
CLAUDIA RUIZ: Good morning, good afternoon, and good evening to everyone. Welcome to the At-Large Consolidated Policy Working Group Call on Wednesday the 10th of April 2024 at 19:00 UTC.

In order to save time, we will not be doing a roll call. However, I would like to note the apologies we received. We have received apologies from Priyatosh Jana, Alfredo Calderon, Jonathan Zuck, Justine Chew, Satish Babu, Vanda Scartezini, and Hadia Elminiawi.

From staff, we have Heidi Ullrich, Andrew Chen, and myself, Claudia Ruiz. Clarice. We have Spanish and French interpretation for today's call. Our Spanish interpreters are Claudia and David, and our French interpreters are Dominique and Jacques.

I see Hadia is here. Hadia, we will remove your apology.

We do have real-time transcribing for this call. I will put the link in the chat. A friendly reminder to please state your name when taking the floor so our interpreters can note you on the other language channels and to please speak at a reasonable pace to allow for accurate interpretation.

Thank you very much. And with this, I turn the call over to you, Olivier. Olivier, if you're speaking, you're on mute.

OLIVIER CRÉPIN-LEBLOND: I am, indeed. And as I'm used to Zoom, I'm pressing the wrong button because [inaudible].

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.

CLAUDIA RUIZ: Olivier, your audio is not clear, at least for me.

OLIVIER CRÉPIN-LEBLOND: Are you serious? Oh, dear, [no].

JUDITH HELLERSTEIN: No, it's good.

CLAUDIA RUIZ: Oh, it is? Okay. Maybe for me.

JUDITH HELLERSTEIN: I think when he moved, he wasn't talking into the speaker of his computer.

OLIVIER CRÉPIN-LEBLOND: Okay. Let's see how that was for the time being. Let's hope it all works well [inaudible].

CLAUDIA RUIZ: I'm sorry to interrupt, Olivier, but I'm hearing from our interpreters that you are muffled, and it's difficult for them to translate. Can we try with Adigo?

OLIVIER CRÉPIN-LEBLOND: [inaudible] how does that sound?

CLAUDIA RUIZ: Okay, that sounds better for me. Let me check with the interpreters. Can you say a few more words, please?

OLIVIER CRÉPIN-LEBLOND: I can say a few more words now, yeah, and see how that works.

CLAUDIA RUIZ: Okay, that sounds clearer. Much better. Perfect, thank you.

OLIVIER CRÉPIN-LEBLOND: Okay, fine. Thank you very much. And apologies for the start of this call. Welcome, everyone, to today's Consolidated Policy Working Group Call. We've got a reasonably busy agenda today.

First, starting with the small group updates. Now, only a handful of them are going to provide us with some updates. We've got, first, Steinar Grøtterød on the Transfer Policy Review Policy Development Process. And then we'll have Alan Greenberg providing us with some details on the Registration Data Request Service. And after that, Alan continuing on the Standing Predictability Implementation Review Team, the SPIRT Charter Drafting Team. It's the Charter Drafting [time] at the moment.

And then we will have, after that—and I don't think that it all adds up to ... It does add up to 25 minutes. After—we've got the full 25 minutes on this—we'll be looking at our policy statement updates where we'll look at our usual policy statement pipeline. And we will focus on the public

comment consideration for the Proposed Renewal of the Registry Agreement for the .XXX top-level domain. Michael Palage will take us through a presentation and proposal.

And then, finally, Any Other Business after that, during which we'll have a quick update on the Latin diacritics.

That's what the agenda is like today at this point in time, and I would like to invite anyone who wants to make any changes to please put your hand up now or write it in the chat and take the floor. I'm not seeing any hands up, so the agenda is adopted as it currently is on your screen, and we can look at the action items from last week.

As you will notice, they are all completed. Andrew has been very busy, actually, providing a lot of information about .mobi history and also the .xxx and related top-level domains. It's not even paperwork because it's all sent by e-mail these days. Documentation. That's what we'd call it. So, yeah, that's all done.

And Steinar has also circulated the Change of Registrant Data Draft Recommendations on the mailing list. So nothing special from last week or even in the previous week. I'm not seeing any hands up, so that means we can go to our next agenda item, and that's the work group and small team updates.

The first one, as I mentioned earlier, was Steinar Grøtterød. And as per usual, Steinar has written the minutes of the GNSO TPR meeting in the chat at the bottom of your screen. The meeting took place yesterday. Let's go over to Steinar Grøtterød.

STEINAR GRØTTERØD: Yeah. Hi, everybody. I just want to emphasize or put into record that during the discussion on the GNSO TPR meeting yesterday, I received some very good input to why some registrars, really, is in need for the option to opt out of notification when there is a change of registration data. And this is particularly the corporate registrars.

And the key here is that they do have some legal binding that they should not contact the registrant when the client asks for that. And they say that, "We will never do this opt-out if we don't have the written consent" and then really hard legal work for them to not inform their client when there is any updates on the registration data.

So based on that one, I think it's reasonable, and I will propose that when we go into the next phase and discuss this in the public comment period, to maybe change that into some wording that we should recommend and except in just that cases.

I recommend everybody to take a look at the Google Doc. And, also, if you have the time and the interest, maybe listen to the recording. It was quite an intensive discussion due to the fact that Business Constituency was the only one that had categorized the majority of their input as "cannot live with". That means that they don't want to have that. So that was the lovely discussion.

I see Alan coming up, so I'll pass it over to him. Alan.

