BRENDA BREWER: Welcome to the Business Constituency Membership call on 5 January 2023, at 15:00 UTC. Today's meeting is recorded. Please state your name before speaking and have your phones and microphones on mute when not speaking. Attendance will be taken from Zoom participation. I do have apologies from Marie Pattullo. And with that, I'll turn the meeting over to Chair Mason Cole. Thank you.

MASON COLE: Thank you, Brenda. Good morning. Good afternoon. Good evening, everybody. Mason Cole here, Chair of the BC. Welcome to our call on 5 January 2023. Happy New Year to everybody. It's good to have everybody on the call. We've got a nice turnout of Membership today, which is good to see, and we have our usual agenda on the screen. Are there any updates or additions to the agenda as you see it, please? Okay, I see no hands. All right, very good. We're going to dive right in because we have a lot to cover today on the policy front and on the finance and operations front. Steve, may I turn the floor over to you, please? Go ahead.

STEVE DELBIANCO: Hi, Mason. Can you see the policy calendar?

MASON COLE: We do.

STEVE DELBIANCO: Okay, great.   I'm not going to cover anything above on Previously Submitted because we haven't done anything since our last meeting. So let me just turn to the three open public comments right now. There's a final report open for public comments till next week, the 16th, and it's on the EPDP's recommendations for curative rights for inter-governmental orgs. Think of the International Red Cross, for instance. What would be their rights protection mechanisms at the second level?

We commented on this a year ago, thanks to Andy, Zach, Marie, and Jimson. And Zach, a couple of weeks ago, volunteered to lead this. He's already got a draft pulled together. And Jay Chapman and Andy Abrams are both working with Zach on that. We will get it to all of you before the 9th or 10th so you'll have seven days to review that comment. Zach, anything you want to add to that right now?

ZACH MUSCOVITCH: No, nothing at this time, Steve. I think it was a relatively easy lift to prepare the draft. So I look forward to Andy and Jay's comments. The draft I prepared supported the final recommendations because they were consistent with the recommendations we've previously made through the BC in its previous comments on the initial report. Thanks, Steve,

STEVE DELBIANCO: You say it's a light lift but that's just because you put a lot of time into understanding the topics. You're a good lawyer and a big contributor to BC so we appreciate that. Don't sell it short. Thank you, man.

ZACH MUSCOVITCH: Thank you.

STEVE DELBIANCO: All right, the next item up is the initial report on the ccNSO's PDP review mechanism. We discussed this extensively two weeks ago, and I said that I didn't believe the BC had sufficient interest in this as a process matter in the country code NSO and no BC member spoke up. So unless somebody gets to me to say we need to comment on this, we're going to leave it alone. That's No. 2. Anyone? Okay, great. No. 3:" Is the OP plan and financial plan for the next five years, plus, fiscal year '23 OP plan and budget? And is it substantial and requires a good deal of effort?

The good news is, it's over four weeks away from the close date on that. We usually have our Finance Committee, led by Lawrence. Tim Smith has always been a big contributor there and so has Jimson. So, I want to thank you, guys, for your previous work and ask whether you think the Finance Committee can take the lead on drafting a BC comment on this.

TIM SMITH: I'm not on the finance committee but I am happy to contribute to this.

STEVE DELBIANCO: Thanks, Tim. I don't know whether we have Lawrence on yet. We may not have Lawrence on but I'm pretty sure that the rest of the Finance Committee will pitch in. That's been the tradition here. Thank you. And then finally, what do we have as an update?   I think that Caroline

discovered that the final text was published last week, 27th of December. And it was published on page 82 where they lay out the same text that was in the release we saw on the 10th of November. Caroline, did they make any changes?

CAROLINE LUPETINI: No, not that I saw. And I cross-checked it with the comparison I did to the text from June as well and all the changes that were made in the November document were also reflected in this 27th of December publishing.

STEVE DELBIANCO: You said they dropped the italic and bold stuff, though.

