

YEŞİM SAĞLAM:

Good morning, good afternoon, and good evening to everyone. Welcome to the APRALO Policy Forum call taking place on Wednesday, 31st of January, 2024 at 0600 UTC on our call today on the English Channel. So apologies for that, we only have one channel for today's call, no Interpretation. We have Justine Chew, Holly Raiche, Ashrafur Rahman Pious, Phyo Thiri, Amrita Choudhury, Shah Rahman, Vipul Gautam, Cheryl Langdon-Orr, Priyatosh Jana, Mabda Fajrilla, Bibek Silwal.

And new people have just joined, Ashirwad Tripathy, Jasmine Ko, Katarina Gevorgyan, Nabeel Yasin, and Udeep Baral. And Mohammad Kawsar Uddin is joining us right now as well. And we have received an apology from Maureen Hillard. From staff side, we have Gisella Gruber, Athena Foo, and myself Yeşim Sağlam present on today's call, and I will be doing call management. Before we get started, just a kind reminder to please state your name before speaking for the transcription purposes, please. With this, I would like to leave the floor back over to you, Justine. Thank you very much.

JUSTINE CHEW:

Thank you very much, Yeşim, and welcome to everyone. When I logged in and first saw that there were only maybe seven people in the room, I was a bit worried, but now I see 21 participants in the list, so I'm quite happy about that now. Yeah, we were waiting for a few more people to join the call, so that's why we're starting a little bit late. But welcome everyone again. So thank you for being here, and thank you for showing interest in this topic that we are going to discuss.

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.

and I'm going to also preface this call by saying that the deck as you see is a recap or a revised version of what I presented at CPWG last week.

So it captures some of the discussions that have already been taking place in CPWG last week. And the idea behind that is because I want all of you folks in this room to understand the issues, understand some of the discussions that have taken place so you can participate in this week's CPWG call as we take the discussion forward. And it would be an idea for you to sort of pay attention to what has been already suggested, what has been remarked. If you had any objections or any additions to those remarks, then it would be timely for you to raise them at the CPWG call.

So you can raise them here, that's fine, but I'm not gonna do anything about putting those points forward to the CPWG call. I want all of you to attend this week's CPWG call because it's an AsiaPac. Well, okay, it's supposedly an AsiaPac friendly time, but not for everyone, unfortunately. But the idea is I want to equip you with sufficient knowledge so that you can participate in the CPWG all on your own. And that's the whole point about this call. So moving ahead, next slide, please.

Okay. So this is roughly what I'm gonna cover in terms of the agenda. As I said before, I'm going to take pains to go through the background so that everyone understands the issue and why it arises. I am definitely going to cover consultation topic one. We may not get through consultation topic two, which is fine, I can just allude to the questions and we're gonna have that discussion at the CPWG call anyway this week, that is the plan. And I want to just mention that in terms of the

ALAC input. So the whole genesis of this consultation is, it's called by the board and it's addressed to all the SO/ACs, it's not necessarily addressed to RALOs specific audience. So that is why I want all the inputs that are coming out of APRALO to go to CPWG.

We are not going to have a process where APRALO submits something because the board hasn't asked us directly, the board has asked ALAC. So I want all the inputs to go into ALAC, and then ALAC makes one submission so that we all agree on that submission and it's consistent, it's one voice. And the other thing I wanna mention before I get into the specifics is that this is a 75-minute call or 60 more minutes now, but I want you to use this opportunity to ask questions, because it is no point in me going through the deck if you still don't understand what I've said and you are not then able to effectively participate in the CPWG call this week. I want you to ask questions and I'm happy for you to put your hand up to interrupt me if you want to clarify something, I want this to be as interactive as possible, so it's not just me talking to you.

I want you to talk to me, as I always say, I welcome people to talk to me, and not just a one-way conversation. So this is your chance because at CPWG call, because the time allocated for discussions are always very short, so I can't really get into specifics and I can't deal with questions that are basic, there's just not enough time. So if you have a basic question or you have something that you don't understand, please bring it up here now because we're not gonna have time to address it in CPWG. So moving on, next slide, please.

This is just the timetable for the consultation that I'm running at CPWG. Suffice to say that we're targeting for the final input to be ready by the

23rd of Feb. because that's when the board has set the first date line for the community input to be in. And we have to go through the normal processes of having CPWG discuss the issue, then come up with positions, and then draft the whatever thing, the statement or whatever response that we're going to be submitting. In this case, it's going to be in the form of a Google form, so we'll have to just adapt accordingly. And I've started on the cadence of four weeks for this process, so we are going into the second week now at CPWG. Next slide, please.

And just bearing in mind that whatever that's submitted on the 23rd of February, and it's not only from the ALAC, from anyone who wants to submit from SO/AC, the Board is going to look at that, and then they're going to run a session in ICANN79 to discuss the inputs that they receive. So what is the issue and why does it arise? So if we think about the 2012 round of new gTLDs, that is when we saw, and this came about after the window for application closed, that's an important thing to note. But that's when we saw the introduction of what is called public interest commitments, what is then called public interest commitments. And I will come to the distinction between mandatory voluntary picks and RBCs in a moment.

So, suffice to say that 2012 round is when we saw the introduction of what is called public interest commitments to handle content-related issues. And there were four categories of these types of commitments. Number one is the mandatory PICs, PICs being Public Interest Commitments born out of GAC advice. And these are the ones that the GAC advised the Board to deal with things like DNS abuse mitigation, having clear registration policy that's not discriminatory, especially if you are having a generic string, and that's something.