ALAN GREENBERG: Yeah, thank you. Can you explain again the part about why some registrars for commercial domains cannot contact them? I didn't understand that.

STEINAR GRØTTERØD: The idea here and what I propose is that every change of registration data should be notified to the registrant for the corporate registrars. And there was particularly one that was very, very heavily arguing that they do have a legal binding that they should not contact the registrant because the registrant is a company, and the contract with this registrar [inaudible] the obligation not to deal with any information in their area of work that the registrar has signed up for this client.

Does that answer your question?

ALAN GREENBERG: Not really. I'm trying to understand why anyone would say, "Don't contact me if you're taking a domain away from me."

STEINAR GRØTTERØD: No, this is not taking a domain name away from anybody.

ALAN GREENBERG: Well, change or registrant is.

STEINAR GRØTTERØD: No. It's the change of registrant data. This is not [inaudible]. Yeah. So this is any update like the e-mail address and so on and so on. In my period working with a registrar, we did a lot of these things of changing registration data to have that tuned into the system that we helped to keep the control of that domain name on behalf of the client.

So I do understand that, and I thought that they could bypass that by having one single e-mail for all the domain names to one client to work into one single e-mail. And then actually not having that, we didn't have to define a special rule for that. But this argument was actually very valid when I think about it, and I find it very, very reasonable.

ALAN GREENBERG: Yeah. My only concern would be that we give an exemption for one valid reason, but it can be used globally by others. So I guess I would want to see that the exemption only applies under certain conditions if there are contractual reasons or something else replaces it.

STEINAR GRØTTERØD: Yes. I do agree with you, Alan.

ALAN GREENBERG: Okay.

STEINAR GRØTTERØD: And this is definitely based on the final wording of that section in the policy of the change of registrant data policy.

ALAN GREENBERG: Okay.

STEINAR GRØTTERØD: But also, having said that, the overall majority of the registrars will not enable this opt-out because it's really, really tricky to add code. And it makes the [audit] trail very, very hard, particularly for [inaudible] registrars and so on. There's a lot of concern, and the majority of registrars said, "You put that into the policy. We will not enable that, and we will not offer that to our clients."

ALAN GREENBERG: Okay, thank you.

STEINAR GRØTTERØD: Good. Olivier.

OLIVIER CRÉPIN-LEBLOND: Yeah. Thank you, Steinar. Actually, John McCormac makes a point in the chat. If the domain name was being hijacked or in the process of being stolen, someone would need to know would that be affecting the owner.

The other thing is, in what you mentioned, you spoke about the bulk updates. And maybe that's the key word here. If there are bulk updates, then there's a special case here. No?

STEINAR GRØTTERØD: Yeah. Bulk updates is normally, in this aspect, change of registration data. It's that you have all the domain names for one client and they're doing a bulk update. The client should not and don't want to have a notification for all this. So that is something that a [corporate] resolver—

ALAN GREENBERG: [inaudible].

STEINAR GRØTTERØD: —yeah—normally will take into [place]. Domain test. Let's put it a little bit differently. The common rule is that all changes of registration data should give notification according to the policy as we describe it, and so on. So the exception is for all, and there are very, very few that do have a certain business model. And for them, a domain theft is [inaudible] maybe impossible. It should not occur whatsoever. Then they have all the legal problems. I hope that [understands you].

Siva, you're on. Come on.

SIVA MUTHASAMY: Yes, Steinar. I think if I have followed it correctly, the argument is that some of the large registrants like corporate registrants may have a totally different need not to be bothered or to have a single e-mail address for all their domains. And so if we make a rule for these exceptional corporate clients, it tends to affect the individual registrants with one domain name or two domain names.

So why not have a totally different category of registrants? Why not group registrants, individual registrants, and corporate registrants? And for corporate registrants, let's say, like Microsoft may have a thousand domain names or a hundred domain names. But a different set of rules could apply. Then they are distinctly identified as corporate registrants.

Maybe it will take time to institute such a system, but that would solve quite a lot of problems for the individual registrants who have a totally different need for safeguard. Thank you.

STEINAR GRØTTERØD:

Yeah. First of all, I think we do have a challenge in identifying domain names as individual versus corporate. It's not necessarily easy. But I do think that it more or less depends on how this section of the policy is being put into [words]. And I think that if we make an opening—an optional opt-out was the phrase that was used during the discussion—and this is put into a context that is serving the purpose of verification that some registrars can do this under certain conditions, then I think it should be okay.

But let's not spend too much time on this because this is not written in stone as of today. I think we should take the deeper discussion on this when there is the final recommendation put into paper and we have the opportunity to discuss that further.

Yeah. I hope that is okay for all of you. And we have a very long agenda. But please listen to the recording also. There are some [comments] that have been placed there. So I think it's good.

SIVA MUTHASAMY: Yeah. [I also have my hand up again].

STEINAR GRØTTERØD: I'm sorry. Siva.

SIVA MUTHASAMY: Yes. I just want to add that there may not be unnecessary resistance to the idea of segregating legal vs. natural persons. In fact, it could be a monetary opportunity for registries and registrars. When you find a way to make a distinction and when you find a way to make a classification of the business registrant or a corporate registrant—which is actually easy, it's not very difficult. It may be difficult to be completely thorough on that, but it's not difficult to attempt and do it 90% or 95%.

So if we make a distinction, it's going to be a great monetary opportunity for registries and registrars. So they could charge corporate and business clients differently. Thank you.

STEINAR GRØTTERØD: I get your point. I disagree with you, but let's take that when we have the final voting. No more hands. Olivier, going back to you.