CAROLINE LUPETINI: Yes. Now it's just plain text, no italics and bold.

STEVE DELBIANCO: The link is right there. Mason, take a look at the link. It says, "Published on 27 December," right in my policy calendar. See it?

MASON COLE: Got it.

STEVE DELBIANCO: So, you just click on there. And then Caroline, you said to go to page 82. So, Caroline before had summarized the changes between the 10th of

November version of what had come before in June. And now the clock has started. There's a 21-month period for member states to transpose it into national law. And things like "should" and the word "ensure" will be transposed in whatever way a country decides they're going to implement that.

We've discussed this before but the Czech Republic and Denmark are in a really good position to move quickly because they require publication and disclosure of registrant data for their ccNSO and their ccTLDs. And so they could simply extend it to the gTLDs over which they have national jurisdiction. Mason, I'll put this back into your camp, but what do you think about us reviving our outreach to Mr. [inaudible - 00:06:18], Member of Parliament for Denmark?

MASON COLE: It might be wise. He was helpful to us before and informative at least. So he may be useful to have another conversation with. In addition to that, we're looking at a project where we might research where there may be member state governments that are hospitable to the BCs interest in terms of transposing the directive in a member state law. So there's a lot of NIS2 work to be done here probably over the next year or so. So, we've got some work to do ahead of us.

STEVE DELBIANCO: And we also agreed that the first country to move would set the tone for many of the others. And we understand that there are a handful of countries that are likely to take the lead, Denmark being a prime mover. And it's not so much the urgency of them to do it right away but there's

an importance of having somebody implement the regs strongly, which sets the bar for the subsequent member states. So maybe we ask Marie to help with our outreach to member [inaudible - 00:07:33] and see whether he would have another call with us. I thought the last one went really well.

MASON COLE: I'll take that action, Steve.

STEVE DELBIANCO: I really appreciate that. Now, at the last BC meeting, we had an extensive discussion, mostly a colloquy between Margie Milam and I on whether NIS2 requires contract parties to do things that would violate the ICANN contracts and policies or might flip that. Do the ICANN contracts and policies require contract parties to do things or prevent them from doing things in a way that makes them violate the NIS2?

I think Margie proposed two or three areas where she thinks it might rise to that level of occasion, but that sort of a test was a test invented by the ICANN Board in 2018 when they adopted the temp spec for GDPR. I revealed to all of you that the bylaws themselves have a completely different and subjective test, which is two-thirds of the board members voting to say it's in the public interest to do a temp spec. They don't have to meet the test of the 2018 temp spec. So it is appropriate to start conversations about whether ICANN needs a temp spec based on the NIS2 publication date, or must that wait until a nation transposes it? It depends.

EN

But I don't think we should conflate the NIS2 discussion and temp spec discussion with the very productive thread we're having on amending the RAA and registry agreements to create real obligations to respond to reports of DNS abuse. I'm pretty sure that Mason and Mark will agree that that train has left the station and we want to keep that focus tightly on DNS abuse and don't bring in registrant information into that conversation. I'd be interested in any reaction from BC members about that.

MARK DATYSGELD: That's definitely right, Steve. We just came out of the Council's special session, the SPS, where we met with the other stakeholders. It seems that we are ready to move forward with the DNS abuse expeditiously. It seems that literally, everybody is on board. And at this point, conflating that with the other issues would be a big mistake. It would make us lose ground on things we already won. So, definitely, something to look towards, not conflating A and B.

STEVE DELBIANCO: Thank you, Mark. Because I'd like to inform the ExCom's deliberation over whether we would send a letter to ICANN indicating our priorities for these contract amendments. And I'd like those priorities to be tightly focused on DNS abuse so that we have a chance to achieve consensus with the contract parties for a change, to isolate the bad actors. Anyone else? Mason, do you agree with what Mark and I have just said?