And then the second category is safeguard PICs, also born out of GAC advice. And these are the ones to handle highly sensitive or regulated industry strengths. Voluntary PICs is the third category, and that's generically describes anything that's volunteered by an applicant to address comments that are put in during the application comment period to address GAC early warning or GAC consensus advice or an objection.

And the fourth category, I put it in bracket as voluntary because it is voluntary in the sense that it is volunteered by the applicant also, and the fourth category being the community gTLD PICs. And these ones have typically to do with registration eligibility and content usage limits. And the important thing to note was all these were accepted in the 2012 round and they were all put into the respective registry agreements wherever they apply. And there were, for example, they weren't really a review process for those PICs in the 2012 round, and that's something that the Board is trying to see whether we need to change this time around. Yeah, Cheryl.

CHERYL LANGDON-ORR:

Thanks. Cheryl for the record, by the way. I just wanted to take a moment to embellish just tiny bit. I sort of look and breeze all of this back in the day, and again with you, Justine, and others in the Subsequent Procedures as well. But I think it's important for our community to understand in case they just hear stuff around how shocking this was for after the round had begun for these things to come into play, and industry [00:12:54 - inaudible] were, to say the least, horrified.

There's still a lot of baggage out there, a lot of disagreement in principle without necessarily taking the time, the energy and the inclination to drill down on the relevant benefits and opportunities these may bring into the whole system. And I wanted to compliment the work of the Subsequent Procedures Working Group that took it seriously when it may not have been, and has come up with a great number of quite important pieces of recommendations and guidelines on this.

So that coupled with the fact that the At-Large community and ALAC specifically wholeheartedly supported GAC extraordinary action in getting these PICs onto any sort of an agenda. It is in those days recognized as in the end user's best interests, and I think it's the flavor of that and the known history that I've now shared with how much we as the At-Large community supported the Government Advisory Committee parties who were concerned about the public interest aspect of some of these proposed strings that we move forward. Everybody's had a chance of trying to build a better model, is this another step in building a better model, but just use those filters of history as you are contemplating your own approaches. Sorry, Justine, I just couldn't help myself.

JUSTINE CHEW:

No problem, Cheryl. Thank you for that remark. Yeah, and that explains why, when someone says, when are we having the next round? Why are we taking so long to get the next round up and running? And my answer is always that, well, look at what happened in 2012. We had all these blind spots and lacuna that caused problems. And that is why we took five years, the Subsequent Procedures PDP took five years to try

and fill up all these lacuna and deal with the problems. And that takes time because all this is community driven, it's a community process that we have to discuss this and come to a consensus somehow of what we wanna do to fix all these problems.

Okay. So back to the agenda now. So when all these things happened in 2012, I and Cheryl rightly pointed out that these PICs came about after the window for application closed, which is why it caused havoc because applicants are saying, well, you never said all these things that we needed to do before, and now you're hoisting them on us, it's unfair and blah, blah, blah, blah, blah, blah. But at the end of the day, it's for the benefit of the communities, but for the benefit of ICANN as well that we get these things right and we get these things in place. But at that point in time in 2012, we had an older bylaw that didn't specifically mention things like content.

So it was all hunky dory, all the PICs got put into the respective agreements, and now they're being grandfathered. And that happened in 2012, 2015, 2014, blah, blah, blah. And then in 2016 when the IANA transition happened, that is when ICANN adopted the new bylaws, the current bylaws or current version of the bylaws, which that particular version explicitly calls out content as outside the ICANN's remit. So that's when we have this, everyone's saying that you can't deal with content, you can't deal with content, that's where it comes from. This is the IANA transition that had that condition put into the bylaws, and that was adopted. And if you want to have a look, it's Article 1, Section 1, A to C and Section 1.1, A to C, and Section 1.1, D. Those are the relevant provisions.

And if you don't wanna go around searching for them, I have a slide at the end of this deck, so you can download the deck and have a look at it in your own time that provides for those Article 1, Section 1.1, A to D. And so that happened in 2016. And then, so on the one hand, we have these commitments that deal with content in the registry agreements.

And on the other hand, we have this bylaw that says that, well, ICANN can't deal with content, so therefore you see a potential conflict. And in 2012, September of 2020, sorry, not 2012, September of 2020, the Board raised a concern, and they said the bylaws, specifically the current bylaws, 2016 bylaws specifically limit ICANN's negotiating and contracting power to PICs that are in service of its mission and the current bylaws language may hinder ICANN from entering into and enforcing content related registry commitments in the next round.

So they clearly spelled out this conflict between existing commitments, which deal with content and the bylaws that disallow dealing with content, if I can put it that simply. So what do we do? And SubPro PDP considered it, but went ahead and then proposed recommendations on PICs, and now they've introduced the term Registry Voluntary Commitments. So now we have PICs and the Registry Voluntary Commitments. I'll come to the distinction a little bit. But part of the group of recommendations that was developed by subsequent prestigious, PDP is that we should continue to have PICs for the highly sensitive and regulated industry strings.

So that's the framework that was born out of GAC advice. So now we have wholeheartedly adopted that, and that's gonna be in the program for the next round. But they also insisted that we should allow

applicants to propose additional Registry Voluntary Commitments, RVCs, even if they fall outside of ICANN's core mission provided that neither ICANN nor a third party under ICANN's control is required to pass judgment on the content. What does that mean exactly? I'll come to that in a little bit, but that is something that you need to bear in mind.