OLIVIER CRÉPIN-LEBLOND: Thank you very much, Steinar. And thank you for the updates. We are then going to the RDRS, the Registration Data Request Service. And for this, Alan Greenberg is going to provide us with an update.

ALAN GREENBERG:

Thank you. A very, very brief update. Probably not as long as your introduction. The process is working well. We are meeting bi-weekly now. Originally, there was only a meeting once a month to discuss the results of the monthly report that is issued. Now, there is an extra meeting in between these two where we are discussing changes to the system.

We are working very closely with ICANN staff to look at potential changes that have been identified and attempt to schedule them. Some of them very quickly. In other words, we are likely to have some changes in place by June and ongoing after that as necessary. So it's a very productive environment, a very cooperative environment. Highly unusual, I must note, but a rather satisfying group to participate in.

So the details I can make available to people, and there's a number of Wikis and Google Docs talking about them. But I don't think the details are particularly important; rather that the system is going to evolve as we identify changes that are necessary to better understand the environment we're in and make sure that, as we go through this two-year experiment, that we learn something from it. So it's been very productive.

Olivier, I see your hand is up.

OLIVIER CRÉPIN-LEBLOND:

Thank you very much, Alan. So on the RDRS usage metrics reports, as you know, the early ones were a little strange because I think a lot of people

were probably testing it out and so on. How are figures looking now? Is it steadying up?

ALAN GREENBERG:

The last report is—we talked about it at the last meeting or two meetings ago—and it's linked. The numbers are growing. They still are somewhat disturbing if you look at the number of requests that are being rejected for various reasons. And part of the work going on is trying to make sure that we have common reporting.

For instance, if it is a privacy proxy request that is rejected because there's no more information that is "publicly available" unless you go directly to the privacy proxy service, different registrars report that in different ways. And we're trying to make sure that everyone is using the same methodology so the numbers make some sense. The root problem, of course, there is that in many cases, the privacy proxy service is the same corporate ownership as the registrar. But, currently, we don't have a policy that addresses that, and we can't fix that in this group.

OLIVIER CRÉPIN-LEBLOND:

So the March figures haven't come out yet.

ALAN GREENBERG:

No. The March figures are out, I believe. I'm getting confused now. No, you're right. Sorry. The February figures are out. The March ones are not out yet. They'll be out in a week or so.

OLIVIER CRÉPIN-LEBLOND: Thanks. Michael.

MICHAEL PALAGE: Yeah, just real quick. I'm sorry, I joined a little late. But to speak to Alan's comments there. I myself, over the last several years, have identified that as an inherent flaw. All the work ICANN was [inaudible] being done, back when Crocker—Steve—was overseeing the initial tech group to stand it up.

I'll go back, and I will show you all the public comments where we identified that any system that does not address the true, beneficial registrant information, that did not address the privacy proxy was fundamentally flawed. And ICANN ignored that advice repeatedly. So the fact that we find ourselves with a system that is not working, duh. Literally, the community's been telling them this for three years. So, shame on ICANN. Sorry.

ALAN GREENBERG: Look, we have a proxy policy that was adopted by the Board, and that would not have addressed this problem because the PDP did not address this problem. That PDP could have addressed this problem but didn't. So we have a policy that is inadequate. And even it has not been implemented. Whether there will be a new PDP to fix this problem, that, as Michael says, is not a new one. It's one we've understood for a very long time. That is where we are.

There has been some discussions of registrars with captive [privacy or proxy] services voluntarily releasing the information if there's a legal

reason to do that. That has been mentioned that some registrars might consider it. It hasn't happened yet.

Michael.

MICHAEL PALAGE:

Yes. So one other thing when we look at this quandary. I guess that's a somewhat politically correct term to use. One of the things that I think is really important for people to realize is part of the challenge here deals with indemnification. So when ICANN was first created and you look back at the original Registry and Registrar Agreements that it had with those parties, ICANN was indemnifying the registrars and registries for policies that they were forced to implement.

Now, what happened is in the early 2000s when the registries went from a limited contract that would periodically be renegotiated and, instead, the registry operators were given, essentially, a contract in perpetuity. During that time, what ICANN did is ICANN said, "Okay, we're going to do this." And part of the quid pro quo was registries began to indemnify ICANN. However, registrars never did it.

And therein lies the problem. Because if a consensus policy is ever passed that is implemented on the registrars and the registrars are sued, they have the ability to go back to ICANN. And thus, I submit to my fellow members on this call, that is why ICANN Legal has a propensity not to do anything. Because anything that exposes ICANN to exposure because of a policy mandated on registrars, they won't do it. And that's why nothing gets done.

ALAN GREENBERG: Okay. This is an interesting discussion, and I think one we want to have at some point about privacy proxy. But that's not this subject. We're talking right now about a project to access data under the current policy. I strongly support the concept of thinking about whether we should have a new PDP and whether it is possible to actually enact change. But that's not today's issue.

MICHAEL PALAGE: I understand, Alan. I just want to identify the root cause. And without doing that, everything else, we're just going to continue to go in circles just like we've done for the last 75 years.

ALAN GREENBERG: If the GNSO Council initiated a PDP and approved recommendations saying that information that a captive registrar has has to be released under the same conditions that they would if they were not through a proxy service, then ICANN Legal would somehow have to live with it and figure out how to make it work. But we haven't had that PDP without those results.

Olivier, please go ahead.

OLIVIER CRÉPIN-LEBLOND: Thank you, Alan. So in our list of work group and small team updates, we've got RDA Scoping Team. Is this doing anything?

