ELISA BUSETTO: Hello, and welcome to the ninth meeting of the subsequent procedures implementation review team on 29th August 2023 at 20:00 UTC. My name is Elisa, I'm the remote participation manager for this session. Please note that the session is being recorded and is governed by the accepted standards of behavior. If you would like to ask your question or make a comment verbally, please raise your hand. When called upon, kindly unmute your microphone and take the floor. Please state your name for the record and speak clearly at a reasonable pace. Mute your mic when you're done speaking.

To ensure transparency of participation in ICANN's multi-stakeholder model, we ask that you sign into Zoom sessions using your full name, and you may be removed from the session if you do not sign in using your full name. With that, I will hand the floor over to Lars.

LARS HOFFMANN: Thank you. Thank you, Elisa. Very good. This is our agenda for today. Please, everybody, be welcome. And I'm going to ask whether anybody has any updates to their SOIs.

OSVALDO NOVOA: Hello, this is Osvaldo. I couldn't find the hand. No, just to inform that there has been a change in my statement of interest. I've retired from Antel, the telecommunications company, and I'm working as an independent consultant for them. That's all. My statement has been updated. Okay, thank you.

LARS HOFFMANN:

Thank you, Osvaldo. I appreciate that. Good. Thank you for that. That gets us to agenda item number two. And I apologize for the weird look. I've got a second screen here in front of me.

The IRT implementation status update, the statistics here about the meetings held, members attendance, these are just, I talk to this every week, I'll [inaudible] it down as we go along, but new members are still joining. The attendance is really just pure math in terms of these are the members and this percentage of those people that attended each of the calls on average.

And this is probably the more interesting slide. These are the days, sorry about that. 641 days until the end of May 2025, which is the date that we have set to complete the applicant guidebook. And the methodology on the 6.8% is kind of rough math, but we tried to put something into place. And, we discussed this internally, Jeff last week suggested that we put a kind of metrics against that to see whether we're on track. And we have weighed the different projects, right. So if we bring a very short topic to the IRT and complete that, that doesn't have the same weight or percentage if it's something very complex and large. So we try to accommodate for that in the in the in the weighted completion percentage. And because of that, we're probably just going to measure that the percentage versus a time percentage of the of the two years that this group has given itself to complete its work, and kind of see that they more or less match up. If we need to refine that, that methodology over time, and we'll do that. But I think as a as a first start, that's

probably a first point, that's a good way, a good way to start here to make sure we kind of stay on track.

With that, I'm just going to [inaudible] up here at the upcoming meetings. Sorry. Yeah. With that, I'm going to pass it over to my colleague, Antoinetta Mangiacotti, who is leading on the topic eight, conflict of interest. And I think there was some draft language shared on lists earlier this week. And obviously, following her presentation, we have a discussion, I think, Antoinetta will take us through the language that is based on the recommendations in the final report. And I suspect there will be questions. I would ask, to the extent possible, to hold them towards the end, obviously, if there's anything you're not understanding, or anything else you want to know, please raise your hand. We're happy to pause. It is a longer document, so it may take a moment to go through. But yeah, any I think substantive points, maybe hold it to the end of the presentation would be good. And with that, six minutes in, Antoinetta, please take it away. And sorry, before you do that, I just see Jim noting in the chat that he has IRT meeting at ICANN 78. 77 is the past, I think, Jim. Anyway, it doesn't matter. 78. Very good. We'll get to it. I was going to talk about it as well under AOB [inaudible] Antoinetta, take it away.

ANTOINETTA MANGIACOTTI: Thank you, Lars. Let me share my screen. All right. Hi, everyone. I hope you can hear me okay. As Lars mentioned, I'm topic lead on conflicts of interest, which is topic eight. And the subsequent procedures final report, and [inaudible] help compile relevant materials and worked with

the team to revise the applicant guidebook in accordance with the recommendation on this topic.

Just as background, the working group put forward one recommendation, recommendation 8.1 for this topic, which calls for, as you see here on the screen, for ICANN to develop a transparent process to ensure that this resolution service provider panelists, independent objectors, and application evaluators are free from conflicts of interest.

In addition, this process must serve as a supplement to the existing code of conduct guidelines for panelists, conflict of interest guidelines for panelists and the ICANN board conflicts of interest policy.

