
YEŞİM NAZLAR:

Good morning, good afternoon, and good evening to everyone. Welcome to the At-Large Consolidated Policy Working Group call taking place on Wednesday, the 7th of April 2021 at 16:00 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 this call. We have received apologies from Marita Moll, Evin Erdoğdu, Holly Raiche, Natalia Filina, Anne-Marie Joly-Bachollet, and from Vanda Scartezini. From staff side, we have Gisella Gruber, Claudia Ruiz, and myself, Yeşim Nazlar. I'll be doing call management on today's call. We have Spanish and French interpretation. Our interpreters are Veronica and David on the Spanish channel, and Aurélie and Camila on the French channel.

Before we get started, just a kind reminder to please state your name before speaking, not only for the interpretation but also for the transcription purposes, please. And one final reminder is for the real-time transcription service that is provided on this call. I've just shared the link on the Zoom chat. Please do check the service. With this, I would like to leave the floor over to you, Olivier. Thanks so much.

OLIVIER CRÉPIN-LEBLOND:

Thank you very much, Yeşim. I hope you can hear me well. Welcome for this Consolidated Policy Working Group call. Today starts with our workgroup update. I know that there's going to be very few updates because it looks like not that much has been happening in the past week

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in our workgroup updates, but let's see as time goes. We'll start with Yrjö Lansipuro, then Alan Greenberg, and then Justine Chew.

After that, we'll be plowing into the policy comment updates. That's where we'll be looking at several policy comments that are nearing closing time. In fact, one of them is to be submitted after the public comment close. That's the Expedited PDP Phase 2 policy recommendations. And the Security, Stability and Resiliency (SSR2) Review Team is currently in voting stage. So that's where we are for the time being. Then we will have Any Other Business after that.

So, with this in mind, are there any amendments to be made to the agenda or any addition or deletions? I am not seeing any hands up so the agenda is adopted as it currently is on your screen. That means we can then go to the action items from our last call, the one on the 31st of March.

You will note that the action items are all complete apart from one which is for the CPWG to invite Graeme Bunton to a future call, to speak to us about the DNS Abuse Institute. We will see. In fact, he recently presented during a RALO monthly meeting. I believe I've also seen him present in another non-ICANN meeting about this. He's got his presentation well-worked out. I'm not sure when we would've wanted to put this. Jonathan, I know that you focus a lot on this. So when do you foresee that we could get Graeme Bunton over?

JONATHAN ZUCK: I think probably any time we want. So I think it's just a question of choosing when there's good space in the call to make that available. I think probably next week if we wanted to.

OLIVIER CRÉPIN-LEBLOND: Okay. I think perhaps next week might be a good time because we do have a light load post ICANN meeting when it comes down to current statements for advice. So it looks as though we might have a bit of time during next week. Let's do this as an action item and let's have an invitation sent over to him.

JONATHAN ZUCK: Should I do that or is that something staff will do? I guess I don't know but I can figure that out offline.

OLIVIER CRÉPIN-LEBLOND: Yeah. We'll figure that out afterwards. Thank you so much. Graeme was over at the last APRALO meeting and mentioned Satish Babu. Thank you.

With this, any comments or questions on any of the action items? I'm not seeing anybody putting their hand up. So we can move to agenda item number three, the workgroup update. The first one is the IGO Work Track. I note that Yrjö Lansipuro is here. Yrjö, you have the floor.

YRJÖ LANSIPURO: Thank you, Olivier. I have to disappoint you and make the call even shorter because we didn't have a meeting on Monday which was a

holiday in many countries, so that there's nothing new to report. Thank you.

OLIVIER CRÉPIN-LEBLOND: Okay. Thanks very much, Yrjö. Then let's move on to—I note Alan Greenberg putting his hand up. I gather this is for the Expedited PDP. Alan, you have the floor.

ALAN GREENBERG: It is. Just a very brief comment saying we've received some of the legal advice which looks very positive. I haven't read it yet but I'll let Hadia comment on the specifics if she chooses to. Just to note that to allow the legal advice to be considered first by the Legal Committee, the EPDP management has cancelled yet in other plenary sessions. So we are reducing the plenary sessions one by one without extending the time period that we have to actually do the work, which is effectively virtually guaranteeing that we will not come up with any consensus advice. It's rather disappointing but I'll let Hadia talk about the actual content of the legal memo, if she chooses. Thank you.

OLIVIER CRÉPIN-LEBLOND: Hadia Elminiawi?

HADIA ELMINIAWI: Thank you, Alan. Actually, we received very positive feedback in relation to distinction between legal versus natural. The memo calls the registrants of designation that verify itself for characterization and they

say that actually it poses lower risk than the consent. They say that if any personal data is included in the registration data by mistake—and hopefully it’s rare and unintended event—the GDPR should, for the most part, be inapplicable except in accidental edge cases. Then they say in those theoretically rare edge cases, several factors would mitigate contracted party’s liabilities like significant steps were taken to verify that the data is not personal data and easy means of correcting mistakes were provided. They also say there may even be an argument based on an EU Court of Justice case so that this is a situation where contracted parties should generally only be liable should they fail to properly address a complaint about the data, i.e., only once they are put on notice about the alleged illegality. So this clearly indicates that registrants of designation pose really minimum risk to the contracted parties.

Also, this raises another issue. We were talking about—we need to have two kinds of distinction or two kinds of labeling for the data. One, in relation to the registrant type. So whether the registrant type is a legal person, a natural person, or maybe we don’t know. So that’s the third status. Another flag that would actually talk about the data itself. So whether the data includes personal information or does not include personal information.