ALAN GREENBERG: It is inactive. I was told that the GNSO Council had had some discussions saying we can't keep on postponing this forever, but I haven't heard about it being reactivated yet. Justine's not on the call, so we should bring that up sometime when she's here.

And I'm happy to go on to the SPIRT Drafting Team if we're finished with this.

OLIVIER CRÉPIN-LEBLOND: Yes. Thank you, Alan. I think that you should indeed go to the Standing Predictability Implementation Review Team. Thank you.

ALAN GREENBERG: All right. This one, also, I think I have a very short report, although I clearly was not right on the last one. We now have a Draft Charter. Essentially, staff have put together a boilerplate charter based on what is normally in a charter and based on the Predictability Framework, which we are working to. And the group is just barely starting to review it, so we are progressing. We are still on our timeline to finish within a few months.

The only problem has been that we have had participation problems. We have had very few people attending the last meeting, and very few people have commented on the Google Doc. And if that continues, we are and we do have a problem. But, hopefully, things will liven up soon.

And back to you, Olivier.

OLIVIER CRÉPIN-LEBLOND: Thank you very much for this, Alan. So no hands up on this topic. Hopefully, SPIRT gets up to a to a start at some point. That's it, really, for today's work group and small team updates.

So now we can move over to the policy statement update with—oh, I see my name here and Andrew Chen. And, unfortunately, Avri's voice has gone. So this week, you're not going to hear it from Avri, except if she really struggles. And she is on the call, so she's probably going to jump in at some point, maybe. But I hope that your voice will get better.

So, over to Andrew Chen.

ANDREW CHEN: So just taking us through our policy statement updates. The String Similarity Review Guidelines Public Comment has been submitted. It was ratified recently.

And then there are a couple of open statements. There's currently the Proposed Bylaws Updates to Limit Access to Accountability Mechanisms. And that's been discussed in the OFB Working Group, for those who want to follow along on that topic.

And the ALAC has decided not to provide a statement on the [RSG] Handbook and the Registry System Testing Specification for the time being.

And then that leaves us, lastly, with our Proposed Renewal of the Registry Agreement for the .XXX TLD, which Michael Palage will be presenting on here shortly.

I've noted here that the draft statement will be going out sometime after this call, once it's been drafted and ready for review. And then the hope is to have a final statement well before the closure of this public comment period.

And then we just have a couple of upcoming public comment proceedings, including the IDNs EPDP Phase 2 Initial Report, which is currently being reviewed. And then there's the Registries Stakeholder Group Charter Amendments, which will be talked about in the Working Group.

And that's it in terms of our public comment statements. Olivier, I'll pass this back to you.

OLIVIER CRÉPIN-LEBLOND:

Thank you very much for this intro. Very helpful. And just pointing out the fact that the ALAC has decided to have "no statement" for the Review of the Draft Registry Service Provider Handbook and the Registry System Testing. These are highly technical issues, and we believe that in those topics, the registries and the people directly involved probably know a lot better than we do, especially for their internal systems. So that's why we have no statement.

But if you believe otherwise and you have found something that really stands out, then, of course, it's never too late to put your hand up and

see if this is a user-related issue or end user, or an issue that would touch on end users.

I am not seeing any hands up, and that means we go, then, to Michael Palage, then, for that statement on the Proposed Renewal of the Registry Agreement for the .XXX top-level domain. Michael has an excellent deck.

And Justine, unfortunately, is unable to join us today. So, Michael, you're going to have to fly this one solo.

MICHAEL PALAGE:

Not a problem. Hello, everyone. What you see here is the second presentation. And one of the things that Justine wanted to highlight is there are some positive aspects of the agreement that we will be including in the written statement.

The purpose of today's presentation is to get through those issues that we identify as problematic and get the feedback. And then based upon the feedback from today's call, Justine and I will endeavor to actually have a draft written document that we will intend to share initially with Jonathan by the end of the week and hopefully be in a position to share that via the mailing list early next week so that the group has at least 24-48 hours to review the document before next week's call. So that is the proposed roadmap.

Just two other data points before I jump into the presentation. IFFOR, who is the sponsoring organization with the .xxx domain name have recently, as of yesterday, posted some responses to questions that I and

others have been asking. Justine and I are going through to incorporate that response to make sure that everything is accurate and on point.

I have also submitted a complaint to ICANN Compliance raising some of the issues that you will see discussed here today. As of yesterday, I think it's been nine days, and I have not yet received confirmation. So those are some of the collateral fact-finding that I've been undertaking to make sure that what we put forward is based upon fact. Okay. Next slide, please.

So one of the things that I think I and others heard from the first call was the following concerns. One, that there were some material changes to the .xxx agreement that potentially lowered the safeguards to Internet end users, including children.

The other point that you will see addressed here in the slides is that there appears to have been violations of the Registry Agreement and potential ICANN consensus policy which ICANN Compliance has not yet enforced. Again, this is something we're working with ICANN to get their position on before we write a final statement.

The third concern that we have here is: is this setting a dangerous precedent that potentially will, in fact, basically be rewarding ICM for, basically, their violations? Can I go to the next slide, please?

So the first material deviation that we identified here dealt with the provision of registrant verification. So if you look at the original agreement, Appendix S, Part 4.1, there is a specific contractual requirement that ICM will authenticate and verify registrants.

One of the things I shared two weeks ago was the actual handout that ICM shared with the community during the launch in 2012 that showed the use of a third party where address verification, natural/legal person, e-mail, as well as telephone verification—these were not only verified, but were, in addition, authenticated.