After the Board adoption of the policy recommendations on the RVCs, the Board has move to do this consultation because they want to know what should be done about this potential conflict that they have indicated back in 2020, sorry. Next slide, please.

Any questions at this point in time? Okay. As I said, happy for anyone to stick their hand up. Preferably stick your hand up and ask verbally the question rather than put something in the chat because I'm not paying too much attention to the chat at the moment. But if you are shy or whatever, please also feel free to put something in the chat, and I'm sure Cheryl is more than capable of answering the question. So in brief, this is where I distinguish between PICs and RBCs. So now moving forward, you just think about this framework, or this pack of four commitments.

Public Interest Commitments would be those that are considered mandatory, and these are the ones that were born out of GAC advice to deal with DNS abuse mitigation, having clear non-discriminatory registration policies. If you apply for a generic string, then you cannot limit it to any exclusive group, it has to be open. And they usually come into the registry agreement as Spec 11, Section 3, A to D, or they are at

the moment in the base as they said, that is where it is in the base registry agreement.

The second category of Public Interest Commitments are the safeguard PICs, again, born out of GAC advice as I said, and these ones deal with the highly sensitive and regulated industry strengths. If you wanna know examples of that, I can show you, but if nobody asks for examples, I'm not gonna bother. But the important thing to note is there are four categories of these kinds of sensitive strings and 10 safeguards that could apply.

Now, depending on which category the string falls into, then different safeguards would apply. There is a framework for that. Vipul asks for examples. Okay. Give me a minute. And usually, these safeguards reside in the RA Spec 11.4. So Yeşim, I'm going to need you to do the scrolling, scrolling, scrolling to slide number 31. Okay, Vipul, that's the answer. These are some of the examples given.

And the, I have pulled out four examples of different groups. So I said before that there are four groups of these kind of strings and 10 safeguards that apply depending on the string. I give you one example of each group and applicable safeguards that apply to each particular group of strings. So no point getting into details, this is for your own reading pleasure at your convenience.

So sorry, Yeşim, now I have to take you back to slide number five. Thank you. So just the post against Public Interest Commitments are what we call the Registry Voluntary Commitments, and these are non-mandatory, they're voluntary, or in some sense they're voluntary. And

the two classes of these RVCs are the other voluntary picks. I'm calling them other because it's in contrast to the community gTLD PICs.

So other voluntary PICs are, again, anything that's volunteered by the applicant to address comments received to the application to address GAC early warning, to address GAC advice, or objections. And if they apply, then they're usually put into the Registry Agreement Spec 11, Section 2. And the fourth category is the community gTLD picks, and these ones are tied specifically to applications for community-based TLDs. So therefore, they are voluntarily profit by the applicant for a community, gTLD. And they typically deal with registration eligibility and content limits.

So the easiest way to think about it is you want to build a gTLD for a specific community, therefore you need to have limits as to who can be part of that community and what can that community actually do with the TLD, as in like post whatever content. So that's the angle of the content use and restriction that applies for every gTLD that is deemed as a community gTLD. And that's part of the application processor, there's specific questions that deal with that sort of type of things. So if you contrast the two groups of PICs and RVCs, so PICs can be said to be pretty standard because they're all mandatory, and therefore we have all these standard tax in the base registry agreement, they should be easy enough to include in the RA, the new RAs or new applicants as they come on board.

Whereas for the Registry Voluntary Commitments, they are highly variable because they are either purely or somewhat voluntary, purely being the other voluntary PICs. The community PICs are somewhat

voluntary. So it's part of how you run the TLD. So it is somewhat voluntary, but it's kind of somewhat mandatory as well. And the important thing is all these RVCs, sorry, are profit on a case-by-case basis.

So it depends on the string that you're applying for, depends on the community that you're trying to serve, so they're variable. And because they are so variable, it is difficult to manage them contractually, in terms of contractual administration, and in terms of monitoring, and then enforcing. Okay, moving on. Next slide, please. I'm gonna try and pick up the pace a bit, okay?

Okay, so going to what the Board is trying to ask us for input, they set out two consultation topics. And as I said, I'm gonna try and definitely get through topic one. If we have time, we can touch on topic two, but probably just the questions, not really into discussion really. So with topic one, consultation topic one, the Board has proposed something called the proposed implementation framework for content related registry commitments. So that is the document that I asked that you all have read before this call, but obviously not all of you have done that, so that's fine. But under this topic, this consultation topic, the Board is basically asking whether this framework is fit for purpose. Hence, you need to know what the framework is saying, having had to read it.

And if you don't think, or if you think it's fit for purpose, but it's not sufficiently exhaustive or it has a weakness here and there, what changes might we want to propose to the framework if that is required. And also, tied to that is if you have a commitment, then we have talked about the commitment having to be enforceable, it has to be enforced.

So there are procedures in place to enforce PICs and RVCs. So the board is asking, are these existing processes, dispute resolution processes, effective enough to handle the disputes, especially on content related commitments? So basically, that's the high level three questions that I have paraphrased the Board is asking us. Let's not worry about consultation topic two right now. Let's go into the next slide, please. Next slide.

So now I'm going to just run you through some of the key things about this proposed implementation framework that the Board has offered to the community to consider. The context of this is that GNSO, the Generic Name Supporting Organization, basically the contractor parties, I guess. They want either the registry operator or the applicant to be able to make content related commitments, and they expect ICANN to enforce them contractually via the RA. So there's no issue about the registry operators or the applicants complaining about having to commit to things.

