OLIVIER CREPIN-LEBLOND:	Good morning, good afternoon, and good evening everyone. This is the ALAC briefing call on the 2013 RAA. Today is the 18th of March, 2013 and the time is 15:39 UTC. I will just immediately let Gisella take us through the housekeeping notes.
GISELLA GRUBER:	Thank you Olivier. I'd just like to remind everyone that on today's call we do have Spanish interpretation so please be so kind as to state your names when speaking, not only for transcript purposes, but also to allow our interpreters on the Spanish channel to identify you on that channel. In order to avoid any background noise please use *6 to mute and *7 to unmute. The recording of this call will be available shortly after the teleconference. The transcript will be available within the next 48 to 72 hours. Thank you. Over to you, Olivier.
OLIVIER CREPIN-LEBLOND:	Thank you very much Gisella. On the call today we have Margie Milam and Samantha Eisner who will be revealing the proposed 2013 RAA. We also have James Bladel and Matt Serlin from the registrar negotiating team who will be providing us with some information on their point of view and their side. We also have Alan Greenberg who is an ALAC member and ALAC liaison to the GNSO who will be providing us with the At-Large perspectives on the RAA.

Without any further delay, I hand the floor over to Margie Maryland, Senior Director of the strategic initiatives at ICANN and Sam Eisner, who is a Senior Counselor at ICANN. Margie, I believe you are starting first. |
| MARGIE MILAM: | Sure, hi everyone. We published for public comment about a week ago a series of documents related to the 2013 RAA. These documents stem from a series of negotiations that we've given you highlights of over the last two years that really bring to conclusion some of the issues that we've been talking about in the past and also address some new issues that have been included in these documents. |

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Rather than go through a point-by-point discussion of it we thought that the best way to handle this would be to open it up for questions from the At-Large participants to see what areas specifically you'd like to have addressed and we'd be happy to address them. And then we'll spend some time also to talk about the registrant rights and responsibilities document. I think that's probably an area that you have a lot of interest in, given your past work in that area. How does that sound?

OLIVIER CREPIN-LEBLOND: Thanks Margie. I think it's a good idea, but I think perhaps just a background and a couple of points on the key elements and key changes would be helpful for this community. I know that the RAA public comment has been open for a short while. I'm not quite sure with all of the work that we've had to do that the community here is well informed enough as a whole so as to be able to ask you specific questions right there and then as a starter. So first, just a background would be absolutely welcome.

MARGIE MILAM: Sure, sure. Essentially the documents that we posted prior to the Beijing meeting, just to be clear, are not fully agreed to documents. Matt and James from our registrar negotiating team can also highlight that perspective as well.

Essentially where we reached a point of publication we came to the conclusion that a lot of these issues that we were having difficulties with, we talked about several times, have heard each other's perspectives very clearly, but felt that it was an appropriate time to seek community input. So that was the benefit for the publication about a week ago to really try to get some input from the community on how to resolve some of these issues.

When you take a look at the documents, and there's a tremendous amount of information that's published there; that's why it's difficult to summarize in any short amount of time the main points. Just so you know, we've published a proposed 2013 RAA. It's red-lined against the 2009 RAA and the one that we published back in June. So that can give you a snapshot of where the negotiations have evolved.

We also published all of the specifications that have been proposed. Some of them are still being negotiated and negotiations are continuing during the public comment forum. Just so everyone is clear this was not meant to be a static document. We're certainly trying to make closure on the initial items where we can during the public comment forum.

Sam, do you want to highlight some of the issues that have changed recently?

SAMANTHA EISNER: For those of you that have been following the RAA negotiations through the path that we've been taking since October 2011, you'll notice that many of the things that we've discussed have been repeated throughout the times that we've presented to the community.

When we came back to the table we did have a few additional asks that we requested to have the registrars consider. We had some additional ideas on enhanced compliance tools that included clarifications on the ability for ICANN to request documentation from registrars, as opposed to relying solely on ICANN's ability to present themselves at the registrar's place of business for the copying of records.