To this end, it makes sense to make the distinction between the registrant, like the registrant type, mandatory because this actually poses no risk to the contracted parties at all. Because when we say the distinction between the registrant types, we’re not saying that the disclosure is a must. We are only saying that flagging the data, the type of the registrant would be a must. Then the disclosure, of course, is an

option and again it depends on whether the data includes personal information or not. Then you would have as an option all the other guidance.

So we think this is the right way to go. However, the word mandatory or must is not a word that the team like the contracted parties and their supporters like. Though, again, this seems like the right way to go even for the contracted parties, by the way, because this provides consistency in the data given the laws that are anticipated or it does make sense in this point in time to differentiate the registration data based on the type of the registrant.

Anyway, I'll stop here. We haven't, of course, discussed this yet. And as Alan said, tomorrow's call was postponed. Though we have this positive legal feedback, again, that doesn't mean that we are necessarily going to do any of that. Thank you.

OLIVIER CRÉPIN-LEBLOND: Thanks very much, Hadia. Alan Greenberg?

ALAN GREENBERG: Thank you very much. To put some perspective on this, Hadia is correct. The memos on plain glance—hold on. Sorry. I'm going to have to take another call. I'll come back in a few minutes and talk about this. I'm sorry.

OLIVIER CRÉPIN-LEBLOND: Okay. Thanks very much for this, Alan. Any other comments in the meantime? Hadia, I return back to you for any other updates on this topic?

HADIA ELMINIAWI: No. But I think—I will go back again and say that it does make sense even for the contracted parties to have two kinds of flags: one for the registrant type and one for the data type. The registrant flag type should pose no risk to them at all because based on this flag, we cannot actually decide to disclose or not disclose. It's safe. Whether the data includes personal information or not, that should actually decide whether to disclose or not. That first step poses actually zero risk, though, of course, there's nothing as zero risk because the mere fact that they collect the data puts them at some kind of risk. But what I mean is flagging the registrant type poses no additional risks to the contracted parties.

Then following that kind of flag, we can have another flag. If the first flag says that the registrant is a legal person, then you have to look at the next flag which says whether the data includes personal information or not. Then based on that second flag, you could actually start deciding whether to disclose or not or publish or not.

OLIVIER CRÉPIN-LEBLOND: Thank you for your clarification. Over to Alan Greenberg.

ALAN GREENBERG:

Okay. Thank you. Sorry about the interruption. What I was going to say was I think we have to be realistic. At this point, there is despite the advice which says we should be able to make consensus policy and proceed with real rules as to what the registrars should do, the chances of us doing that is close to nil. Given the amount of time and given the adamancy of the registrars saying they're not looking for minimal risk, they're looking for zero risk. Period. The chances of us doing anything in terms of consensus policy is very, very low. Nevertheless, I think we have to continue to push our point because we will want to make a minority statement and we will want to give advice to the Board following this and we have to have made our case during the processes to do that. So I think we have to set our expectations that we're not likely to succeed in the PDP, just given the very small number of weeks left and the determination by the contracted parties not to give on this one. But I think we still have to go through the motions to justify what we'll be doing going forward. Thank you.

OLIVIER CRÉPIN-LEBLOND:

Thank you very much, Alan. I do have a question. Hadia mentioned that there was of course the risk. If the data was held by the registrar, it could be accidentally disclosed. But surely, they have the data anyway since they have client data, don't they? So why would there be a difference in liability, or is that not a possibility as such?

ALAN GREENBERG:

I don't think the "accidentally disclosed" is a breach. If we're talking about breaches, you're right. They have all sorts of client data and

what's in WHOIS is just a noise actor at that point. So I'm assuming when we talk about accidentally disclosing it means that you didn't think there was personal data but there was by mistake. That's how I'm interpreting the wording. Hadia may have a different position on it but that's what I'm assuming when we're talking about accidentally, we're talking about making a determination that it's not personal data when in fact it was.

OLIVIER CRÉPIN-LEBLOND: Thanks, Alan. The second question I have on this is has there been any case of such data being accidentally disclosed, as you mentioned, and the company being prosecuted for that? Is that a reality?

ALAN GREENBERG: At this point, everything is redacted and they are being super careful about what they give out. Has some registrar given out personal data by mistake to someone who shouldn't have gotten it? I'm not aware of such cases, at least not such cases where it went to someone complaining about it. I mean, personal data is, in theory, given out to a number of people from disclosure requests. Now, if someone did that wrongly, that is they did the balancing test but they shouldn't have disclosed it and did, they're being really prudent. So I don't think there's probably many cases like that. They're erring on the side of not disclosing far more often. Remember, we have cases where a registrar would not disclose information to privacy officers in Europe who clearly understand the law. I thought that they had a right to get the

information and the registrar said no. So I don't think we have many cases in the other extreme.

OLIVIER CRÉPIN-LEBLOND: Okay. Thank you. I'm not seeing any other hands up. So we probably then can move on now. The third item in this subsection is the Subsequent Procedures. Thank you, Hadia and Alan. We'll look forward to some more next week. Subsequent Procedures with Justine Chew now.

JUSTINE CHEW: Thank you, Olivier. The goal today is to settle the draft advice to the ICANN Board on Subsequent Procedures. The draft was circulated on Monday, I believe it was. We had some comments to the draft that's posted in the Google Doc form. So can I ask Yeşim to pull up the Google Doc, please? Great. Thank you.

I'm just going to go through or I'm just going to raise the substantive amendments. I'm not going to go through the non-substantive ones. I think those are quite easily resolved. The substantive amendments mainly are proposed by Alan. So at some point in time, I'm going to ask Alan to speak to them. Can we go to the bottom half of page 3, please, Yeşim?