The organization that represents them effectively says that, we are happy to do that and we're happy for them to be enforced. This is a question of how. The Board has also said that this framework we think would reduce, but will not eliminate the risks of content related commitments being to challenge because of the fact that the bylaw says that you can't touch content, you can't deal with content. So there's still this conflict and they're saying that there's a potential risk that someone will challenge the validity or the enforceability of a content related commitment simply because the bylaws doesn't allow you to do that.

And the important thing is that we are all clear, the whole community, I don't think anybody objects to this, is that we have to have clear objective procedures for implementing and enforcing content related restrictions. But the kicker here is that the Board is suggesting that the ROs, the Registry Operators themselves be responsible for implementing such processes because they commit to it. So they implement it and they take care of it, they're totally responsible for it.

So if the RO is going to be, the Registry Operator is going to be requested or asked to deal with them, to be responsible for them, then that puts the pressure of ICANN to have enough resources to enforce and to have oversight over. Then the argument is that if you want ICANN to monitor and enforce, then ICANN must have enough staff, enough expertise, enough time to do these things. And we don't know how many applications there are going to be for the next round. So basically, it's a big deal. And the framework has got five sections, so I'm just gonna touch on a few things in each of the five sections as they are relevant to this conversation. Next slide, please.

The first deals with the part A, use of public interest commitment. So in terms of how it's set out, so I alluded to this earlier, that the mandatory PICs and the safeguard PICs are going to be included, no questions asked, it's all done and dusted, it's in the recommendations, has been passed by the Board, so they've all adopted this, so that's gonna proceed. The only extenuating thing that comes out of this is that they said that the applications for the strings, the sensitive strings, or what might be a sensitive string or highly regulated string will be assessed after the community action period happens.

So the community action period is the term that ICANN Org has used to describe the application comment period. What happens is, once application start coming in, there will be a point in time where ICANN Org will say, Hey, we are releasing all the applications for public viewing, please feel free to comment. So that is when the community action period, what they call that now, I call it the application comment period for SubPro happens. So that is when anyone and everyone, doesn't have to be us, anyone in the public can put in comments or can put in GAC early warning if you're a GAC member to any application that has been published for viewing.

So the point being that ICANN Org will consider comments to applications. If someone says that I think this is a highly regulated string. So ICANN will look at that, and then they will determine whether that is the case. And if that is the case, then the applicant will be subjected to the safeguard PICs. They will have to come up with the safeguard PICs and put them into the registry agreement. That's how it works.

So, no issues here. I think that's all fine. Part B, next slide, please, which is where it gets more interesting in terms of the Registry Voluntary Commitments, the RVCs. The interesting thing here is that the applicants may propose RVCs in response to comments, objections, early warnings during, again, the community action period, or any time prior to the execution of the RA. But there will be a point in time where if it comes in, if the change comes in, or proposal for RVC comes in, it will be considered as a change to the application. And then it will trigger what is called the application change request process. Again,

that is already in the framework for SubPro and the program. So no issues there.

And the important thing to note about this application change request is there is the potential for public comment. I can over look at the changes, and then if they see, especially if the change materially affects ICANN or even some part of the community, then they would typically call for public comment. So they would ask the public for comments to whether this change is acceptable or not. So that's how it works. But more importantly here is the Board has suggested that for RVCs, the requirements would be here objective process-oriented approach for implementing, administering specific restrictions or requirements.

So basically, it's like, they say the applicant is, if you wanna propose an RVC, then it has to be clear, it has to be objective, it has to be process oriented. You have to tell us how you're going to implement it, how are you going to monitor it, how are you gonna administer it, and how are you going to enforce it yourself? And don't rely on ICANN to do that. So that's what the Board is suggesting.

The second thing is the how is that the applicant must engage an independent third party that is not controlled by ICANN, but has to be approved by ICANN to do the audit to ensure compliance. And this third party must do the audit and must certify the compliance. So the compliance report is what ICANN would be using to keep any naughty RO in line if they decide to not comply with their own commitments.

So again, it's important differentiation. The Board is asking for us to consider not relying on ICANN contract compliance to monitor these

RVCs. They're asking us to consider putting that responsibility back to the applicant or the RO. And ICANN would just rely on the certificate from an approved third-party auditor to determine whether the registry operator or the applicant is in compliance or not. And obviously, if any RVCs is limited in time, duration, or scope, then those limitations must be clearly set up. And they must come with a set of objective criteria to say how it is triggered or when it is triggered. Now, this is required for transparency, for predictability, and for enforcement purposes. Next slide, please.

So the important thing here would be, again, still under part B RVCs. Any RVC that is proposed has to be worded, has to be explained or expressed in words. And the issue here is that if the applicant and ICANN do not agree on the wording of the RVC, the proposed RVC, or that if it's enforceable, then it won't be approved and it won't go into the registry agreement. The thing is, this is part of contract law. You have to have both parties agree to something that goes in the contract, and whatever's written in the contract has to be sufficiently understandable. It can't be just a bunch of words, because then you can't enforce it and then you compromise the contract.

So that's why the Board is suggesting that ICANN Org at least must agree to whatever RVC that is proposed to be put into the RA, because it would be expected to be enforceable. So you can't have something in the RA that is not enforceable. And if something is not worded carefully, it can be unenforceable. And coming to part C, enforcement, obviously there's no disagreement to this, that everybody in the community agrees that whatever PICs and whatever RVCs are put in, it has to be enforceable by ICANN.