So what happens is, in that original agreement, there was authentication and verification by a third party on these data elements. What is being proposed now is ICM is basically looking to move towards "the registrant represents and warrants." So instead of the obligation being on the registry operator to verify this data, they are now moving to, "We're going to trust the registrar to represent this. And if it's brought to our attention, we reserve the right to cancel the name." Next slide, please.

The problem with this, as I have just noted previously, is the burden went from an affirmative obligation by the registry operator to one now that has switched to, "We're going to trust the registrant to do the right thing." And that just seems fundamentally wrong.

Now, one of the things that I think is important and we as a group should consider is part of NIS 2, Article 28, talks about verification. Literally, what ICM registry was originally doing is meets or exceeds the original requirements of NIS 2 Article 28.

So I actually think—personal opinion here—it would be in our best interest, the community's best interest to hold ICM accountable to what they originally represented and then use that as a learning experience that can be shared with the broader Internet or ICANN community and inform potential future policy development processes. Next slide.

The second substantial deviation deals with website labeling. So one of the aspects that was supposed to be promoting child safety was the labeling of websites in the .xxx zone. So, again, if you go to Appendix S, Part 4.1, you see that there is a specific obligation that IFFOR would contract for the labeling and monitoring. What they are now proposing in the new agreement is, instead of that contract where they are going to be labeling and monitoring, it now goes to, again, voluntary—"may label the sites." Next slide.

The problem with this change is, again, affirmative obligation that now becomes merely, "We reserve the right to monitor." I think this, again, is inconsistent with the original obligations that ICM made to the community in actually obtaining the original registry contract. Next slide, please.

Here, one of the aspects that I had mentioned previously is there were some substantial changes regarding the IFFOR structure as well as funding. Under the agreement, IFFOR has been delegated responsibility under Appendix S. Some of the comments that IFFOR responded is pushing back on this. So, again, Justin and I are going to look at this and take some—we're going to look at this and make sure that the statements we are including are factually accurate.

One of the other things that was noted in the original application was the diverse representation of IFFOR and the fact that they were supposed to receive \$10 per domain name registration. These were all representations made in the actual Registry Agreement, in the original application, or through the application process. What you see now is that, largely, IFFOR is only going to be referenced as one of a number of people

that have consulted. And in the documentation that IFFOR posted yesterday, they acknowledged that IFFOR is most likely going to be wound down and be deprecated. Next slide.

So, again, there's a number of problems here. Before drilling down on these, Justine and I do want to go back and look at the responses that IFFOR has posed. But what you see here are some of the concerns based on the contract as well as some of the 990 tax returns that we have been reviewing. Next slide, please.

One of the other things that is interesting here is that the original agreement required, basically, the chief executive officer to sign off and make an annual certification regarding compliance in all material respects of the agreement. What is now being proposed is a much narrower scope, and they are only agreeing to commit to Section 4 of Specification 11.

And as I just tried to highlight in the previous slides, this means that instead of them doing registrant verification, that's no longer out of scope. Instead of them doing the labeling and monitoring, that is no longer an obligation. It now becomes voluntary. So the ability for the CEO or the executive to certify this, the bar has been substantially lower. Next slide, please.

The question here is: does the lowering of this bar does benefit end users, and is this really the appropriate thing that ICANN should be doing, particularly when we have this outstanding issue of potential compliance issues?

And, again, just to remind everyone, the issue of compliance has to do with: all registries are bound under consensus policy to file what is called an RSEP. An RSEP is a Registry Service Evaluation Policy process. And this means that at any point in time where the registry operator wants to change a business practice or service, they are required to vet this with ICANN. This means when you add or deprecate a service or even change a service.

And as noted in the compliance point to ICANN, when I was working with fTLD in connection with .bank and .insurance, when they changed the registrant verification process, ICANN mandated that they file an RSEP. So the question here is: did ICM file an RSEP when they basically deprecated the prior registrant verification services as well as the membership contact [inaudible]? Next slide, please.

And this is kind of a high-level concern. This slide here is really driven by some of the discussions that I've had with Jonathan and others about, "Mike, why do you feel so passionate about this?" And to me, I really think this sets a dangerous precedent. What we see here is ICANN basically giving a registry operator a Get Out of Jail Free card and excusing previous non-compliance or alleged non-compliance by giving them a new agreement that basically removes those original terms that created the non-compliance. And that just seems wrong.

I think this also potentially erodes the community's trust in ICANN Compliance. And I am hopeful that Jamie Hedlund will be able to respond and answer these questions because I find it odd that it took this public comment period for myself and some others to identify these issues. Yet, ICANN Org/Legal/Compliance has basically been negotiating this contract

for two years. And maybe they addressed these issues. Maybe they haven't.

The other major point, I think, that's worth noting here is in the 2012 round, as many may recall, if you designated yourself as a community application but failed to meet the requirements, the penalties that ICANN imposed on those applicants was, "We are still going to hold you accountable to your Spec 12 community obligations." This is what happened with .music.

If ICANN is letting the sponsored registries walk away from their previous obligations, why then hold the 2012 [failed] immunity applicants to a different standard? That seems to be treating similarly-situated registries in a different legal manner, which I think is inconsistent with what ICANN should be doing.

I think this also sets a dangerous precedent regarding the whole drama that was involved in the .amazon allocation. Again, to be clear, I think Amazon, to date, has complied explicitly with what was represented in the Registry Agreement. But does this precedent allow them at the time of renewal to unilaterally say, "I choose to do otherwise?"