Okay. So you'll see that the proposed amendments are highlighted in a different color. I've left it as such so that it's easy to follow. Alan, did you want to speak to the amendments that you proposed for both the third last and the second last bullet?

ALAN GREENBERG:

I am happy to. Sorry. Let me pull up my own copy of it. It makes it easier. Can someone put the link for the document in the chat, please? Thank you.

All right. I made one small comment on auctions but the substantive comment is on enforcement of PICs and RVCs. Three changes. The first one is in the end of a bullet showing on the screen right now. It starts with “Should a jurisdictionally competent”. Essentially, that says if someone says that, “Hey, you’re doing something outside of your mission,” then we should essentially try to make it work. Either change something or negotiate with the registry to change it. What I’m saying is I’m adding a third option. And that third option is if it comes down to we believe that you cannot enforce the contract because of the mission then the Board should try to change the mission. I believe there is no such case, as we’ll talk about in a moment. But ultimately, if we are in a situation where a registry cannot fulfill its legitimate business practices with contract or clauses and those clauses cannot be enforced, then we need to fix it. Bylaw change is one way that that might be fixed.

So all I’m adding is the third option. It’s a rather extreme one and it’s not one that you can do overnight, but it’s one I think we should include. This was discussed in our earlier discussions, but for one reason or another, it never made it into the document. I don’t think anyone objected to it when we discussed it earlier.

The second change is—normally when we talk about there are clauses in contracts which can’t be enforced, the reference that normally is made

is because those clauses talk about content. So they may say you cannot have nudity in your website or you cannot say disparaging things about gay people or whatever. Those certainly are content. Now, the clause in the ICANN contract which refers to content is in Article 1 Section 1.1(c), which reads, “ICANN shall not regulate (i.e., impose rules and restrictions on) services that use the Internet’s unique identifiers or the content that such services carry or provide.”

Now, the parenthetical statement is the key one. It says you cannot regulate or impose rules. It is ICANN cannot impose rules. So what that’s saying is ICANN cannot set its own standards as to what is legitimate content or not. But here we’re not talking about ICANN setting standards. We’re simply saying that the registry sets the standards according to their business practices. And ICANN, because it is the custodian of the contract, it has to enforce it. So the parenthetical is very clear, I believe, in saying we cannot impose our own standards and try to govern what is allowed to be on the Internet. It in no way forbids registries from saying what can be in their private registry or on their TLD that that registry owns. So I believe we’re okay and that argument has not been made before so I think we need to make it.

The last part—you may scroll to the next page—is the issue of enforcement. Now, for those of you who were around a long time—and Cheryl and Olivier will remember and some others perhaps as well—we had some rather hard meetings with the Board at a number of ICANN meetings. Because when the Board came up with the concept of PIC, the only mechanism by which it could be enforced was the DRP. At that point, the presumption was like the UDRP, a Dispute Resolution Process is going to be filed by the complainant to try to get it resolved, and a

DRP requires that harm be shown. So you cannot complain about a PIC not being followed unless you can demonstrate that you have been harmed. That really means that government departments, consumer departments, other consumer organizations could not even file a complaint against a PIC or now an RVC because they themselves are not being harmed. They're looking out for someone else who might be harmed but they're not harmed. We were after some really hard meetings with the Board. We got a commitment that the PICs could be enforced by Compliance without a DRP.

When the PIC DRP rules were written, the whole thing got changed a little bit and it said you have to submit your complaint to ICANN, you have to show harm, and then if ICANN finds it's valid and cannot resolve it, it may forward it back to the DRP panel. So the whole thing got turned on its end and the commitment that we had from the Board essentially disappeared. This is saying, "Uh-uh. If a PIC has any meaning or an RVC has any meaning, you need to be able to complain about it even if you had harm shown." That is the substance of those.

Cheryl I see is confirming, "Yes, indeed. That was what happened." Justine, do you want me to go over my other comment on auctions as well? They're relatively small ones so maybe not. Your call, though.

JUSTINE CHEW:

Just a minute. I just want to make the point that the addition that you've made here on the top of page 4, the first bullet, I noted your explanation about the historical context of the addition, so that's fine now. It flows nicely into the last bullet which is to compel the Board to review the PIC

DRP so that it allows any complainant to put in a complaint without having to show how it could be that the harm is foreseeable to themselves or to a third party. I think that goes quite nicely together.

ALAN GREENBERG: I think we have to be careful. It could well be that a DRP is still the mechanism used but you shouldn't have to show harm to get into it. So it's the need to not show harm that we really want to make sure that we're protecting against.

JUSTINE CHEW: Okay. So the two bullets that you see here aren't necessarily inconsistent, no?

ALAN GREENBERG: I think so. I think we're okay.

JUSTINE CHEW: Okay. Does anyone else have objections? I see Olivier's hand.

ALAN GREENBERG: I will note that later on when go over our justification, the same points are raised and I have a little bit more background and flowery talk about it, but it's the same issue just described in a more detailed way or at least I hope a more detailed way.

JUSTINE CHEW: Sure. Here we're going through the Executive Summary so the points that we're making are in bullet form. Later in the document you'll see that there's context and rationale so there's a bit more explanation of the summary. Olivier, go ahead, please.

OLIVIER CRÉPIN-LEBLOND: Thank you very much, Justine. I'm going to play devil's advocate here and ask the point that has often been made regarding needing to show harm before filing something, which is what do you make of frivolous applications or frivolous DRP requests, those that have no basis?

