contract amendment. Usually, reviews are shepherded by the OFB Working Group, but since this touches upon IANA, it may also be considered by the CPWG. So we will discuss this with working group chairs.

Otherwise, these statements that are currently in development have been commented on, including the ALAC advice to the ICANN Board on Subsequent Procedures and the NIS2 directive. The workspace for At-Large has already been updated with the presentations today, as well as the link to the EU public consultation page.

So that leaves the ALAC statement regarding the second security, stability, and resiliency SSR2 Review Team final report. Alejandro just commented that he and Greg are working on drafting initial At-Large consensus points on this statement.

So unless there are further comments from either Greg or Alejandro, I'll turn it back over to Jonathan. Thanks so much.

JONATHAN ZUCK:

I think that about sums it up. I feel like we had an unwritten consensus that we probably want the comment on the NIS2 directive. Is there anybody that, after the conversations that we've just had, believe that we don't need to comment?

Olivier, you put your hand up for something?

OLIVIER CREPIN-LEBLOND: That was to speak after you, not to respond to this.

JONATHAN ZUCK: Oh, okay. All right. Alan, I know you've got a lot on your plate, but are you the best person to shepherd such a statement?

ALAN GREENBERG: I'll volunteer to start it. We'll see what happens afterwards.

JONATHAN ZUCK: All right. That sounds good. Thank you. Olivier, is that a question or should I just pass the baton back to you?

OLIVIER CREPIN-LEBLOND: Thank you, Jonathan. My question was with regards to timings for the SSR2 because we do have plenty of things that are moving forward, preparing for next week's call. Should we plan for some presentation of something regarding this?

JONATHAN ZUCK: I think we probably should on the next call be looking at consensus talking points, for sure. So I'm hoping that Greg and Alejandro are able to do that for the next meeting.

OLIVIER CREPIN-LEBLOND: Okay. Thanks. The other thing was EPDP Phase 2 policy recommendations. This at the moment is for our consideration. Are we to move that over to the page and proceed further with it? Of course, the big question that remains is whether the ALAC will comment on the IANA naming function review.

Great silence. Justine Chew?

JUSTINE CHEW: Thanks, Olivier. Just with the public comment on the IANA naming function contract amendment, I was just wondering whether it might be useful to have our ALAC rep advisors on that. Thanks.

JONATHAN ZUCK: Yes, I think that would be a good idea. Who is our ALAC rep?

JUSTINE CHEW: I believe it's Kaili Kan.

JONATHAN ZUCK: So let's make a note of that—to get Kaili Kan to speak to us.

All right. And, Olivier, to answer your question, yeah, I think it's inevitable that we'll be commenting with every opportunity on the EPDP. So I don't know if we even need to vote on that.

Anyone else?

OLIVIER CREPIN-LEBLOND: We have Hadia.

JONATHAN ZUCK: Hadia, go ahead.

HADIA ELMINIAWI: Hi. I was just going to note that, yes, I think we need to comment on the EPDP, too. You've already done that, Jonathan.

But since Alan also left, I was going to wonder if we will ... Because the basic idea was to use the minority statement that we provided as a base for our comment. I'm not sure, now, that we should use only this. Maybe, in light of what's happening in the EPDP Phase 2A, we need to make some modifications. But, again, since Alan left, we can discuss this later.

JONATHAN ZUCK: All right. That sounds good. Thanks, Hadia. All right, Olivier, back to you.

OLIVIER CREPIN-LEBLOND: Thank you very much, Jonathan. We're over in Agenda Item 7: Any Other Business.

Well, I guess everyone is pretty much relieved that there is no further business. We can therefore go to #8 and find out when our next meeting is going to take place.

CLAUDIA RUIZ: Hi, Olivier. Just confirming that the next will be next Wednesday, the 24th of February, at 13:00 UTC.

OLIVIER CREPIN-LEBLOND: 24th of February, 13:00 UTC. Just waiting a second to see if there are any obvious clashes that we might have overseen.

Nope. Okay. Well, then let's meet up next week again. Until then, of course, please follow up on the mailing lists. There are quite a number of action items that we have.

In the meantime, I'd like to thank our interpreters for having stayed an extra 15 minutes, as well as our great captioner. Please respond to the captions study. I know that we all receive it and it's repetitive, but if it's been helpful, please say it loud because it's the only way we can then ask to continue having this great service.

With this, I'd like to thank all of our participants on today's call and convene you to next week's call. Until then, having a very good morning, afternoon, evening or night.

Jonathan, you have the last word.

JONATHAN ZUCK: Thanks, everyone. We'll see you next week. Let's keep the conversations on the lists.

[END OF TRANSCRIPT]