And, Avri, this is something I hope—you know, you and I have talked with—what action here in ICANN taking does this potentially impact the ability for ICANN to impose future PIC or RVC requirements? Next slide, and we're almost done.

And then I guess what happens here is what I call the overall fairness problem. And, Alan, I think you had talked to this two weeks ago when this topic was first addressed that you generally, I think, view the

agreement that we should move towards standardized contracts. And if a particular business model did not [fail], allowing a registry operator to adjust accordingly.

But what I think is problematic here is ICM was only permitted to participate in the 2004 round under the auspices of a clearly-defined community and a sponsoring organization. ICM basically received a commercial first mover advantage over other TLD applicants that had to wait until 2012. And what they are now seeking to do is enter into a baseline Registry Agreement that basically removes a lot of the baggage and that was required as an original condition precedent to them receiving the TLD. Next slide, and I think the last slide, if I'm correct.

When in doubt? Hopefully, through this presentation, I have given at least substantial points on why I think there are concerns regarding the modification of this contract. And in deciding what to do in a closed call, I actually point to the existing Registry Agreement.

Again, Appendix S, Part 1. And in there it says that the "registry operator shall bear the burden of demonstrating that such modification is consistent with the application that they originally submitted." And I submit that they have not met that burden.

And I believe that is the end of the presentation. I will now open the floor to any questions. Alan, you're up.

ALAN GREENBERG:

Thank you. I'll try to be brief, but there's a couple of things I think that are relevant. The fact that they had to commit to these various conditions

in 2004 to get the .xxx domain is factual. The world has changed. And although there were some early warnings about some of the comparable domains in the 2012 round, they were allocated. And they were allocated without all of these conditions.

So given that situation, yes, they did have an early mover advantage. But it is probably not unreasonable to say the world has changed, and those conditions that the TLD was granted under maybe should be changed.

That being said, as you point out, there is an RSEP process to do this. And I consider it completely unreasonable to essentially slip the changes in to a renewal of a contract and not go through the due process of saying, "These conditions we agreed to, we believe they are no longer reasonable. Here's the reason why they're no longer reasonable." That may be economic. That may be a level playing field with other domains.

And they can't bypass that process just because it's renewable time. And that is that rationale is exacerbated based on the fact that, apparently, there has been contract violations that Compliance has chosen not to take any action on. I understand that needs to be verified. I think we want to word this carefully, not implying the changes cannot be made. But if substantial changes are made, they have to be made using the due process, not slipped into a contract renewal.

And I think we need to separate those arguments carefully because there is a process for contractual change, but it should not be able to be bypassed. Thank you.

MICHAEL PALAGE: I'll put it this way, Alan. I will work with Justine to make sure that we properly capture that. And I think, with some of the discussions that we had originally and my side of discussions with Justine, we will probably try to put that up front like, "This is what we like about the contract. We recognize that there is some change." So, yes, we will try to capture that.

ALAN GREENBERG: Yeah. To be clear, the change may or may not be warranted. We haven't gone through the process. But we need to go through that process if there's going to be changed. Thank you.

MICHAEL PALAGE: Okay, Steinar. A revision to the contract. One potentially could argue that. Because what happens is once that new contract is executed, if you look at the redline of the agreement, there is language that talks about striking certain language. So representations made in the original application would then no longer be bound to this second contract. And I think that really goes to Alan's point how this really is a potential whitewashing of previous contractual violations if the RSEP was not properly complied with.

And, John, to your point there. Again, we're responding to John McCormac's comment about changes in the marketplace. I recognize that, and I think, as I had stated approximately two weeks ago, while almost every other 2004 sponsored TLD registry has voluntarily accepted a Specification 12 in the new baseline agreement as part of the contract modifications, there was one exception.

And that one exception was .mobi. And as I think I had noted at the time, the original .mobi business proposal was based upon a BlackBerry—back then, BlackBerry and Razr phones with small-screen real estate. So a lot of what they call their style guides were hardcoded in.

So I would agree, John, there are situations where a business model has changed. I would submit that verifying registrant data and protecting kids from harms through proper labeling and monitoring haven't changed and are still good and should still be supported. That would be, again, my personal opinion.

Are there any other questions or comments? [I don't see]—

JUDITH HELLERSTEIN: [inaudible] hand up.

MICHAEL PALAGE: Who has their hand up?

JUDITH HELLERSTEIN: Olivier.

MICHAEL PALAGE: Olivier?

ALAN GREENBERG: Yes.

OLIVIER CRÉPIN-LEBLOND: Yeah. Thank you very much. One question. Since 2012, the ICANN Bylaws have been rewritten, and there has been an amendment that basically says that nothing that ICANN does—and I'm paraphrasing, I haven't got it in front of me. It's to do with content. Basically, ICANN doesn't have anything to do with content.

How does that impact on this here? Because you're speaking about the labeling and things like that, which have to do with content. So wouldn't ICANN be precluded from even looking at this stuff because it's now not dealing with content anymore?

MICHAEL PALAGE: So, Olivier, excellent question. And this is actually a side discussion that I had with Avri. One of the things that I find interesting is—I'm going to go back to the .music registry contract that was signed in 2019, so after the Bylaw amendment. If you go and you look at Spec 12, there is a specific prohibition regarding pirated material, right? The only way to make a determination of pirated copyrighted material on a website is to actually look at the content.