ALAN GREENBERG: I can try to answer if you want, Justine.

JUSTINE CHEW: Yeah. Alan, would you like to take that?

ALAN GREENBERG: Yes, that's true. Right now you can make a complaint—sorry, let's go back to the old WHOIS days where the contact information was visible. I filed a complaint that contact information was wrong. People use postal codes that didn't exist, claiming this is their address but really it was a bakery at a small town in France. There are all sorts of cases and I didn't have to show harm. I simply said, "They're in violation. Fix it." Yes, someone could file an inordinate number of frivolous ones but these do go to ICANN first, and that's ICANN's job. Remember, if you look at the Contractual Compliance stats, I don't know, 60% or something of all

complaints are rejected because they don't apply because either they weren't backed up with any substantiation or they were really for ccTLDs or the person didn't understand the rule. That's Contractual Compliance's business. There's lots of effectively frivolous—maybe not intentionally but nevertheless end up being frivolous. So that's their job. And if someone abuses the situation by regularly doing something then Compliance has ways of addressing that. So I don't think we need to be concerned of that.

JUSTINE CHEW:

Yes. I totally agree with Alan. There isn't any mechanism to prevent so-called frivolous complaints being filed with ICANN Contractual Compliance now. So I don't think it's something that we need to concern ourselves with. I think it's more important that we put forward the point to not show harm or the requirement to show harm is possibly even harmful. Bill, you have your hand up. Please go ahead.

BILL JOURIS:

I just wondered, is there any history of an individual filing a flood of frivolous complaints or is this strictly a hypothetical problem we're talking about here?

JUSTINE CHEW:

I can't tell you the exact answer because I don't have the details of the complaints that are filed. In fact, you might need to look into the data bottle to see if those kind of information is published. All I can remember is Contractual Compliance do publish the numbers of

complaints and a very high level type of complaint. I don't believe they publish the identity of the complainant. So from that aspect, I don't think you'd be able to establish whether a person has a history of having frivolous complaints, so to speak. Jonathan, go ahead, please.

JONATHAN ZUCK:

Thanks. I think this is one of those situations and I think you summed it up well. There isn't anything stopping frivolous complaints now. Jamie frequently reports that they received X number of complaints and then eliminated 75% of them as incorrect, misinformed, etc. before following up on the other 25% or something. There's no reason for this to be treated any differently than any other contract provision from that standpoint. Maybe there'll be frivolous complaints, maybe there won't be, maybe there won't be frivolous, maybe they'll be just be complaining about the wrong thing or inaccurate or something, but that's still the mechanism that we have going into this. There's no reason these provisions should somehow be treated differently than other contract provisions.

JUSTINE CHEW:

Thanks. Alan?

ALAN GREENBERG:

You're never going to see them labeled as frivolous because frivolous presumes a motive, and ICANN is not going to assume to understand someone's motive. Now, does that mean there has never been a stream of complaints from one or related parties that are just there to annoy or

to cause problems for the registrant or the registry or the registrar? I'm sure there been over the years. I know too many people who are involved in this business with us that would be just perfect to do that if they chose to. But you're not going to call them frivolous because that presumes motive, and ICANN already seems to have ways of addressing these kinds of things regardless of whether it is deliberate or just dumb. I like the old expression of never assume a conspiracy when ignorance explains something. So we're more likely to have complaints filed for invalid reasons or at least there's going to be a lot more of those and there are going to be ones that are deliberately there to annoy. Thank you.

JUSTINE CHEW:

All right. Thank you. Are there any other comments or objections to the amendments being proposed? Okay. I'm seeing no hands, no other comments in chat. Can we move on to page 5, please, Yeşim?

This is the summary on auctions and private resolutions. Again, Alan, you proposed an amendment including the word "an increasing" and I asked a question of what's the basis of increasing. Go ahead.

ALAN GREENBERG:

Thank you. I'm not going to die in a ditch over this one. Since we drafted this, things have changed. We drafted this in moderately late 2020. Since then, we've had the acquisition of Afilias by Ethos Capital. Afilias is critical. Afilias is a highly respected old gTLD that pre-existed before the 2012 round. They've always been viewed as one of the good guys. So they're sort of special and they've now been acquired by Ethos Capital,

and now Ethos Capital has acquired Donuts, which are clearly not in the same two categories. So I think the consolidation has escalated and this word simply says that again in the more detailed description I go into a little bit more background, but the train is moving faster and faster down the hill at this point and I think we need to just make it clear that this is not a stable world that we were worried about in mid 2020, for instance, when this was being discussed. A lot of this is being discussed. This is escalating significantly. Thank you.

JUSTINE CHEW:

Thanks. It's not something that I'm going to die in the ditch as well. Christopher, your hand's up.

CHRISTOPHER WILKINSON:

Hello. Good evening. This is not about .eu. As you say, Alan, I think that's a correct assessment of what is going on. In the ideal world, ICANN staff would be publishing regularly the economic effects of the movements that we observe. But at present, even just going on press reports, I think you're right on that. Thank you.

JUSTINE CHEW:

Thank you, Christopher. Judith?

JUDITH HELLERSTEIN:

My question is are we going to say we're going to want to put restrictions on Afiliis being acquired by Donuts? I mean, unless we're going to put in PICs on this, I don't really see whether the Board has a

role in that. Unlike PIR, it's not a nonprofit. It's not for public good. Both companies were always for the public good. Afilias was just a better owner for the—

JUSTINE CHEW: Judith? Sorry. We're talking about auctions now and not PICs. So the idea is because of the consolidation that's happening and continues to increase, as Alan puts it, the ability to have private auctions will give these consolidated entities a greater advantage than it would have if there wasn't consolidation. So you're basically putting the little guy, the niche applicant out of the room if you go for private auctions.