As part of the rationale, the working group believe that the provisions in the 2012 round weren't sufficient to effectively guard against conflicts of interest among the entities listed in the recommendation. The working group also noted that some comments on the draft final report suggests a drawing on best practice resources for the implementation of this recommendation, such as the International Bar Association's guidelines on conflict of interest in international arbitration. So some background there.

So in this document that we shared yesterday, you will see that we have included the code of conduct and the conflict of interest guidelines sections from the applicant guidebook. At the bottom, you will also find just the first paragraph of the ICANN board conflicts of interest policy with a link to the ICANN org web page where you can read the full text. And we just thought it would be helpful for the IRT to see all of these guidelines and policies in the same document for purposes of this call.

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Also wanted to note that most of the text that you see here in black is language from the 2012 applicant guidebook, while the proposed revisions are shown in a different color.

So starting with proposed changes to the relevant sections of the applicant guidebook. So here we're proposing to expand both the code of conduct and the conflict of interest guidelines to apply not just to the evaluation panelists, but also to the other two entities listed in the recommendation. So the dispute resolution service provider panelists and the independent objector.

So you will see here now, panelists is defined in the first paragraph to refer to all three groups, if you will. And in turn, then we also clarified that these guidelines should be followed not only during the application evaluation, but also during the objection and dispute resolution processes. So just to note that you will see the changes applied throughout the document.

So under the code of conduct, which is intended to prevent real and apparent conflict of interest and ethical behavior by panelists. In the second paragraph here, you will see a change. Basically, this is a compliance period for the ethical obligations of panelists. This information was also included in the 2012 applicant guidebook, but it was under the conflict of interest section. We proposed moving it up top here, so that the conflict of interest guidelines would just focus on the guidelines and so that the reader can see the this information right off the bat. So that's the first change there.

Also here, this is new text. So as suggested in the rationale for this recommendation, we took a look at International Bar Association guidelines on conflict of interest. I'll just refer to these as the IBA guidelines to see what we could pull from those to strengthen the language of the applicant guidebook on this topic. So as you see here, the text, this new text is inspired from those guidelines, essentially states that a panelist that has accepted appointment should not withdraw appointment unless compelled to do so by an anticipated circumstances, or if the panelist becomes aware of a conflict of interest situation. A panelist who withdraws prior to completion of the application valuation or objection or dispute resolution process should take reasonable steps to protect the interest of the applicant to parties such as returning evidentiary materials.

Following that, I thought it would be helpful to have a short principle section [inaudible] code of conducts to state that panelists are required to comply with the principles listed down below in the subsections.

So under this section here, we added another bullet point again. This is based on the IBA guidelines that we looked at and basically to reiterate that panelists should conduct themselves in a way that is fair and impartial to all parties.

Under the compensation and gifts section here, first change you will see, you will also notice this throughout the document. So where we reference applicant in connection with the dispute resolution proceeding, since a party to a dispute may not be an applicant, we clarified to state that it could either be an applicant or any party to a

dispute resolution proceeding. So you will see that change applied throughout the document as well.

On the sentence here that was removed, regarding the not accepting gifts greater than 25 USD, it appeared that it was covered in the previous sentence. So to keep the language [inaudible], we thought we could remove it from this paragraph.

However, we did add a note here, suggested by Legal, essentially, an applicant who is an objector doing a dispute is required to submit payments to the provider to cover the fees of the panel. And that accepting this payment would not mean that the panelist is in violation of the code. So we just added this point of clarification in case there would be any doubts as to payment as part of the of this process.

Down below, here, we also added a section on data protection and privacy panelists are required to comply with. It is a short section. It is my understanding that I think we plan to have a separate section on this in applicant guidebook that will expand on data protection privacy, and we will cross reference that section once it becomes available.

So under the conflict of interest guidelines, basically, they define the minimum standards that panelists are required to comply with. This first sentence here that was you see the deleted, this was not removed, it was just moved down below regarding the providers having large number of employees and clients was moved down below, but it would make more sense to open this section with what the conflict of interest guidelines are what they're intended to achieve.