Another thing that we have been working on with the registrars, and this is a place where we still have further discussions with the registrars that we anticipate on this issue, is trying to identify some minimum thresholds of activity that we could expect to see from proxy and privacy services that the registrar offers through its website essentially during the registration process. At times they'll see that when you go to register a domain name through a registrar they might offer you as a portion of your registration process the ability to use a proxy or privacy service.

If we were to identify some standards of practice that could be applicable to those we know that throughout these negotiations and throughout the law enforcement recommendations we heard requests for some proxy privacy work to be done. Those would be minimum standards and then there would be further work done on a proxy privacy accreditation program or some other formal mechanism through which ICANN would seek to oversee the behavior of proxy privacy services a bit more broadly.

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Another item that you might have seen is the inclusion of a statement of registrant rights and responsibilities that is now recommended as a specification to the document. I know within the At-Large community after the 2009 RAA was agreed to the At-Large community in particular was very active in trying to create a statement of registrant rights and responsibilities. The item that is posted within the RAA is a bit different from that actually.

What the registrant rights and responsibilities specification is within the document, or within the RAA today is an attempt to very easily and in very summary form identify some specific and very important rights as well as responsibilities that fall both to registrars and to registrants. Each of these items actually are within the RAA, so R3 document (as we've been calling it) isn't a standalone document in the sense that it doesn't create new rights or responsibilities, or it's not separately enforceable against the registrars. It's actually a summary of items that come from the RAA itself as we've been negotiating it and is a key component of it.

I think once you see it you'll notice that it is actually in very easy language to read. It's less than a page and we think that it's actually a great tool for education and complete understanding for the registrants to really see how they are forming a relationship with their registrar. I think that those are some of our really key areas where we've had some changes since the last time that we spoke with the community about this in Toronto.

OLIVIER CREPIN-LEBLOND: Thank you very much Samantha. Any other thoughts, Margie?

MARGIE MILAM: I guess in the documents that we posted we also maybe want to bring to your attention that we've highlighted some areas of differences. So as you're preparing your comments to the postings we recommend that you take a look at those questions and perhaps provide input on them because that's really where it would be useful to us to help conclude the negotiations.

I'll give you one example. One of the registrar requests has been to eliminate the Port 43 access, but only where there are thick registries. In other words, since thick registries have the obligation to publish the entire WHOIS record of the thick information that the registrars have asked that they no longer have that obligation. That's something that we felt that the community could weigh in on as to whether that would be an appropriate accommodation to the registrar request.

And just to point out that if you take a look at the documents and files there has been tremendous progress in the WHOIS-related obligations. For example, there's a specification that includes a validation and verification of certain WHOIS fields. That's in there and that's a change from today. There's also another WHOIS specification that has SLA requirements, service level agreement requirements that relate to the Port 43 access for thin registries where registrars would be continuing to provide that information.

So as you look at the documents that are posted for public comment we suggest that you look at it from a holistic perspective because there are a tremendous amount of improvements with respect to access and accuracy related to WHOIS. That's just one example of an area where it'd be useful to receive comments from At-Large and others in the community. I think that's essentially what I wanted to highlight.

OLIVIER CREPIN-LEBLOND: Okay, thank you very much Margie. So now I think that we can have our next speaker from the proposed RAA negotiating team on the registrar side of things. Matt Serlin, I believe you're on the call.

MATT SERLIN: I am indeed, along with several of my colleagues, so I'll start things off. First of all, thank you for setting up this briefing today. I think it's a good sign for us that your community is obviously very much interested and has a vested interest in the outcome of these RAA discussions. I appreciate everyone's time to discuss this today.

I think what it probably makes sense to do is to start with the last topics that Margie and Sam discussed, and we'll kind of work our way backwards; because at least in my mind that's what's most fresh from what they discussed.

I just want to clarify a little bit on the Port 43 WHOIS requirement. What the registrar position is essentially is that in the world of thick WHOIS where the registry is the authoritative WHOIS server, the registrar providing WHOIS information in addition to the registry actually is redundant. What the registrars are proposing is where a gTLD is a thick TLD that the registrar would not be obligated to provide Port 43 WHOIS information. Anyone using a Port 43 WHOIS service would simply query the registry's authoritative WHOIS server.

It's our position that that doesn't really take anything away from accurate WHOIS information. It doesn't take anything away from access to that information. Really it's just a question of where that information is authoritatively coming from.