JUDITH HELLERSTEIN: But then maybe what you could do is—can you give saving credits in private auctions?

JUSTINE CHEW: That's not the point, Judith. Alan, maybe you want to jump in and try and explain the situation?

ALAN GREENBERG: Thank you. This is not about regulating the industry. We have no ability to regulate the industry. The various national anti-trust companies, anti-trust government entities may one day get in and say, "No, you can't acquire something because you'll have too much of a controlling interest in something." That's not our job. So we're not trying to stop it, we're not trying to make rules.

All we're saying is there's a huge amount of money associated with some registries. And the fact that they are consolidated more and more and want to have large numbers of TLDs, which means they're going to be applying for large numbers of TLDs, almost certainly, is problematic. Because as we say in this description, if you are competing, if you are a one-off registry that you want to have one registry to do something and you're competing with someone who is bankrolled by a huge entity, you're in a bad position. Private auctions exacerbate that significantly because they normally say they have all of their regular money behind them but they have the revenue from last auctions which they can use to bankroll the other coming auctions. We have the double whammy of having large corporations with huge amounts of money.

In the last round, GoDaddy was not a supporter of the new gTLD round but now they've acquired Neustar and now they are a registry. We are likely to be in this business going forward. So we have companies with huge amounts of money and the private auctions will give them the ability to bankroll additional future auctions without even touching their own capital.

So all we're saying is we can't fix the problem of competition in the industry, that's not our job, but we can minimize their opportunity to have lucrative private auctions which then bankroll the rest of it. And for that matter, private auctions will also have significant concern that there will be people who will be applying for TLDs, not because they want to run them but purely because they think they're going to be able to make money in auctions afterwards. Both of those are not good for this industry and not good for competition. Thank you.

JUSTINE CHEW: Jonathan, your next.

JONATHAN ZUCK: Thanks, Judith. The other piece of it that we shouldn't forget is the Vickrey auction, right? That's another device that's built into—and that we want a pure Vickrey auction, not the bastardized version that Paul McGrady came up with. We need a pure Vickrey auction because that forces people to state up front what their bids are across all of these TLDs, which will temper some of the gaming and potential misbehavior as well. So I think it's both. We want to get rid of the private auctions and make sure that we have a true Vickrey auction as the mechanism inside ICANN. I just wanted to bring that up because I think that that's the other element that helps to temper the gamesmanship associated with this.

JUSTINE CHEW: Thanks, Jonathan. Judith, I hope that answers your question. The whole point about banning private auctions is because private auction—well, the larger the entities, the larger the player, then presumably, the more applications they're going to put in. From my perspective, each application should be funded by their own funds. There is a cost to it. And if they are allowed to use private auctions to gain funds to fund the other auctions, then you are exacerbating the disadvantage against a small player who doesn't have the ability to apply for so many applications in order to do the same thing that big players are doing. Alan, you have your hand up again.

ALAN GREENBERG: Just a small comment. Remember, the Board can't say we're going to use Vickrey auctions. The Board can accept or reject these recommendations. So they can't change the advice. They can send it back to the GNSO and say, "We're not willing to accept this. You may want to do something else." And the GNSO may or may not do something else. Just remember, in response to Jonathan's comment that the Board can say, "Yes, we're going to use Vickrey auctions, your arguments are convincing." But they can reject the recommendations that are in the report. So just keep that in mind as we're going through this. Thank you.

JUSTINE CHEW: Thanks, Alan. Seeing no other hands or questions in the chat, can we move on to page 14? We're moving into the substance of the document where I said that we actually explained the context and provided longer rationales. Page 14. The bottom half of page 14. Sorry, there's a lag in my screen. The bottom half of Page 14, this pertains to something that Alan has already spoken about. This paragraph here was talking about three ways where the Board could take action if there was a determination of enforceability of a PIC or RVC. Alan has already suggested that we included the third avenue. I'm just going to put in the word if necessary because that was mentioned in the Executive Summary bullet points. So I don't think Alan will object to that.

ALAN GREENBERG: Nope.

JUSTINE CHEW: This part here, which talks about the ICANN Bylaws Article 1 Section 1.1(c) that has already been explained by Alan, seeing that there was no objections when we spoke at the Executive Summary section, I think we can move on.

ALAN GREENBERG: It says it goes in a little bit of the history of how the wording got there and the fact that the wording is not accidental, it was debated ad infinitum.

JUSTINE CHEW: Okay. This portion here, the top of page 15, that is the longer explanation for the question of the issue about not having to prove harm in order to file a DRP or PIC DRP. I'm not sure whether anyone else needs to have a bit more explanation on this. Does anyone have any questions on this paragraph?

ALAN GREENBERG: Justine, it's Alan. We could elaborate a little bit more saying, of course, you could change the DRP to say you don't have harm for DRP. But I think that's again gilding the lily. All we're saying is the current way it's being done is not acceptable. The fact that the current DRP process says it's something filed by ICANN once they have determined that there is harm, that was internally defined process. That isn't part of the policy. So I think we can get what we want without the policy changing here.

But this is our opportunity to get a kick at that can. So it's not the policy necessarily here, but how the policy is being implemented.

JUSTINE CHEW:

Yes. Earlier on, when we were discussing the Executive Summary, we agreed that the two avenues are necessarily inconsistent. So we can have this mention about the DRPs, the enforceability of a PIC or RVC not being subjected to harm costs, but we can also ask for a view of the PIC
DRP to allow filing of complaints without having to show harm.