So further down below, you will see this text here. This is also not new text. This was from the 2012 applicant guidebook, was part of the bulleted list up above, but we thought it would make sense to split these up in terms of just how the section would flow as the first part of it here [inaudible] what ICANN will require service providers to do, as opposed to what ICANN will do in terms of identifying backup providers or reassigning applications to third party providers, if needed.

In addition here, the compliance period, as I mentioned, that was not deleted, it was just moved up top to stay when those ethical obligations begin and continue throughout the application evaluation dispute resolution processes.

In terms of the guidelines, you will see again this new text, this is new text inspired from the IBA guidelines to reiterate the fundamental principle is that panelists should remain independent and impartial throughout the processes.

Along those same lines, down below, new text as well. Panelists should decline appointment or refuse to continue as panelists if they have any doubt as to their ability to remain impartial. If facts exist that may give rise to doubts as to a panelist's impartiality or independence, the panelists should disclose such facts, and any doubts as to whether the panelists should disclose certain facts should be resolved in favor of disclosure.

Down below, we added a note here at the end of the section is service providers also have their own conflicts of interest policies and procedures. But it would be important to remind readers of this,

thought it would be helpful to create a page on the next round website with a link to all the different provider conflict of interest guidelines. So that link will be added here once it is available.

The definition of evaluation panelists here was edited, as I pointed out, it was a bit too broad. There are other people at ICANN that review applications, but they're not evaluation panelists. And so we thought we would limit this to include what is just in the second sentence here.

On the code of conduct violations, we made some minor wording changes here. Clarifications, first sentence in the third paragraph was suggested to be removed as it is covered by the sentence following that. So in addition to adding new text, we also looked at areas where we could tighten the language to keep things more concise.

It was also pointed out that the public can raise concerns, not only regarding the code of conduct, not only through the public comment forum, but also through the advancement or the reconsideration request process. And so we added that here at the end. We're keeping it in for now. We're considering potentially maybe adding a generic statement in the applicant guidebook to refer to this and where we could. So we could just point to that instead of repeating it over and over in the guidebook, but we're keeping in here and it's still TBD.

And lastly, the ICANN board conflict of interest policy. We have just included the first paragraph of that in here. It's quite long, but you will find the link to the full text down below. This policy is in place to prevent conflicts of interest from affecting decision making involving ICANN, to ensure decisions of ICANN are made for the benefit of the

internet community, and to protect ICANN's interest when contemplating entering into a contract or other arrangement that might benefit personal interests of a covered person. And per section 7.1 of the policy, [inaudible] person refers to officer, director, board liaison, or key employee of ICANN.

As background for this policy, it was pointed out that this is something that maybe the board governance committee is looking into, potentially looking into. So any changes to this would need to be made through the board governance process. And this is something that our legal team is checking to see if there are any changes or suggestions that we want to make here. And I think this brings me to the end of the document. IPT, please let me know if there's anything I've missed or misstated. And we welcome any questions, suggestions, or if there's anything that the RIT wants to raise. Please feel free to do so. So thank you. And I see Susan, you have your hand up.

SUSAN PAYNE: Yeah, thanks very much. It's Susan Payne. Thanks, Antoinetta. Really appreciate this. And apologies, I hadn't looked at this text. I'm afraid I missed your email. And so it came in last night, late here. And I'm sorry to say I didn't see it. So I'm sort of, I put a comment in the chat, but I was kind of reacting on the hoof. And my comment in the chat was about, I thought the definition of including the IO in with the panelists and calling them all panelists was confusing. But actually, as you were going through the text, I feel it was more than just a definition or confusion. I think the independent objector has a really different role. And whilst I think some of the code of conduct and some of the conflict

of interest provisions, probably very applicable to all, there are definitely places where it's drafted as though they're a panelist, and they're not. And so the part they play, and therefore their obligations and responsibilities are just different.

So an example, just as an easy example to look at is just where you were talking about code of conduct violations, which is just there. Yes. And it talks about or if there was a failure, it might result in reviewing or discarding decisions that were made by the panelists. But you know, it's a really different role. If the IO was had a conflict of interest and pursued a case, that's it might well mean that the case needs to be thrown out, but it's a really different situation.