In the environment we have today frankly very few people would even know to query a registrar's WHOIS service for a thick gTLD. So that's really the goal of what the registrars are asking for. It is not in any way, shape, or form to limit or to take away access to WHOIS that exists today. I just want to make sure that that's clear for folks.

Moving back again to what Sam termed the R3 document, the registrant rights and responsibilities, it's a really good example of, I think Sam said there were a couple of things that ICANN staff in this last round of discussions came back to the registrars with to consider. There were actually, I think it was 10 or 12 additional things. This is on top of the dozen or so law enforcement things that were considered and the GNSO items that were considered. This is a matter of weeks ago that we were presented with this stuff and the R3 document probably being one of the biggest ones.

Number 1, is one where frankly we were actually able to work together and turn it into a document, which I think actually achieved the goal that it set out to, which is a sort of plain-spoken document that actually a lot of work went into frankly to remove a lot of the legalese language that it initiated with. We turned it into kind of a more spoken document that can be easily translated into different languages and used throughout the world so that people (both registrants and registrars) can understand their rights and also what the responsibilities are.

You will notice that the number of rights outnumber the number of responsibilities, but there are some things in there that we thought it

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was important to highlight. I would definitely say that that is probably one of the key addendums or annexes.

I think someone pointed out the other day that in the public comments session there are 17 different documents up for consideration. I would strongly suggest that that's one that the community really spend a hard time looking at and understanding that that is a document that will be presented to every registrant of a domain name if it moves forward.

Then really just back to the sort of starting point of the staff's discussion, where we are, and the general status of negotiations. I think I'll maybe give my perspective and then I'll let James kind of speak up and add his thoughts as well; or either Jeff or Volker are on as well.

I think we the negotiating team were definitely reluctant to post the documents at the time that we posted them. I think it's our sense that had we continued to work on the items that were outstanding… and really the items that are outstanding are few and far between. I mean, we've been at this for almost two years and the registrars really have…

If you remove the items that are still up for discussion, and I think there are somewhere between a half dozen and 8 or 10 of them. If you remove all of those the RAA that that would leave you with is still drastically different and raises the bar for registrars entering this marketplace over what we have today.

I think it was our hope that had we continued to work on some of these things that we really could have gotten to a "fully negotiated RAA", but I think ICANN wanted to have the documents up and out for review before Beijing. So they have gone that route and we obviously continued to be available to staff to negotiate these remaining points and we actually hope that the posting of the documents can shed some light on what these outstanding items are.

It's our hope that the community support in addressing the… especially for us the biggest issue from our standpoint is the Board amendment process. I know there's been a lot of discussion in the community when this was first released in the registry agreement. It's our hope that that's an area where the community really can continue to voice their objection to the Board amendment process and their support for both the registrar and the registry position on that; in addition to some of the other items that are outstanding as well.

I guess with that I'll see if James or any other members of the negotiating team would like to speak up as well. Thank you.

OLIVIER CREPIN-LEBLOND: Thanks very much Matt. Just one thing before I ask if James or other members of the registrar would want to speak, because they're all muted at the moment, so we would have to unmute them.

But you mentioned the R3 paper. In this community I'm sure you must have been aware that there was a paper that was written by the Future Challengers working group and that was presented for public comment. It was also entitled "R3". Is there any chance of changing the denomination of the registrar rights and responsibilities document to something other than "R3"?

MATT SERLIN: Yeah, absolutely. Actually I think that was one of the areas that we had had some back and forth discussion on because it definitely is confusing the way it is termed right now. So I would say absolutely that there is definitely an opportunity to change the naming of it.

OLIVIER CREPIN-LEBLOND: Okay, thanks very much Matt. You mentioned maybe James Bladel might be interested to add a few more things, or anyone else in your team.

JAMES BLADEL: Yes.

OLIVIER CREPIN-LEBLOND: Okay, who is the 'yes'?

JAMES BLADEL: That was James. I'm sorry, I didn't know if I was on mute or not.

OLIVIER CREPIN-LEBLOND: You've been unmuted James. Welcome and you have the floor.