So that's why the Board is emphasizing the fact that whatever it is that goes in has to be enforceable and will be enforced. It's just a question of it will be enforced, how would you enforce it? But it must be enforceable, so it must be clearly worded, it must have objective criteria, blah, blah, blah, blah, all those things that I mentioned before.

But in addition to contractual compliance enforcing PICs and RVCs. There are two additional procedures for dispute resolution. The one that applies to PICs is called the Public Interest Commitment Dispute Resolution Process, or PICDRP for short. And the Board has indicated that PICDRP, there is an existing procedure, existing PICDRP. The Board has indicated that the PIC DRP may be modified during implementation of the next round, and this is important because there is a GAC advice that something needs to be modified with the PIC DRP. So we're gonna take that forward, and this gives us an opportunity to do that. Next slide, please.

Moving on to the community gTLD commitments Part D. Yes, RA is Registry Agreement. So I'm gonna start using short forms, abbreviations, you just have to keep up. I'll try to intersperse with the actual words, but you need to start getting to know all the acronyms, otherwise, you'll get lost very easily. And with the community TLDs, as I said before, even in the 2012 round, because the string is proposed to benefit or serve a community, there is always going to be issues of use and content restrictions.

Who gets to be part of the community, what does a committee member get to do, not get to do as part of the community, those kind of questions. And that was already part of the 2012 round. So that is

going to go forward, but the difference now is that those questions weren't evaluated. So whatever that was proposed by the applicant weren't really evaluated unless they were caught in a contention set.

And unless they opted to do a, what is it called, a community priority evaluation to resolve that contention, and these are all optional steps that they can take. And that in the 2012 round, if a CPE, a Community Priority Evaluation was initiated, that would be the only time when these RVCs, these proposed RVCs to deal with content would actually be evaluated. But moving forward, the ICANB Board is now suggesting that regardless of whether you get caught in a contention set or not, and regardless of whether you opt for CPE or not, we are gonna evaluate those RVCs. I think that's logical as part of this framework.

And so the commitments are going to be evaluated and again, they must be agreed between the applicant and the ICANN Org before number one, they can be used for CPE, and number two, they can go into the RA, the registry agreement. So those are the conditions for them to be inserted into the RA, the registry agreement. And in terms of enforcement part E, there is something called the Registry Restriction Dispute Resolution Procedure, or RRDRP, that deals specifically with alleged violations of community gTLD commitments. All right, moving on.

Okay, so this is summary of what I've just explained. I put this in because this is the deck for the CPWG call this week. I was gonna start with this for CPWG call, so I think we can bypass this because I've taken pain to talk about it. So moving on to the actual questions that the Board is asking us pertaining to consultation topic one. And they're

saying, moving forward, both ICANN Org and applicant must agree that a profit RVC has to be clear, detailed, mutually understood, and sufficiently objective and measurable to be enforceable. So this is the extent of the criteria of what enforceability means. So they're asking, the Board is not asking. So there's no issue. I think everybody in the committee agrees to that.

The question the Board is asking then is if ICANN and the applicant cannot agree on the final language of an RVC as being enforceable under the ICANN bylaws, and as a practicable matter, then should the application be allowed to move forward without that proposed RVC number one, even though, and two, even though the RVC was proposed as a means to resolve an objection, a GAC early warning, and or a comment, and this is a binary answer, yes or no. And we're having trouble in CPWG because we have people who say yes, and we have people saying no, but that's fine. We're gonna sort it out right at the CPWG call. And then the Board ask for rationale, obviously. So we all dig into rationales, so if you say yes, why, if you say no, why.

And then I'll come to the actual discussion in a bit. The third question they ask is, should all applicants that propose RVC or a community gTLD commitment be required to designate a third party to monitor compliance? Now, this is the kicker, regardless of whether or not the commitment relates to content. So they've now gone outside of the content related argument aspect of it to throw in anything under the sun kind of thing. Yes or no? And why yes or no? So moving on to the next slide, please. So I've tried to pull together the remarks or the comments that were raised in last week's CPWG call into this slide number 15 hoping that it would, number one, remind people, number

two, it's always easier if you have something to look at, it would develop better in your mind.

But it's also for the benefit of the people in this room because you weren't at the CPWG call. So in terms of question one and question two, we take them together because we are going to talk about the answer and the rationale together. So the folks that say, yes, we cannot-- yes, the application should be allowed to move forward without that RVC and the yes bit of it is to do with GAC early warning or comment. So people said yes in answer to question one, they're saying yes, if the RVC that was rejected was to address a comment or a GAC early warning, and why do we say that? I think Cheryl was the one who talked about this at CPWG. And why do we say that?

Because a comment does not have a weight of an objection. So you have to understand the processes of the next round. And if you haven't been involved in SubPro, you haven't lived SubPro, it might be a bit hard, but we're gonna try and impart as much knowledge to you guys as possible. Now, the thing is comment, anybody can file in a comment, there's no fee involved. All you have to do is just register a username and then you can file in a comment. The problematic bit about comment is sometimes a comment can be frivolous or malicious. That's the word that Cheryl uses, which is possible. It could be for example, I am working for one particular applicant and I'm trying to put down another application.

So I file a comment anonymously and say that, oh, that application is bad and blah, blah, blah, blah, blah. So it's malicious in that way because I'm actually acting on behalf of another applicant. So, it's hard

to determine whether a comment is really useful or objective or not, and if the applicant decides that, okay, fine, we want to deal with this comment, we propose a RVC, but if ICANN doesn't agree to the RVC, then that's gonna fall through. That's gonna affect my application.