EN

MASON COLE: Generally, yes, I'm with you. Give me a minute to dive back into it and I'll come back to you separately if I need to. But yes, so far, so good.

STEVE DELBIANCO: All right, I really appreciate that. Channel 2 is Council, but the last Council meeting was on December the 15th. What I've got in here is that they approved three resolutions: a work plan on GNSO, guidance process on applicant support, and Lawrence, you're working on that, I believe -- the applicant support, GGP?

LAWRENCE OLAWALE-ROBERTS: Yes, I am, Steve.

STEVE DELBIANCO: Great. Anything you can add to the work plan that was approved?

LAWRENCE OLAWALE-ROBERTS: With the work plan that's approved, the committee is planning to dive into work in the coming week. I guess that's where we're going to have our first meeting for the year. We will definitely be reaching out to all the SOs and ACs.

STEVE DELBIANCO: Okay. Mark, on the second one, the continuous improvement, we don't have Marie with us today, is there anything you want to add about continuous improvements?

MARK DATYSGELD: I think Lawrence is in a loop right now.

STEVE DELBIANCO: Mark, can anyone add on the continuous improvements?

MARK DATYSGELD: Continuous improvement was supposed to be something bigger and better, and became this new type of thing that is not very trivialized from what it should be. So, no, nothing too useful on that one.

STEVE DELBIANCO: Okay. Arinola, I'd like to turn to you for the third one. Congratulations on being renamed as Chair of the Standing Selection Committee. Please tell your colleagues what the committee does and what you need from us for the January 11th meeting.

ARINOLA AKINYEMI: Thank you, Steve. Happy New Year to everyone. Generally, the Standing Selection Committee worked with the Council to select licenses for the review teams and a few other things like the GNSO Fellowship Mentor. We work according to assignments assigned specifically to us by the Council. Currently, we have two assignments to work on, which are the GNSO Fellowship Mentor and the GNSO Selection Committee members.

I am a candidate for the Fellowship Mentor, and as such, I'll need to recuse myself from the meeting. And because of this, the selection

process is slated to continue. It's ongoing currently. Documents are being studied. Applications are being reviewed. There's a doodle poll that will close on the 10th that every representative of every constituency with the GNSO would need to fill in.

The BC cannot because I am recused, so I cannot do anything. An alternate is required to stand in my stead to do that. It's a lightweight thing, it's just for a meeting. Two, at the most. Usually, the selection process is concluded with one meeting. From history, I've never seen it go beyond that anyway. So that is where we stand currently.

MASON COLE: Does the Vice Chair of the meeting and the BC alternate just assume the role of weighing in for the BC, or does the alternate have to take your position as Chair?

ARINOLA AKINYEMI: No, the Vice Chair will chair the meeting. The alternate is just there to have a BC position, that's all.

STEVE DELBIANCO: Mark, given that you're a councilor and you're familiar with the fellowship mentor program, I'm hoping it's possible that you can find room on your schedule for the 11th of January. It would be very easy for you to fill in for us, given all that you know. Does that potentially work for you?

MARK DATYSGELD: It's just a matter of timing. The answer is yes. Do you know the time?

STEVE DELBIANCO: We'll let you know the time.

ARINOLA AKINYEMI: The meeting should be at 14:00 UTC, there about. But it's not just for the meeting, you need to be onboarded properly. And you also need to review applications and fill in the doodle poll by the 10th.

STEVE DELBIANCO: Arinola, could you please prepare an email indicating what needs to be done, when the meeting is, and all the documents, and send it to Mark? But copy BC private so that we'll all know.

ARINOLA AKINYEMI: I will not be able to provide the documents. The documents will be provided by Org. Now that Mark has agreed to step in, all I need to do is to link him up with the Org, and then they will continue from there.

STEVE DELBIANCO: I got it. Mark, does 14:00 UTC on the 11th work for you?

MARK DATYSGELD: The answer is maybe. I do have a thing at that time so I don't know. Let's do this over email because it would be good to align properly.