JAMES BLADEL: Thank you very much. I guess I would echo Matt's thanks and gratitude towards ALAC for putting this together. I think that both Samantha and Matt did a fairly good job of providing a synopsis of where we are and what some of the outstanding issues are.

I would note that while the R3 document conflicts name-wise with the document that you've linked to in the chat room, it also in some respects conflicts substance-wise with the community documents that registrars posted to their websites last year. So I think we definitely have this effort now as a community to try and reconcile or synchronize those documents, or harmonize I think is a word that people are using a lot lately, to make sure that they are not in conflict with one another.

But overall I would say that we as registrars are very pleased with the draft RAA and we were in Toronto as well. The draft 2013 RAA that was presented in Toronto (it was actually I think being called the draft 2012 RAA at that time) was leaps and bounds ahead of the 2009 version and was, we believed, going to significantly raise the bar for the participants in the industry as well as give ICANN compliance tools necessary to force meaningful self-government of this phase.

I think it's fair to say we were a little caught off guard by the additional requirements that were added in the January meeting, but we have I think recognized with the R3 document and some of the other provisions that they weren't completely off the wall. Maybe the timing was a little unexpected, but the substance and the merits of the issues were not terrible, and we worked very hard I think to incorporate at least the intention behind all of those.

I would emphasize that the few items that we do have remaining were accurately covered by Matt and by Sam. The Port 43 issue I think is one with a potential of confusion. As Matt mentioned we want to have one authoritative voice when it comes to WHOIS queries. If the registry is an authoritative depository for that information then we want their WHOIS to be that voice, and we certainly don't want to have multiple sources for that; some of which may be stale due to caching or recent updates that aren't reflected. So I think that there's a potential for confusion that we're trying to eliminate with the Port 43 obligations.

I agree that we have some work to do with the privacy and proxy specification, but I would point out that we are much more, from a registrar perspective, much more hopeful in the PDP process that we were talking about putting together a more community-led accreditation program for the service providers so that we could establish the parameters for such a service and bring those folks into the ICANN umbrella, as opposed to just kind of putting some stop-gap stuff into a contract. We really wanted to see instead that there would be a comprehensive push towards an accreditation program. We'd like to see those efforts directed to the direction.

With the amendment clause, I think that Matt has highlighted our concerns there. It is very encouraging the voices that we've seen on this issue almost unanimously and across all of the segments of the community coming out to say that this is an area of concern. It could be a destabilizing factor in the agreements with both registries and registrars, so we would welcome questions on that as well.

But it's important to think that all of this stuff that we're wrestling with here, yes we are commercial businesses, but we are doing so on behalf of our customers, many of whom have chosen us or have voted for us with their wallets and are counting on us to stand up for their interests and their needs as well. What happens in the RAA is not necessarily a good avenue for separating good and bad service providers. Unfortunately it kind of hits all of them equally, some of with are larger and able to absorb those changes a little more readily.

I represent a fairly large organization, but some could be smaller, more niche-oriented, or boutique-oriented service providers, or are serving specific markets, languages, or portions of the world. They may not be able to readily absorb some of these changes, so we're thinking of them as well. That's the challenge, I think, of the registrar negotiating team that we have a very broad spectrum of interests and folks that we're trying to look out for.

So I look forward to your questions, but otherwise I think Samantha and Matt did a very good job of articulating all of the issues. Thanks.

OLIVIER CREPIN-LEBLOND: Thank you very much James. Now we have the next person on the agenda, that's Alan Greenberg, who is our ALAC liaison to the GNSO to

provide us some At-Large perspective. Then afterwards we will open the floor for questions and answers. We have some time in front of us, so let's go over to Alan Greenberg. You have the floor.

ALAN GREENBERG: The answers will effect what I say to some extent. The first question is actually being discussed on the chat as we speak regarding Port 43 for a thick registry. Currently in the RAA, is there any requirement as to who's information the registrar provides? That is, in a thick registry the registrar has a copy of the information, as does the registry. Conceivably they could be out of sync. Is there any requirement in the RAA that the registrar present the registrar's version or the registry's version? Or, is it up to the implementation?