So we're saying that so far as comments are concerned, no, the application can go forward because there are other roadblocks down the line that you still have to pass, applicant will have to pass, and that is the objection. The same with GAC early warning. GAC early warning is different to GAC advice in the sense that GAC advice is a GAC consensus advice, which triggers a process under the bylaw for the ICANN Board to act on it.

But a GAC early warning is not consensus advice. It is one or more than one GAC member just alerting or issuing a warning, they're saying that, Hey, I have a problem with this string and this is my problem. That is a GAC early warning. So it doesn't have a force of GAC advice. So in that respect, there is a process for the GAC member or the GAC members who raised that GAC early morning to talk to the applicant to see whether they can resolve that issue or not.

And if they can't, they can't, that's fine. Then the application doesn't get stopped, it'll proceed because GAC has the ability to either issue GAC advice, consensus advice if they want to, if they are able to, or they can file an objection. And that is the difference between comment, GAC early warning, and objection.

Now, the people who said no in answer to question one, they said no if the RVC purports to address an objection. So because an objection is a

formal process, you have to pay filing fees to file an objection. You have to substantiate the reasons why you are objecting to the string. So it's not really limiting. And so therefore it's unlikely to be a menial issue or a frivolous issue that's being raised. Which is why we think it needs to be addressed. And therefore, it should be addressed satisfactorily.

If it's not, then the application should not be able to proceed. So that's the context of the two opposing sites, they aren't really opposing in the sense that one answer deals with one type of input, the other deals with another type of input, whether it's formal or informal. Yes, Holly. Holly, you have your hand up and you're still muted.

HOLLY RAICHE:

So sorry. It goes back to debates probably 10 years ago that I had, and it's about enforceability. We are talking about a contract, and we're talking about a contract and ICANN is one of those parties, and if ICANN is stepping away and saying we are not going to enforce it, then who has standing to step in the place of ICANN and say, this is what you have to do.

JUSTINE CHEW:

Where are you saying that ICANN is not gonna enforce it?

HOLLY RAICHE:

Because that's what you said in the very beginning.

JUSTINE CHEW: Did I?

HOLLY RAICHE: Yeah. And I just sat there and thought, wait a minute, if ICANN doesn't, now I understand what you were saying was ICANN does not wanna enforce content, and I'm understanding if I'm correct, that maybe the exceptions to that are what you were talking about and that wasn't made clear. So I'm sitting here thinking, are you talking about the exceptions to ICANN's rule, we will not enforce if they fall under the categories of either PICs or voluntary commitments. What is the role of compliance here in all of this?

JUSTINE CHEW: Okay. So as I tried to explain, maybe I didn't do a good job of it. What the Board is suggesting is anything that is expected to go into the contract will be, it has to be enforceable and it will be enforced. So there's no question of not enforcing anything. I think I have to correct you there. So what they're saying is that basically if ICANN can't agree to the language of the commitment, meaning to say that they don't think it's enforceable or they cannot enforce it, then it's not gonna go in the contract. So that's the flip side of it. Anything that is going into the contract must be enforceable and will be enforced.

HOLLY RAICHE: Then what you said in the very beginning, and maybe this is where the-- is ICANN does not under the terms of its agreement with the US, it will not enforce content. And what you're talking about here is a range of

content. I want to know how you get around the original statement, which was ICANN does not want to enforce rules on content because this is all content.

JUSTINE CHEW: That is the question that the Board is asking. Does the community one-

HOLLY RAICHE: Me too. That's why I'm going through this and I'm thinking, wait a minute, the opening statement was, ICANN does not want to enforce content rules, and these are content rules. So we're talking a lot about enforcement, but I wanna know how you get around that contradiction.

JUSTINE CHEW: Okay. I don't think that I said that ICANN doesn't want to enforce content.

HOLLY RAICHE: Well, that was the agreement, that was the original agreement. I'm suggesting that maybe in introducing this topic, be very clear because I know there's always been reticence on behalf of ICANN of enforcing anything about content, about making any judgments of content. I'm assuming what this is about is saying as long as something is in the contract, even if it is about content, if it's in the contract, ICANN will enforce it and it will use compliance, we hope, to deal with it. Is that right?

JUSTINE CHEW: So yes, you are right, except the bit about compliance. So that's a question mark. We may not use compliance or if it is a content related thing, again, it is a question of whether you require contractual compliance to have skills and the resources to enforce something. That's part of the question as well.

HOLLY RAICHE: Exactly.

JUSTINE CHEW: So if we say that they don't, that is why the Board is asking us to consider having a third party or certify that the RO is in compliance. And if the certificate says that, no, these guys are not in compliance, then ICANN will take action. So that is how they enforce. They're enforcing indirectly, but they're not monitoring and they're not auditing.

HOLLY RAICHE: Yeah, so when it comes to contact content, there is an alternative route that ICANN goes rather than compliance.

JUSTINE CHEW: That is what is being suggested. Contractual compliance comes at the end. As I said, if the third-party auditor says that this RO is not in

compliance, they submit a report to ICANN, ICANN then take that report and ask on the RO so that how the enforcement takes place.

HOLLY RAICHE: And if it's in the contract, even if some of what is in the contract is about content, ICANN will enforce.

CHERYL LANGDON-ORR: Correct.

HOLLY RAICHE: Excellent.