So I feel like the IO ought to be just addressed that their role where applicable, some of this may well be applicable to them directly, and some of it just might need tweaking to reflect their different role in the proceedings.

ANTOINETTA MANGIACOTTI: Thank you, Susan. Yeah, that makes sense. That's something we discussed as well. Initially, we had separated all three, the resolution service providers, panels, validation panels and an independent objector. It was a little long to repeat all three throughout the document. But I think it could be a good idea to review this again, and try to revise it according to different actions that are taken by each one of those.

LARS HOFFMANN: There's no hand up at the moment. I just want to reiterate, I think you said at the top, but a couple of people joined the call. And I think I'm right in saying that the language, it's redlined, because it's based on the language that was there previously, right. And so we updated the kind of the 2012 language with new text that flows from the recommendations in the final report. Is that right?

ANTOINETTA MANGIACOTTI: Yep.

LARS HOFFMANN: Thank you. Just for just for clarity. Thanks. Nigel, go ahead.

NIGEL HICKSON: Yes, thank you very much. And good evening. Thanks for going through this. And it's really interesting to read this in full. I just really had two questions. One was, and I recognize this was text that was in the existing applicant guidebook, but it was in relation to the 1% holding in a company. This comes in under the panelists and immediate family members. And there's a must not currently hold or be committed to acquire more than 1% of any public listed applicant. And I just wonder what the rationale for the 1% was. 1% could be significant or it could not be significant, it depends on the actual person itself.

And secondly, is there anything here—and perhaps I've missed it— about panelists having worked for an entity? I mean, that might have

been considered. I just wanted to ask whether if a panelist is judging an application from Google, and was 25 years with Google until they retired and became a panelist is that okay? Thanks.

ANTOINETTA MANGIACOTTI: Thank you, Nigel. So regarding your first question, this was again, as I mentioned in the 2012 applicant guidebook, as you can see that the text has not been changed regarding that, that part that you that you referred to, and there was no recommendation to change it. I don't know if others on the team may have additional background information on how that came about. But I can just again, say that this was old language, and there was no recommendation.

And as for the relationships or having worked at different companies, I don't know if you're referring to there is a part about having to disclose business relationships or relationships during the past six months. Is that what you were referring to?

NIGEL HICKSON: Yeah, no, well, I think that covers it to an extent. So if you just left the company and then become a panelist and were evaluating the company, then, or an application from the company, then you would have to disclose that you had had a relationship with that company. But it doesn't preclude you from actually being a panelist, the fact that you work for them, I presume.

ANTOINETTA MANGIACOTTI: Justine?

JUSTINE CHEW: Yes, thanks, Antoinetta. This is Justine for the record. I just wanted to ask, and this may not be in context of the COI provisions, but as a result of any conflict identified, where would there be a process of replacing certain panelists and even the independent objector?

And I asked this because in context of SubPro, I recall that we discussed the possibility of having more than one independent objector appointed for the next round to address the possibility of conflicts in future. So, for example, if one, using Nigel's example, right, so if one independent objector were found to be in that situation, then presumably there should be some way of calling that person out and having that person replaced by the other independent objector. So that potentially is something that we sort of considered in SubPro. I'm just wondering about how that's going to be provided for. Thank you.

ANTOINETTA MANGIACOTTI: Thank you, Justine. At this stage, we haven't discussed it extensively yet. I know that there will be an independent objector for the next round. I think that if conflicts of interest are identified through a process, they will be replaced or moved around. Also wanted to add, what was also discussed is potentially including these guidelines as part of the contracts with future providers, just to ensure that there is a contractual language there that requires them to comply with conflicts of interest. So, let's see, any other hands up, Lars? Anything to add?

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LARS HOFFMANN:

No, I think nothing to add at this stage from my point, obviously, this is limited, as you said just now as well, to just the conflict of interest statement in itself, or aspect of the interaction with the panelists or independent objector. So, other processes, as you said, are going to be going to be put into place later on.

And I would suggest that per our usual cadence of things, that we move on. This may also mean that we have a slightly shorter meeting again today. But obviously, if there's any questions, I will address them. The document has been sent out, obviously went through this today, but give everybody a chance to take a look and provide comments to it. Please, this is a red line document to help everybody understand what is old 2012 language, and what is here based on the recommendations. So please, if you have anything to add, wherever possible, use the comment function, it would be really great, rather than the edit function, because it might get a bit complicated. And then we circle back to this topic during our next meeting to see whether it leaves us and we also come back with some answers of some of the questions that have been raised here. Justine.