ALAN GREENBERG:

Yeah. When we were discussing this with the Board many years ago, what came out of it was you could file a complaint with ICANN or you could file a DRP. That's how it was being described that point. That's not how they ended up implementing it. But I think our message is getting across here and I don't think we need to refine it any more. We could add more words but I don't think it's really necessary.

JUSTINE CHEW:

I agree. Does anyone else disagree? Okay. Seeing no other objections, I think that is pretty much it. I think we can just clean this up a little bit and then commend it to the ALAC for ratification. Thanks, Alan. Back to you, Olivier.

OLIVIER CRÉPIN-LEBLOND:

Thank you very much, Justine. Thanks, everyone.

ALAN GREENBERG: Olivier, can I make a comment first?

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

ALAN GREENBERG: I just like to say I hadn't read this advice in a couple of months now. And going back over it, I was somewhat overwhelmed at just how good a job Justine has done in putting this together. It is our longest advice by probably a factor of 20 than anything we've ever done before. It is just so well-crafted that I want to take my hat off that I'm not wearing to Justine and say thank you.

OLIVIER CRÉPIN-LEBLOND: Thanks very much, Alan, for echoing the points which I think a lot of people in our community will be echoing. Hear, hear. There is an Executive Summary, which is the cherry on the cake that will help those people that are not happy reading the full length of it. But certainly the full length of the advice is pretty incredible. Thank you so much, Justine, for this. I should add the result of months and months and months of work and tireless work by Justine Chew and also with some help from a small group at some part of the way. But it's certainly a long process for this and the result is absolutely astounding. Really, really amazing. I really do hope that it will be taken by the destination addressee, is one we'd call them, in its right level because it's very impressive indeed. I see Christopher Wilkinson has put his hand up.

CHRISTOPHER WILKINSON: Thank you, Justine. I support, of course, what Justine said. My point is that our members should receive this document. From that point of view, may I ask ICANN to have it translated into the ICANN working languages? Thank you.

OLIVIER CRÉPIN-LEBLOND: Thanks so much for this request, Christopher. Yes, indeed. It does say English on top of the document. And it has been customary for the ALAC to request the translation of a document when it reached a certain level. I think that we shall follow up. I'm sure there is support in the community. But that's not for this group to choose. I think it will be for the ALAC and perhaps Maureen Hilyard to make the request if there is support on the ALAC for that. I would certainly also personally support this. Definitely, our language communities would no doubt be quite proud of being able to display the results of the work of all the input of the community. We'll do that as a follow-up with Maureen Hilyard.

I am not seeing any other hands up. So thank you so much. I noticed Maureen Hilyard mentioned, "I'm sure that the translations will be supported by the ALAC." There we go. Thank you for this suggestion, Christopher. Thank you again for this, Justine Chew. Great work. Let's move on.

Let's go to the Policy Comment update. I usually say it's with Evin Erdoğdu and Jonathan Zuck, but on this week Evin is actually away. She has to take some holidays sometime. But Jonathan Zuck is valiant,

standing, and is there to take us through this part. Jonathan, you have the floor.

JONATHAN ZUCK:

Thanks, Olivier. We've had two comments recently ratified by the ALAC, the EU Directive on the Security of Network Information Systems, the NIS2 Directive and the IANA Naming Functions Review recommendation for IANA Naming Function contract amendments. That was actually not the CBWG but the OFB. Some upcoming comment proceedings, the GNSO review of Rights Protection Mechanisms is coming up. The Maximal Starting Repertoire Version 5 for the Root Zone Label Generation Rules and the proposed renewal of the .name Registry Agreement. The Rights Protection Mechanism is probably the one that we would focus on.

Right now, what we call public comment for decision is whether or not we want to take it up as the CPWG. That's the initial report on the third ccNSO Policy Development Process for the retirement of ccTLDs. For that, we have a presentation by Barrack Otieno. Barrack, if you're ready, go ahead and take the floor. Is Barrack on the call? I'm just now looking, I don't see.

YEŞİM NAZLAR:

Sorry, Jonathan. This is Yeşim. I don't see Barrack on the call.

JONATHAN ZUCK:

Okay. So there won't be a presentation. Also, if you scroll up a little bit, there's current statements that are in the process. We talked about

Subsequent Procedures and the EPDP Phase 2 policy recommendations for Board consideration. Alan, do you want to talk about those comments, or Hadia?

ALAN GREENBERG: We've talked about them in an infinite number of times.

JONATHAN ZUCK: I think that's right. Okay. What is there in terms of deadline? In terms of people commenting them? Is there a place for people to post comments on them?

ALAN GREENBERG: There is obviously a place. We have a workspace for it. We decided not to try to rush it and send it in with the public comments.

YEŞİM NAZLAR: Alan, apologies. You sound a bit faint. Is it possible to adjust your microphone?

ALAN GREENBERG: Sorry, I pushed my microphone up. My mistake. We decided not to try to rush this and do it in time for the public comment period. This is the after a discussion with the GAC, that they weren't doing it right now. Really, we probably want to take a little bit of time to make sure that we've got it all right, and perhaps factoring in things that are happening in Phase 2A. So we should get it done sometime in the near future but

there's no desperate rush for it. I suspect the GAC might not do anything before June, in fact. We should keep an eye on it right now. But it seemed to make sense to defer it a little bit. There was no real need to get it in for the public comment period. That's where it stands right now.