STEVE DELBIANCO: Okay. Arinola, send something to me, Mason, and Mark and we'll circulate it to the whole of ExCom and make sure we have somebody.

ARINOLA AKINYEMI: Okay. But as a way of clarification, the alternate does not necessarily have to have any experience of the fellowship or any knowledge of the fellowship. There's a checklist you're going to be working with. It's more of an administrative process than a knowledge of the fellowship program.

STEVE DELBIANCO: Good point. So it could be anyone.

ARINOLA AKINYEMI: It could be anybody, yes. It could be anyone because it's just an administrative process.

STEVE DELBIANCO: So let me pause there and ask if any BC members are interested in the spotlight as the BC alternate. It's a candidate selection process. Get to Mark and Mason and I and we'll do our best to get somebody from ExCom to fill in. Thanks, Arinola.

ARINOLA AKINYEMI: Okay, thank you so much.

STEVE DELBIANCO: Mark, I noted that your next council meeting comes up on the 19th of January, but we don't have an agenda yet. Do you want to say anything about what you expect to be on the Council's agenda later this month?

MARK DATYSGELD: So the agenda is a little bit slim. It's coalescing, there's still an open agenda, even at this point in our list. What I think will happen is that after our prioritization effort that we did in late December, we are actually going to start looking into closing some open topics. Council has been looking towards wrapping up IGOs which we all have identified that there's absolutely no reason not to be closed.

We're also approving the final letters for DNS abuse, thankfully. So that's pretty much the conclusion of that particular side. I posted it on the chat. This is the final draft and it involves the suggestions on contractual amendments, which have been more or less taken up by the CPH. And it goes further into the discussion of what is the role of bulk registrations. And for what it's worth, Jeff Neuman was pretty useful in providing me some extra information on that and how to proceed with that. As far as the other topics are concerned, we, unfortunately, don't have a final agenda yet.

STEVE DELBIANCO: Thanks, Mark, I put that draft letter up on the screen, lots of different authors making changes. But it looks like it is pretty tightly focused on DNS abuse issues associated with bulk registration.

MARK DATYSGELD: At the core, the thing that we want is we don't want to have that bulk registration PDP. That's the gist of it. We are asking the CPH to tell us what is their understanding of this procedure. Just so the membership understands, both registrations from a CP's perspective, what it looks like is a button that you upload a plain text list containing domains, and boom, it gets registered. And that can be 5,000 domains, doesn't matter.

So the thing is, we have seen this used again and again to carry out abuse. We have seen this being employed by malicious actors in partnership with contracted parties that we don't find particularly lawful using this to mass-register domains generally in bad faith. So our question really is what do they think about this? Do they have a flagging system? Is anybody actually looking at when 5,000 registrations come in? So simply by starting to probe them and trying to get them questioned, I think we can get to the heart of the matter.

Instead of trying some weird, all-encompassing PDP, we can actually see what's up and work out how we could actually go about solving this problem. Instead of poking it with a stick until something emerges. So, let's see how this goes. Our expectation is that they would have an answer for us by the end of February, and that might have us either reconvene this month on DNS abuse or start a process to look into their answer that produces something.

STEVE DELBIANCO: Yes, I have to support you completely on the idea of negotiating a common understanding of something like bulk registrations. It's so much better than a 12-month PDP with implementation review teams, board

votes, and public comments. We could short-circuit all that insanity if reasonable people say, "Here are the rules." So I really applaud you for trying that. Let's see if we can keep the cooperation going, Mark. Thank you. Mark, do you have anything else that you expect on the 9th or can I move ahead into the other activities?

MARK DATYSGELD: Have fun.

STEVE DELBIANCO: All right. So, the closed generics. Tim, did you have anything updated on closed generics?