JUSTINE CHEW:

Thank you Lars, this is Justine again. So, yeah, number one, personally, I would have appreciated a little bit more time to go through the text. But that's fine. Second question is, well, we've already raised the issue about the independent objector not fitting within the term panelist. So the question then is, would your team be going through and revising this text to account for that first? Or do you want us to just go through

this text right now without that inclusion or without that adjustment? Because I'm just trying to not do double work if I can. Thank you.

LARS HOFFMANN:

Thanks Justine, I appreciate that. It also goes to Anne's question in the chat. I think my practical approach would be considering that this is not about the role, but about the kind of conflict of interest that these functions cannot have in order to perform their roles. So from that perspective, while it makes sense, from what I hear from the discussion to maybe pull them apart, the actual aspects of them are probably in terms of what conflicts they can and cannot have a conflict of interest are probably very much overlapping. This is the reason why we actually pulled them together. That doesn't mean that they perform the same function, just that they have an overlapping area of conflicts that they must have. So if we put it apart, I think substantially in terms of the actual conflict of interest policy, and not a great deal will change, my tentative hedged statement here. But I hear what you're saying, Justine. So if there is a desire for us from the group to pull that apart first to have a discussion and then pull it apart first, certainly that is something we can do. So useful feedback, unless anybody sees this differently, we will do that.

In that case, I will have to check a couple of things. And Monday is a holiday, the United States of America. So whether we get that turnaround by Friday this week, I cannot promise. So it may mean that we park this and get back to it during a later meeting and then move on to a different subject next week, potentially.

So I'm going to leave that there. Unless I hear anything else, that's what we'll do. We'll look at the text first and we'll share it with the group one more time. Then as it is updated. And also I note, I put that in the chat, Jim had a question around the Board Governance Committee, the BGC and subcommittee there. And we will follow up internally as well and give an answer on [—I don't want to say the next call.] As soon as we have an answer, we'll give it on the call after that. And I hope that's the next one.

Good. Then we have a little bit more homework to do. What I do here, however, is that [inaudible] sorry. Very good. Then if you could stop sharing. And I will share again my screen here. Hopefully see what we have for the next meetings.

We discussed this, I think very briefly last week, you see that here in maybe red, orange, whatever it may be. It's late here. We added four meetings. We decided to call them A meetings because we have them all numbered otherwise we would have got updates in the list. And anyway, so I hope that it's okay to everybody to do it that way. And we added those on a need to basis in order to make sure that we have enough time to discuss the various topics and the run up to ICANN 78. So we may cancel some of those if they're not needed. But also we may hold them all obviously, the invites of that will go through, I think tomorrow morning European time I was gonna say after this call, but Elisa is coordinating this and she's based in Brussels, it's going to be 11:00 PM here. So I hope it's okay for everybody that those invites go out tomorrow morning.

And the topic list, I'm going to confirm that internally for next week, I have to say I forgot about Labor Day, which mess a little bit with our internal schedule. But I think that the plan may be to share the universal access language, UA, with the group next week. I'll send a note to the list as I said, to confirm that later tomorrow or the very latest on Thursday.

And with that, Jim wants to talk about ICANN 78 as well, I will suggest to that now. I don't know whether Susan and Anne, you had any chance to talk to the council about the meeting time as well. I think we said last time that currently this is scheduled for 10:30 local time on the Saturday. I'll let Jim speak as well because he probably has better and more information than I do. Jim.

JIM PRENDERGAST: Yeah, thanks, Lars. I don't necessarily have better information, I guess. I thought I sent an email out to list but I sent an email to the wrong list. So apologies. But you know, I'll be a little direct and I apologize. And this is not directed at you or the team. But I was kind of surprised that the IRT is only meeting once during ICANN 78. We've got a lot of staff, a lot of members of the IRT that are going to be there in person. And we've got a lot of work to do as evidenced by the supplemental meetings that have already been added to the schedule.