JUSTINE CHEW: That is what they're proposing, yes.

CHERYL LANGDON-ORR: Holly, it's an actually elegant solution should it get sufficient community support.

HOLLY RAICHE: So the elegant solution is if it is content, but the content is accepted, it can be enforced. Is that right?

CHERYL LANGDON-ORR: It's either in or out of a contract. But even if it's in a contract, ICANN as the entity does not sit as arbiter, its third party sits as arbiter, but ICANN will of course enforce its contract based on the third party's quite dispassionate assessment.

JUSTINE CHEW: Remember I said earlier that so long as ICANN or any party that is under the control of ICANN is not acting as the arbiter to determine content related stuff. That is the crux of it. And I think you jumped ahead to slide number 16. Actually, that's where we --

HOLLY RAICHE: No, look, I was suddenly thinking, wait a minute, wait a minute, I think this needs to be very, very clear and now it is, and thank you.

JUSTINE CHEW: Okay, so there are different sort of interrelated elements. The first two questions deal with the language of the commitment. What do you do if the two parties can't agree on the language? So this is the context of what slide number 15 is. What you are talking about is slide number 16. So if we can go to slide number 16 if nobody has any further questions on slide number 15. So this is where the Board says, should applicants propose that RVCs and community detailed commitments be required to designate a third party to monitor compliance?

And this is regardless of whether the commitment is related to content or not because there's also an issue of if say that the commitment requires a specific technical skill to be able to monitor and you know,

then are we expecting contractor compliance to have that skill. So anything that you expect contractual compliance to do has to be commercially reasonable, otherwise, if there are 10 of these specialized commitments, do you expect ICANN to hire 10 separate experts to deal with each of these 10 commitments?

That is the question, and I think that's commercially unreasonable, personally I think that. So we discussed it at CPWG last week, and then part of-- again, there was a yes and a no answer, but I'm gonna try and describe it. So some said yes in answer to question three that we should require all applicants to designate this third party. It doesn't matter whether it is content related or specific special skills, special technical aspects, doesn't matter.

Any applicant who wants to propose a RVC or a community gTLD commitment has to nominate a third party to do the monitoring. And the certification is that they are in compliance. So the people who said, yes, we should do that as a blanket approach argued that because it's too subjective to determine whether something is content related or not.

So it's just easier to go with a blanket practice, but this way of going about it, I'm suggesting that has to be applicable to anyone who's suggesting a community gTLD commitment, because that invariably will be content related. And that is the approach that was taken in 2012 round. So there is no reason why we shouldn't be able to continue it. And the people who answered no said that, well, it's very unfair and quite demanding on applicants to go and find a third party to monitor

blah, blah, blah when they're trying to do good by proposing a goody-goody commitment.

But again, it's still too subjective, but if you wanna do this that way, then because it's very subjective, you still need to have some kind of standard, or you need to have an arbiter to say, yeah, okay, we need this, we need a third-party monitor, or we don't need a third-party monitor. Who is that going to be? What's the standard going to be? Who is gonna be, we don't know. We haven't really talked about that further. So the argument is that it's too general to conclude that every single RVC will require third party monitor. Then there were other questions, which I'm gonna bring up in CPWG. So you just have to get onto CPWG call to participate in that.

Moving on, next slide, please. So the next batch of questions were to do with the potential changes to the proposed implementation framework, whether there should be changes or not, and also, if there are anything that we need to do to depict DRP and the RDRP to make them more effective. And the last question is a catchall question. Anything you want to say about the proposed implementation framework. Now, CPWG didn't get that far. We only got to five and six, I believe.

So next slide, please, very quickly. And what I heard was that in terms of changes to the proposed implementation framework, there was some comments in chat as well as verbal comments that we need to be able to say that there must be a way to disallow or prevent an RVC, which gets into the RA.

From being changed or eroded by the applicant, or the RO or the successor who someone else buys over the RO and becomes the new RO to disregard the issue it's sought to address, especially if the issue is still aligned. So, me I say that if the underlying issue which caused this RVC to be proposed in the first place continue to exist, then we must have a way to preserve that RVC and not allow an RO being brought up by someone else, or the RO itself down the line changes the RVC to suit themselves. So then it defeats the purpose, especially if the underlying issue is still of concern.

Then second point was that we need to have some limits on the ability to change the RVCs. We do note that SubPro has recommended that the applicants and ROs be allowed to change RVCs from time to time, but we're saying that that has to have some limits. Like you can't just willy-nilly change, today, I say this, tomorrow, I say something else, it just makes a mockery of the thing. So there has to be some sense, it has to make sense, the change has to make sense. And there has to be balance of public interest, which is commercial feasibility. And we can't say that blanket no change because there could be something to do with the RVC that cannot be implemented, or they figure out down the line or something.

Some circumstances change that makes it obsolete or makes it not doable anymore. So then therefore you still have to have permission to be given to the applicant or the RO to change the RVC to meet the circumstances. So we can't have a blanket saying that we can't change, it doesn't work that way either. And the reason why we're asking for this limit is because otherwise we would have to invest in time and resources in monitoring every single RA change that comes into the

pipeline. And I think we all have enough work to do as it is. So I think that's where we ended up with at CPWG.

Next slide, please. Oh, okay. There was some question about DRP changes, which I will also get into in the CPWG call, so we can wait there. Yes, Holly.