TIM SMITH: No, I don't have any updates on closed generics. I have a meeting with Philippe next week, January 10th, to get an update from him. I believe there have been a couple more meetings since we last talked at the last BC meeting but I don't have an update. And I believe they're still on track to actually submit whatever they're submitting to the board following a two-day meeting at the end of January, in Washington, I believe. That's the only update I have.

The other thing I'd say is I did distribute BCs previous positions to Philippe, and I know we talked at the last meeting that I'd also do that with the CSG ExCom, and that's sitting on my desktop and I'll get it out of here today. So, apologies for not getting on that sooner.

STEVE DELBIANCO: Tim, when you send that CCME, indicate that I'd be glad to provide additional info if any of them have questions.

TIM SMITH: Perfect. I'll do that. Thanks, Steve.

STEVE DELBIANCO: Appreciate it. Next one up is the Transfer Policy Working Group. Zach and Arinola, do you have anything to update?

ZACH MUSCOVITCH: No, as they say in Hollywood, Steve, we've been on hiatus. We'll come back to you on that shortly. Thank you.

STEVE DELBIANCO: Thank you. Okay, the guidance process, we handled that earlier. We handled DNS abuse. I've got nothing new on SSAD Light. Let me turn it over to Tim Smith to cover the commercial stakeholder group. Tim.

TIM SMITH: Thanks, Steve. Well, as I've already mentioned, no real update on closed generics. And I think the only other thing that is brewing right at the moment has to do with the implementation of Work Stream 2 recommendations, which we had a briefing this morning on BC's recommendations that need to be addressed. And there's also one for the CSG. So we don't have a meeting.

I think there are seven outstanding recommendations that we need to respond to, or have been asked to respond to. And we'll be convening a meeting of the CSG ExCom to discuss those. Org has asked for that to be responded to by the end of January. So, that's the only thing I can add to that. And these all have to do with Recommendation 6, which as I understand it, are good practices and are not mandatory recommendations. So we'll be dealing with that in a couple of weeks. And that's the only thing that seems to be moving right at the moment. Thank you.

STEVE DELBIANCO: Thank you, Jim. That's it for the policy calendar. Back to you, Mason.

MASON COLE: Thanks very much, Steve. Appreciate the thorough run-through, as always. Any updates or follow-ups for Steve on the policy calendar? Okay, no hands in the queue. All right. Thanks, everybody. Let's go to Lawrence. The floor is now yours, so please proceed. Thanks, Lawrence.

LAWRENCE OLAWALE-ROBERTS: Thank you. Good day again, members. Apologies for my abrupt exit while I was giving that report. Welcome back from the holidays. Registration is ongoing for the next ICANN meeting in Cancun. And members are encouraged to register -- to be there in person if that's your plan, or remotely -- to be able to have access to the BC and other meetings during ICANN76. Registration is key. And especially for our new members, if you require any information, please reach out to Brenda.

The additional budget request proposals are being worked on for the BC. This is due by the 30th of January. And I'll be circulating draft proposals that I deem to be complete from my end. And another one to which I really seek members' input to. The two proposals have to do with providing virtual video resources for the ICANN Learning Program that we put on through the additional budget request provision earlier and continuous support for printing materials, the BC fiscal newsletters for the forthcoming public meetings.

Aside from this, the third proposal, which seeks members' input is a model of some form of meeting that will be piloted by the BC to reach out to businesses. So it's more or less a major outreach event where we want to leverage our network as the business constituency and those of ICANN to sponsor business leaders and to bring businesses within the meeting region into an ICANN public meeting. We expect that a few BC members might also require sponsorship for this event where it passes through the additional budget request process.

At this point, I will want to pause for any questions as I believe that there might be one or two members that might require some clarity around this. As I said, this proposal is due by the 30th of January, and I will be pushing out the draft and soliciting members' input so that it would reflect the broader BC idea and thinking. We are eager to receive your approval, we will turn in those proposals before the said date.