JONATHAN ZUCK:

Thanks, Alan. John posed a question about .name Agreement, very specific about how the zone file will be available, and I don't know. I haven't read this. So I might turn that question back to you if you want to take a look at that and want to see a comment on that. That's coming up and we'll need to decide whether or not it's something that we think there's an end user perspective on.

I guess my question is on the public comments for decision on the retirement of ccTLDs without the presentation from Barrack. I don't know if we're prepared to discuss that or to know whether or not we want to get engaged on it. It feels as though the deadline is coming up quickly. So we're going to take that offline because I don't think anybody's prepared to speak on that on this call. I'll try to follow up with Barrack and we'll try to get something resolved on the list with respect to that.

OLIVIER CRÉPIN-LEBLOND: Jonathan?

JONATHAN ZUCK: Please, go ahead.

OLIVIER CRÉPIN-LEBLOND: Thank you very much, Jonathan. Just to mention, Barrack did make a presentation last week, but then we kind of ran out of time, unfortunately. So it was a little bit rushed. Now, if anyone is interested, they can still look back. I think the presentation is on the last week's agenda, as such.

Having browsed over the topic and so on, the retirement of ccTLDs is obviously something that is particularly important from our community because some of them might be directly affected having built a brand or having built a lifetime of correspondence under a country code top-level domain. That being said, any changes to the current system, which is at the moment, pretty much—well, ccTLD gets retired as and when, with no rules at all should be something that is welcomed. I guess that people would prefer to have some kind of a standard system or some way to foresee the possibility of a ccTLD being retired.

Does it need a positive comment from At-Large? I don't remember Barrack mentioning this last week, if anybody out there remembers. I think it's a good process. We might just say no objections, I'm not sure. But let's follow up indeed with Barrack. That would be a good thing so as to get a better feel of what the ccNSO is like at the moment, and if this is a touchy subject, do we need to tip the scale one way or another.

JONATHAN ZUCK: I think that's right. Usually, I think the answer is going to be no from our standpoint. Okay. I think that's it for this section, Olivier.

OLIVIER CRÉPIN-LEBLOND: Okay. We did have the second Security and Stability, Resiliency Review Team Final Report. It is currently at voting stage, but I don't think there was actually had any feedback from Alejandro Pisanty or Greg Shatan on this. Have we?

JONATHAN ZUCK: Greg, do you want to discuss this?

OLIVIER CRÉPIN-LEBLOND: Alejandro is on the call.

JONATHAN ZUCK: They both are.

OLIVIER CRÉPIN-LEBLOND: Both are? Okay.

GREG SHATAN: Sorry, there's a printer in the background. We pretty much finalized this. Evin put it in close to final version. I can circulate it to this group or Evin could. I was going to make a few changes but I somehow lost my access to the document itself and requested access, and then I don't know if I got it or not. It's probably buried in 500 e-mails.

JONATHAN ZUCK: Can you put the link in the chat now? Evin's out on vacation.

GREG SHATAN: I can put the link in the chat, maybe at least for view only purposes. I'll find that and get around to it. It's not terribly different than what we discussed last week. Largely, it partly stayed the same. There were a few suggestions that were added in. Then one or two, just a little bit more clean-up that needs to be done and one suggestion that was given to me offline just to add a few contextual words regarding each of the recommendations. As one of our participants in the [inaudible] given he couldn't remember what they're all about so that was the only thing that really hasn't been done. So let me—

JONATHAN ZUCK: There's the link in the chat now.

GREG SHATAN: Awesome. I'm glad that somebody else is doing that because I was hunting. Claudia, thank you so much. There's probably a teeny amount of time for a little more change, but not really. It really has to go through the ratification process.

JONATHAN ZUCK: It's up for vote now. Unless something's at crisis, I think it's probably ready to roll.

GREG SHATAN: Yes, I think it is ready to roll. I might still try to wiggle in contextual changes but I can do those as a member of the ALAC, I guess. But in any case, I think it says what we need to say, I think it ended up being quite nicely balanced and certainly not as lengthy or as in-depth or as awesome as Justine's work, which never ceases to impress and amaze me. I think we get our point across on these topics.

CLAUDIA RUIZ: Hi, Jonathan. It's Claudia. Sorry for interrupting. I had my hand raised. A quick comment. In Evin's absence, I will set up the big pulse, actually. Since it wasn't decided by Friday, the voting will start today and go through until Sunday, so that's the four-day period. We'll start late and without an extension we'll submit it on Monday.

JONATHAN ZUCK: Okay, thanks.

GREG SHATAN: I see Alejandro has his hand up. Certainly we're going to hear from him.

JONATHAN ZUCK: Alejandro, go ahead.

ALEJANDRO PISANTY: Just to concur with Greg very briefly. I did the very first draft of it and I decided the only aspects where there's [empathic] support or any variations on what [inaudible] to report this. One thing that's

remarkable for me, having been the chair of the first SSR report is that they again struggled for a while. As you know, it was a very long drawn process [before it] settled. It's very hard to choose three major recommendations because there are so many fields, so many lines of work covered in the SSR report. And it took us a while for this, for the SSR2 team to find the right level of aggregation for the report. It's very involved down the rabbit hole trying to perform a security—

YEŞİM NAZLAR: Alejandro, I'm so sorry for interrupting. Our interpreters are having a hard time understanding your audio. Is it possible to wear a headset?

ALEJANDRO PISANTY: Unfortunately, I don't have one here.

YEŞİM NAZLAR: Okay. Let's try.

ALEJANDRO PISANTY: I will speak more slowly. Thanks for making this known.

YEŞİM NAZLAR: Thanks so much.