HOLLY RAICHE:

Just again, and it's just a consideration, but looking at the questions, if ICANN, as an organization, doesn't want to be the gatekeeper of content in any sort, would it not be appropriate for somebody like ICANN Legal to make judgements within an agreed framework of some sort? Not sure about that framework, because I absolutely take your point and agree with you that there must be a way to change, but within parameters, because otherwise things that were in the contract may actually just be irrelevant as time passes or whatever. So there has to be way to change. But if it's gonna be an ICANN process and an ICANN consultative process, that could take some very significant time. And maybe the thing to do is just put some gay posts around the change and then have a strictly legal, although lawyers take lots of time, so maybe I'm wrong there, I don't know.

JUSTINE CHEW:

Yeah, I mean, in terms of the process that is in place with ICANN as far as I understand it, so we have seen public comments, proceedings for renewal, or RAs, amendments of RAs, so that is the process that ICANN adopt. And I believe they only put out something for public comment if

it's a material change. I think they have a threshold for what they consider as material and what they consider as immaterial.

HOLLY RAICHE: I think that would probably be the best place to start then with answering this question.

JUSTINE CHEW: Okay. I mean, we can ask the question of what does ICANN Legal consider as material or immaterial and see what's the answer that we get.

HOLLY RAICHE: Yeah, makes sense. Okay, cool.

JUSTINE CHEW: Right. I'm mindful of the time and I haven't had any questions from anyone else. Or [01:09:18 - inaudible], policy to do with digital dystopia by considering growing. I don't know how that question is relevant to this present conversation that we are having. So I don't know, we might wanna take that offline [01:09:36 - inaudible]. I wanna ask, does anyone else have any questions or they're not clear about what has been discussed so far?

Because I'm very concerned that you all understand the issues, understand the arguments, understand the exceptions and those sort of things to be able to participate in the CPWG call discussions. I want you

to have enough information to make an informed input whether you agree or disagree with something, or whether you think there's another way out or an alternative that can work just as well, or this is all? Shah, please go ahead.

SHAH RAHMAN: Hi, Justine. Thank you. This is Shah. I'm not clear about one of the questions maybe you read already that some of the bylaws mandatory need to be changed or amendments in response to that RVCs. So there might be some language changes in that bylaws that is supposed to-- I understood clearly, but did not understand what you mean regarding the changes of the --

JUSTINE CHEW: Can you point me to the slide number. Yeşim, can you find out whether we can extend this call a little bit, please? Can point me to the slide number?

SHAH RAHMAN: I'm not sure which slide.

JUSTINE CHEW: Because I'm having trouble understanding your question, so is there something that you can point me to?

SHAH RAHMAN: Just simple questions. One of the questions that within this, yes, some is there a changes of bylaws regarding the --

JUSTINE CHEW: That is under topic two, which we haven't gotten to. So can you wait and ask or listen to the discussion in CPWG.

SHAH RAHMAN: CPWG. Okay.

JUSTINE CHEW: I'm just concentrating on topic one at the moment because the whole purpose is just to get you up to speed with what's been discussed at CPWG so that you can jump into CPWG and be in the know. So I don't really wanna get into things that's going to be discussed because we don't have time.

SHAH RAHMAN: I actually went through that.

JUSTINE CHEW: Alright. So any other questions in respect of topic one? Can I assume then that everybody understands, at least in general, the issues and the difficulties, the challenges that we are trying to grapple with, and the arguments that have been made to a yes or a no answer. So hearing nothing, Yeşim, do you mind if we can just take a few minutes to look into the rest of the questions on the topic two, which is slide 24? Okay.

I would suggest that you just have a glance at this slide deck before you get onto the CPWG call to get some refresher and to get some preface as to what was being discussing at CPWG.

So on topic two, which is what Shah was trying to allude to, is we have another bunch of questions. I think you can read it for yourself, I don't really need to get into to the details per se, but we have not discussed this at CPWG, so that's why I'm asking that you hold your thoughts and put them into the CPWG call this week.

So next slide. So there's a whole bunch of questions regarding topic two. Question five is where the fundamental bylaw change, that's the one that Shah was alluding to.

Okay. So I don't wanna keep you all too much longer. Any last comments that anybody wants to make? I had an AOB, which I can't remember what it is now. Sign of H, terrible. Maybe I may be able to figure it out. Nope. Okay, it hasn't come back to me anyway, so if it hasn't come back to me, then it's probably not too important. Okay, hopefully you have enough information to jump into the discussion at CPWG. I would strongly encourage all of you to come on to the call at CPWG to say your piece, put in your comments whether you agree, disagree, whatever, participate, this is how you participate.

All right. That being the case, I thank you for your time, thank you for listening to me patiently, thank you for all your questions, thank you for the discussions, and I look forward to seeing you at the CPWG call.

CHERYL LANGDON-ORR: Yes, Cheryl here. Just briefly, may it not have gone to everybody, but there was a request to have the link to the CPWG call. I'm sure, yes, we can pop that into chat before we sign off. Thanks.

JUSTINE CHEW: Okay, good point. So thank you for your engagement. We will probably have a few more of these kind of calls where we actually have a discussion of the issues via the APF. So keep a lookout for announcements. And by all means, if you have suggestions on topics that you want to discuss at the APF, you know how to reach me, let me know. So thank you. Good evening, good afternoon to everyone, and see you soon.

SHAH RAHMAN: Thank you. See you. Night.

CHERYL LANGDON-ORR: Thank you, everyone. Have a good day.

YEŞİM SAĞLAM: This meeting is now adjourned to the great rest of the day.

[END OF TRANSCRIPTION]