The additional budget request is additional funding set aside by ICANN to meet some community needs that have not been captured in the main ICANN budget. If you have any creative ideas of what you think the BC

needs to do or what ICANN can support the BC in doing in FY20 form, this will be the time to put this into a proposal and submit it for consideration.

ICANN has also restarted the CROP program, that's the Community Regional Outreach Program. CROP is a facility where ICANN gets to provide three nights of stay and a return ticket to conduct outreach in regional programs as well as at an ICANN public meeting. We traditionally have three slots and these slots are to be utilized for FY23.

Where the timing also works for the CROP proposals, whoever will be running the outreach events will also need to get approval from the Stakeholder Engagement Team of ICANN. So it's quite a process, even where you meet the BC [inaudible - 00:33:10] there is still the ICANN end to be taken care of. So it needs to be carefully thought out. But ExCom is open to receiving expressions of interest to conduct outreach using CROP.

Also, the nomination period for the ICANN Community Excellence Award is open. This is an award that goes out to members. Incidentally, self-nominations are not allowed. So we want to encourage members of the BC to look inwards at members who we think are deserving of an ICANN Community Award. And yes, we do have a good number of them.

The Chair of the BC, the Vice Chair, policy, are people who have contributed tremendously to the community system, the multi-stakeholder ecosystem within ICANN. It will be nice to have two, three, or four members put forward members of the BC who are deserving. We need to have more of our members spotlighted at this kind of

opportunity. You can reach out to me or to the Secretariat for more information with regard to nominations.

For the BC newsletter for ICANN76, we are requesting for your articles to please come in over the next two weeks so that we can be able to curate those materials together and put them in print form. If we are not able to quickly get your articles in, we will lose the opportunity of having hard copies of the newsletter. It would be nice if we got back to having hard copies supporting the virtual copies that we always circulate.

So please, you might want to write an article on your experience in the BC so far, maybe how the BC has impacted you or your business, or there might be some aspects of policy that you follow and you find interesting. It will be nice to read about the transport policy from Zach. I know you and your team and fellow colleagues would bring an interesting twist to an article of such a nature. It would be nice to spotlight what Mark is doing with the DNS abuse process within ICANN. So there's a lot to talk about.

Please, let's just dedicate some time to put pen to paper. Do send me this article before the close of the coming week so that we can start working on our newsletter. Based on the fact that we also have some new members joining the BC, it's about time to have an updated copy of the Meet The BC publications. Meet The BC is a comprehensive directory of members of the BC carrying their bios, their pictures, and information about their business and what they do.

We will definitely send to the BC private list the procedure on how to send in your bios and materials. The timeline through which we want this

sent in is such that we can have this done before the end of FY23. We are hoping to use the budgetary allocations for printing to cover this publication. You will definitely hear more on the private list with regard to the next edition of Meet The BC.

There are open Invoices. I would like to inform members that the BC is in the process of setting up another bank account and as soon as we have this completely set up, we will communicate the details to everyone so that our dues for the coming year will be paid into this particular banking account. I'm sure that the BC will receive your usual cooperation with regard to dues for FY24. With this, I will take a pause and give the floor back to Mason if there are no questions.

MASON COLE: Thank you, Lawrence. Any questions or follow-up for Lawrence? Okay, I don't see any hands. All right, Lawrence, thank you very much for your report. As usual, very thorough. We're now ahead of schedule, this is great. Is there any other business to be brought before the BC today? Okay, colleagues, in that case, I will return 19 minutes of your day back to you. Thank you for your time. Brenda, thank you as always for the support. And we will meet again, Brenda in two weeks' time, is that correct?

BRENDA BREWER: That is correct, Mason, thank you.

MASON COLE: Okay, two weeks' time, regular time of day. We look forward to talking with you then. In the meantime, thanks, everybody for stepping up and helping the BC. We've got a lot of work to do in 2023 and it's going to require a lot of help from colleagues. So, thank you very much for stepping up to the plate. All right, everybody, thanks for your time. BC is adjourned. Take care.

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