And if there is, please tell me, but I do not know how one could make a determination of piracy without looking at the underlying content on a website. This was contained in Specification 12 of the [failed] community applicant that they are still bound by, and this was signed after the Bylaws. So why would ICANN Legal allow that term to be included? I don't get it.

So, good question. And I've done the research, and I haven't found the appropriate answer.

OLIVIER CRÉPIN-LEBLOND: Yeah. Thanks, Michael.

MICHAEL PALAGE: So with that, I see no further hands or no further comments in the chat. So what I will do is turn it back to you, Olivier. And, again, Justine and I will work on coming up with a draft comment. And we will endeavor to have it posted via the mailing list early next week to allow at least 24-48 hours before next week's call to expedite it so we hopefully do not have to spend the full allotment of time on next week's call.

So back to you, Olivier.

MICHAEL PALAGE: Thank you very much, Michael. As we actually have a bit of time, I had a follow-up question just on this specific topic because you have answered my question in mentioning a discrepancy that we're seeing in another contract. If that's the case—and I'm not, by the way, saying it's a discrepancy. I'm just saying it's perceived, what could be, perhaps, maybe. Who knows? It looks weird. It looks strange.

But if one looks at it this way then, no matter what one is looking at now, surely if .xxx lawyers were not an agreement, they could actually [prey] on this and say, "No. Actually, you guys are going against your own Bylaws," saying that, effectively, we're putting together a statement

that's not really going to be helpful because it's not something that ICANN is going to win if it gets challenged.

MICHAEL PALAGE: I was trying to dissect that again. So you're saying as part of these negotiations, Go Daddy's attorneys wouldn't be arguing what?

OLIVIER CRÉPIN-LEBLOND: They'd be arguing that ICANN is actually breaking its own Bylaws by dabbling in content [inaudible].

MICHAEL PALAGE: Yes.

OLIVIER CRÉPIN-LEBLOND: And even if the contract does get signed or whatever or does get pushed over the registry, they might turn around and break it because of that.

MICHAEL PALAGE: So responding to that, Olivier, I have two comments. One, the changes regarding registrant verification have nothing to do with content. So that, to me, is one of the big issues and one of the potential true learning experiences that potentially could give back to the ICANN community. That has nothing to do with content, and I don't understand why ICANN is potentially walking away from that. Number one.

Number two, I believe that the contracting parties have been unreasonably waiving the content flag. I think we are all in agreement. It is not in the Internet community's best interest to have ICANN mandating content through the policy development process. That is not a good idea.

But I believe the absolutism that some contracting parties are taking do not fly. And I raised this question with Becky Burr during the ICANN79 meeting. If you look at the UDRP, the UDRP talks about the registration and use of a domain name. In order to determine that there has been a violation, you literally need to look at the content.

So if ICANN is going to be-all-in absolute is that we can't do content, then the UDRP is violative of the ICANN Bylaws, and the UDRP should be suspended. Now, is ICANN going to—

OLIVIER CRÉPIN-LEBLOND: Playing devil's advocate, that's your point of view. But has this been established?

MICHAEL PALAGE: So I would go a little further than it's a viewpoint. Again, please tell me how you can determine, through the registration of use, the bad faith of the domain name without looking at the content? I will agree there are some UDRPs where the mere URL alone will give an indication. But what panelists always cite—and I can pull out numerous opinions—they literally have to look at the content on the page to determine whether that is a fair use or whether it's bad faith.

I would love for someone to tell me how you can make a determination without looking at the content on the web page. And now have [Greg]. Well, let's go to a—

OLIVIER CRÉPIN-LEBLOND: [inaudible].

MICHAEL PALAGE: Greg, as a fellow IP practitioner attorney, please explain to me.

OLIVIER CRÉPIN-LEBLOND: Greg Shatan.

GREG SHATAN: Mike is absolutely correct that the UDRP depends on a capacity to review content—or at least to look at content, I should say—in the context of use or abuse of a domain name. And that's pretty facially obvious.

It's important to look at the actual words of the Bylaw. It doesn't say ICANN can't "do" content. It says ICANN can't "regulate" content. And then it goes on to explain that regulation means the unilateral imposition of a rule on content. I don't have it in front of me, so I'm not getting it exact. But it definitely talks about regulation, and it definitely mentions unilateral imposition.

The agreements relating to the content are not regulation. Something that doesn't actually get into, essentially, content moderation that per se is not regulating content either. The intent here is to avoid ICANN making

rules about what content can and can't exist on its own initiative. There have been many attempts, and not just by the contracted parties.

The actual discussion, which I was closely involved in back in the Transition, which is almost 10 years now. I was very closely involved in those. Every word there was hammered out between people of very different positions to end up with something that everyone could live with. And that didn't take down the UDRP, and it didn't completely make ICANN just completely on the technical layer.

So I think it's pretty unassailable. I mean, around the edges, there's plenty of assailing and those, of course, who would like ICANN to have absolutely nothing to do with content or will try to bully and expand what it says. But what it actually says is not that broad. Thanks.

MICHAEL PALAGE: Thank you, co-councilor. Thank you, Olivier.

OLIVIER CRÉPIN-LEBLOND: Yeah. Thank you. Thank you, Greg. And thank you, Michael, for this. But you're mentioning the UDRP as if this was an ICANN-run process. But it isn't. It's an ICANN policy. But the providers of the UDRP are external. They're the WIPO, etc. They're external organizations, aren't they? They're not ICANN itself.