ALEJANDRO PISANTY: As I was saying, it took time to find the right level of aggregation between security audit, in-depth, very technical, or to do broad strokes

would make the report too general and vague and therefore also [useless. I think that there are some people, we have seen some] comments about standard compliance and training. I would like to verbally acknowledge that these are important things to do. But they are expensive representation and not always the wisest investments. You have to train a lot of people who are in lower ranks and who use this training to be certified and then move away from the organization. We're actually investing in someone else's manpower. That said, I'm glad that many of you are concurring with what [Greg and I have supplied] and I'm glad to have been able to serve, [and I'll be attending to the next meeting where I am called.] Thank you.

GREG SHATAN:

This is Greg, if I could add just one more thing. Thank you, Alejandro. I was struck in reading this report, the number of recommendations that went to essentially making ICANN a better, more state-of-the-art or at least reasonably professional organization for an organization of its size and focus. Recently, I've been doing a lot of work with one particular client, where I've become very much more knowledgeable about how corporations manage risk and create systems and deal with infrastructure and infosec from the inside. And a lot of the suggestions regarding business continuity and disaster recovery plan, these things are mother's milk to security and information security planning both for my law firm and for this client. I added comments to point out.

And I think that in the long run, something we should keep an eye on, ICANN have sometimes been amateurish, in a sense, in how it chooses what kind of infrastructure to have for itself. Not having a CISO and not

having a recognizable BCM BR Plan, and maybe not meeting ISO 27001 standards. If they were a vendor to a large financial services institution, maybe they wouldn't be a vendor, they wouldn't meet minimum standards. Not that this is a multi-billion dollar software company, but at the same time, the standards exist for large and small companies and it needs to be managed appropriately for them. I think ICANN, for all the money they spent on all sorts of things, has not spent that much money on creating a long-term infrastructure in protecting its rear end. Thanks.

ALEJANDRO PISANTY:

Just to add to that maybe some balance, in the sense that, years ago, when we did the first SSR review, we did find a very high quality security-oriented operation in the form of ICANN [inaudible] about it. New investment often goes more into documentation, into the formal training of people. These are budget items that must be approved by the community. So I hope that they vote together to say if ALAC recommends an increased posture here, it must also recommend and support, I think, with budget and employee headcount. Those things go together.

And on the other hand, it's very important to recognize the leadership that some of the ICANN staff and operations do have in this field. It's discreet but very important and widely recognized. That said, the other thing that I think has to be taken into account is the need for, as we say in the report, ICANN has sort of three [more or less consensus spheres here.] One is ICANN's own operations and ICANN's contracted parties, participants in the policy development process, etc. Then the other one is the rest of the world. You'll need a lot of situational awareness out

there. And that will also take into account geopolitical risk, legal risk, and some significant jurisdictions and so forth. So if we support that increased security posture, we will also, at some point, support budgeting and headcount. Thank you.

JONATHAN ZUCK:

Thanks, guys. As Greg said in the comments, I think it's very often the case that we're the cobbler's children with no shoes. It's a pretty good analogy.

So that comment has a little bit of extension on it, as Claudia mentioned, so please take a look at it and then if you see an issue, raise it right away because that'll be going up. That vote is starting today. With that, I think, Olivier, it's back to you.

OLIVIER CRÉPIN-LEBLOND:

Thank you very much, Jonathan. We're now on agenda item number five, and that's Any Other Business. Alejandro, I'm taking this as a hand that's remained behind. Seeing no other hands up, then that means we can swiftly move on to choosing the time and date of our next meeting.

YEŞİM NAZLAR:

Thanks so much, Olivier. I think we will be able to go back to our rotating time. Next week's call will be at 13:00 UTC on Wednesday, 14th of April.

OLIVIER CRÉPIN-LEBLOND: Thank you for this, Yeşim. I understand there is an EPDP meeting taking place at 14:00, but Hadia and Alan will be able to be there for the first part of the call. I think what we'll do is to probably first go through the EPDP, if there is an update by then. Then we will hopefully be able to have Graeme Bunton joining us from the DNS Abuse Foundation. Is it the DNS Abuse Foundation? I can't remember the name. Anyway, we've discussed it earlier.

JONATHAN ZUCK: Institute.

OLIVIER CRÉPIN-LEBLOND: Institute. Alan?

ALAN GREENBERG: Sorry, I'm having trouble getting my mouse to point to the right place. Did you say 14:00?

OLIVIER CRÉPIN-LEBLOND: 13:00 UTC.

JONATHAN ZUCK: 13:00.

ALAN GREEBERG: 13:00. Okay, sorry. I misheard that. All right, then I have no comment.

OLIVIER CRÉPIN-LEBLOND: Okay. Thank you, Alan. And the reason is we do need to get that rotation going. Again, we've had several calls stuck at around the same sort of time a bit later in the day, and it's a bit unfair for the same people to constantly have to be at these terrible hours. So hopefully, that will ease the pressure a little bit on them. With this, I think that there is nothing else. Jonathan, anything else to add?

JONATHAN ZUCK: No, that's it. Thanks, everyone.

OLIVIER CRÉPIN-LEBLOND: Great. Thank you, everybody. Thanks to our interpreters and to the transcript person that deals with real-time text transcription. Fantastic. Thank you so much. Have a very good morning, afternoon.

ALEJANDRO PISANTY: To the interpreters, apologies for the inconvenience.

OLIVIER CRÉPIN-LEBLOND: Thank you, Alejandro. Thank you.

YEŞİM NAZLAR: Thank you all very much for joining today's meeting. This meeting is now adjourned. Have a great rest of the day. Bye.

[END OF TRANSCRIPT]