I guess what really kind of isn't sitting well with me is the excuse that is being used is that we can't have any conflicts with celebratory sessions. SubPro is probably the highest profile priority for ICANN Org there is. For us not to take advantage of everybody, or a lot of people being in

the same place at the same time is a huge missed opportunity, in my opinion. We should have at least two or three meetings. You know, if people have a conflict with a celebration and an IRT meeting, well, it's up to them to make that decision and figure out what's a priority for them. But for the organization to be prioritizing celebratory sessions over the policy work that needs to get done for this project to get it launched, just seems like the wrong priority, in my opinion, and I think we, as the IRT should push back on this and ask for additional meetings.

We all know from work in the PDP that with some of the best stuff and some of the most contentious issues that we dealt with were dealt with best during in person meetings at ICANN. So I know the schedule is firming up, but I still think we should push back and I still think we should ask for more face to face meeting time during ICANN 78. Thanks.

LARS HOFFMANN: Thank you, Jim. So, Sebastien's hand. Sebastien.

SEBASTIEN DUCOS: Yeah, quickly to answer to Jim. Actually, the GNSO, ccNSO and ALAC decided this week not to have the planned celebratory session altogether, which does free that slot. Now the ICANN meeting like the rest of physics doesn't like a void. So it's quickly being filled. But it is something that Lars and team want to look at. Please, at least contact the GNSO staff, they'll be more than happy to help you there. I don't know about two or three sessions, Jim, but maybe that would fit another one if that makes sense.

LARS HOFFMANN:

Thank you, Sebastien. Elisa, who's on this call, is coordinating the meeting so she'll be in touch tomorrow with Terri and the GNSO staff. From our end, Jim and Sebastien and everybody else, we're going to be there. And our expectation is I showed the list of topics that we went through in Los Angeles, and that are going to be ready to share with you guys over the next few weeks. And there are some complex issues there. So I think there's going to be—and that's why these extra meetings are here, right, that we move through those five or six topics in time for ICANN 78. And there's also predictability work, which is still coming back to this group as well. So from our end, yes, I think we can use the face-to-face time, there's no concern. Our team is—not everybody, but most people are going to be there. If we have three meetings, and we get three spots from our end, we can certainly support that, would have no concerns with that. So we'll talk with those that hold the pen on the calendar and see what we can make work. Sebastien, your suggestion is great. So really, no concern. Thanks.

And I can just say one thing. I'm not part of the group that does the planning, the community group, staff that supports that team. And if there's a desire to have a SubPro, I'm making this up, a half day, during every meeting, whatever, three hours, five hours, Tuesday afternoon, what I can say from personally and for my team, we are there to support that and to and to make that work. We are sure to what Jim said, we can use the time positively. But having that support from you guys, via the Council, via the ALAC, via the GAC, and the ccNSO and the others to kind of give that push through the group, be very much welcome and helpful to make that happen. So maybe we can all work

together to get more time, not just the next meeting, but going forward. And I think we all know once we have a certain slot in a certain time on the meeting, right, we have the routine and it becomes standard and everybody kind of builds their timetable around that. Jim, you said it's priority, it certainly is for us. And so I would be personally very supportive of that, for what it's worth. Thanks.

Good. With that, we're 15 minutes left, which means I have an early end of day today. I have no further points. I talked about universal acceptance for next week. So I confirmed that. And we'll have homework to do here on the COI. And also, I mentioned this in passing, but we're also still working on some of the language on the predictability that we talked about last time. So that's coming as well. And what we're going to do after UA just a heads up is then talk about some aspects of the string similarity. That's the next subject after that. Jeff noted, there's some recommendations that are still pending. So we've taken into account, there's also some overlap with the IDN EPDP. But we think that we need to move the work forward as best as we can at this moment. And Sarmad, who's the lead on those two topics, has done that. And we'll share that language, those documents with you in the run up to those meetings.

With that, [inaudible]. I would certainly agree with that. Not to extend the meeting beyond the days. Good. I think we can end the call. Thank you, everyone. Have a lovely rest of your day, evening, night or morning. And if you can end the recording, please. Thank you. And thank you, Antoinetta, especially for the presentation. Thank you. Thank you all.

[END OF TRANSCRIPTION]