MICHAEL PALAGE: Yes. And this gets down to when ICANN could delegate responsibility. And, Avri, maybe, I don't know if you want to speak to this. I thought you

did a pretty articulate job of explaining some of the dynamics regarding when ICANN outsources some of these policy determinations. Would you like to speak to that now? Or I could, again, gather this and prepare this for a future presentation.

AVRI DORIA: I'm not sure I could speak very well. I could type something, though.

MICHAEL PALAGE: Okay. Well, yeah, you definitely sound like you're under the weather, so I do not want to stress this.

Olivier, I think we can do that in a future call.

MICHAEL PALAGE: Yeah. As I said, for now in between my multiple day jobs and my volunteer work here, I would really like to use my free bandwidth this week to work with Justine to nail down the draft comment and perhaps this broader issue of content. I think it is something. It's not going away.

And just to show you where it's potentially even going to be problematic looking at TLDs such as .arab, [.challa], .hebrew—or what is it? .kosher, I think, is another TLD. In a number of these TLDs, it is fundamental to the registry operator to regulate what is happening on the domain names on their TLDs. And to sit there and deny them that opportunity to express that contractually or allow them to enforce that contractually, I think is a very dangerous slippery slope. And, again, I'll leave it at that.

OLIVIER CRÉPIN-LEBLOND: Thank you very much for this, Michael. We look forward to your follow-up on this.

Greg, do you still have your—no? Yeah, you still have your hand up.

GREG SHATAN: Yeah, just briefly. And we can revisit this at more length. But the fact that there are third-party operators involved in the UDRP is really irrelevant to the analysis. The UDRP rules themselves are created and administered by ICANN. We're looking forward to very much doing that in RPM Phase 2.

And the issue is not that ICANN can ask third parties to regulate content. It says the UDRP is not a regulation of content. And neither is it problematic that ICANN, in agreement, is agreeing that operators of registries can regulate the registries, and that if they fail to abide by their contractual obligations, that the other party to the contract (i.e., ICANN) can enforce the contract. None of that is in any way constrained by the Bylaws with regard to the regulation of content, which ICANN can't do.

OLIVIER CRÉPIN-LEBLOND: Okay. Thanks very much for this additional information, Greg. And, yeah, we'll look forward to Michael's follow-up on this. And we'll no doubt get to revisit the discussion in a future call of the CPWG.

That takes us to the last agenda item on today's agenda, and that's the—well, the penultimate one, of course—the agenda Item 6, Any Other Business.

There is one item of Any Other Business which was supposed to be provided by Justine Chew. But, unfortunately, an emergency has made it that she can't make it on today's call. But Andrew is thankfully able to take over on this. So, Andrew Chen.

ANDREW CHEN:

Thank you, Olivier. So the AOB item here is about Latin diacritics. And so, essentially, what's happened is the GNSO Council has been informed by ICANN Org staff that the diacritics issue has been studied and that it'll be discussed further on April 18th. Essentially, staff has indicated to the Council that there's a way of dealing with the diacritics issue, and it's regarding the String Similarity Review, and that there are still some String Similarity Review recommendations from the SubPro report that may be impacted by the diacritics issue.

And so for additional information about the diacritics issue, we suggest going and sitting in on the April 18th GNSO Council meeting where they will discuss diacritics.

OLIVIER CRÉPIN-LEBLOND:

Yeah. Thank you for this, Andrew. And, in fact, Justine has also sent me a few notes that she's asked me to share with everyone here. Her point of view is that she doesn't know if there's sufficient support for this because

it's likely to delay one set of SubPro supplemental recommendations from being approved by the Council and forwarded to the Board.

And that particular set on the SubPro Supplementary Recommendations on String Similarity is one which the Board may reject altogether anyway. So depending on what the Council decides—and you rightly mentioned about this forthcoming call—if it were to go back to the Small Team plus some more work, then Justine would recommend Jonathan and the ALAC to put Bill Joris on a Small Team Plus, as the subject matter experts. But it's a developing situation and will no doubt have further updates in a future CPWG Call on that.

Any other "other business?" And I see Greg has his hand up. No? Greg has his hand down. And Bill has acknowledged, yes, "Please keep me informed on that." Indeed, you will be involved.

And I think that, not seeing any other hands up, that takes us to the end of this call. First, we have to find out when our next call will take place, please.

CLAUDIA RUIZ:

Hi, everyone. Our next call is next Wednesday the 17th of April at 14:00 UTC. Thank you.

OLIVIER CRÉPIN-LEBLOND:

14:00 next Wednesday the 17th in our usual rotation. I hope it doesn't conflict with other calls. I do remember the last time there was a conflict. But I understand the other calls have been moved around, so I'm thankful that this has been resolved.

And I think that takes us to the end of today's call. So, wanting to thank, of course, interpreters for the great work. And, of course, the transcription as well, the transcriber.

A "get well soon" goes to Avri Doria, my co-chair, whom you've heard earlier has got a terrible, terrible voice at the moment. So, hopefully, by next week, you'll be back to singing performance.

And when it comes down to those people that are celebrating today's Eid, which is the end of Ramadan, I should say Happy Eid or a Blessed Eid for those people that are celebrating this. And for everyone else, then have, in any case, a very good morning, afternoon, evening, or night wherever you are.

Thank you and goodbye.

JUDITH HELLERSTEIN: See everyone tomorrow at the OFB call at 14:00 UTC.

OLIVIER CRÉPIN-LEBLOND: Thank you, Judith.

CHERYL LANGDON-ORR: Bye.

CLAUDIA RUIZ: Thank you. The meeting is adjourned.

[END OF TRANSCRIPTION]