MARGIE MILAM: This is Margie. I'm sorry, Sam had to drop off the call. I'm not in the legal department, but I'm not aware that the contract is that specific that it has to be the registrar's information or the registry information. I don't know if Matt or James have a different perspective on that.

ALAN GREENBERG: That was my understanding also, but I wanted to verify. Does anyone disagree?

OLIVIER CREPIN-LEBLOND: Alan, I've got Michele Neylon who has put his hand up. He might wish to reply to this. Michele?

MICHELE NEYLON: Thanks Olivier. It is our understanding that we have to provide the WHOIS records. There's nothing that I'm aware of in the contracts that specifies which set of records. But as I was saying in the chat they should be pretty much identical.

ALAN GREENBERG: No, I understand. I just wanted to have that clarified. Thank you.

MICHELE NEYLON: Just to clarify Alan, somebody else has asked why we just don't redirect the queries. It's our understanding from previous conversations with ICANN that they expect us to provide our own and not just redirect. Maybe somebody else can speak to that. I can't.

ALAN GREENBERG: Thank you. The second question, again if Sam is off I'm not sure who can answer, but I'll ask the question anyway. On the specifications which are now documents that are essentially attached or associated with the RAA, it is unclear from anything I've read in the documents how those are to be amended or when they take effect if they are amended. Can anyone provide any insight into that?

MARGIE MILAM: Matt, do you want to answer?

MATT SERLIN: Well, let me take my crack actually Margie and then you can agree or disagree. It's a good question Alan and it's a question that we have raised as well.

There are a couple of points. Number one is, I don't know if it was posted or not, but there is a document in progress that's a sort of transitional document that would actually list out the items in the new RAA including all of the specifications. The thought there is that we would identify whether it's a set period of time or a certain date in time when those specifications would become enforceable once a registrar would sign a new agreement. For example, they have a certain period of time, let's just say six months from the point they sign the agreement to the point that all of those specifications become enforceable.

ALAN GREENBERG: Yeah, I was more asking the steady state afterwards.

MATT SERLIN: Yeah, so then my understanding afterwards is that the specifications would be amended in the exact same manner by which the contract itself would be amended. There is this notion of the registrars voting and pushing forth amendments to the agreement, and then obviously

there is still discussion about the methods in which ICANN has the ability to amend the contract as well. But that's my understanding, that everything in the specifications would be amended just in the same manner by which the contract would.

ALAN GREENBERG: Which implies that they don't affect a given registrar until they sign a new RAA?

MATT SERLIN: Correct. Margie, do you have anything?

MARGIE MILAM: Yeah, that's how I read it as well that the specifications are attachments to the RAA and essentially because they are an attachment to the RAA they get amended the same way that the RAA gets amended. Then Matt's also correct to pinpoint that we've heard the registrar's concern that some of these changes may require a little more time to implement, so what we've done is we've posted in the public comment forum a transitional document that would essentially allow for a phase-in of certain obligations.

We haven't clarified which ones those would be. That's something that additional work would need to be done on, but the concept is that even if the new agreement is signed there would be a transition period to be able to come into compliance with some of the newer obligations that have significant operational impact.

ALAN GREENBERG: Okay, thank you Margie. Alright, back to…

OLIVIER CREPIN-LEBLOND: Alan, can I just remind you please to state your name before you speak because a number of times you've just spoken and the interpreters can't really make sense in Spanish.

ALAN GREENBERG: First a disclaimer, the comments that I'm making are mine. ALAC has not had an opportunity to really discuss this and come up with a community position. So anything I'm saying from here on is definitely my position and not necessarily ALAC's or At-Large's.

The first statement I'll make is the improvement in the RAA is hard to overestimate. It is just so much clearer and cleaner with things actually defined with some of the more convoluted, circular provisions removed and replaced by things which are easy to understand. As a base to work from it's just, I won't say infinitely better, but it's close to that. The previous RAA was almost impossible to understand and there is a somewhat better chance in this new one; with one exception, and I'll get to that in a moment.

A couple of things which are noteworthy are the clear definition of 'reseller' and specifications of what resellers and similar types of entities can and cannot do, and the responsibilities of the registrar if they have that kind of relationship. I think in most of the areas that ALAC has had significant concern this document is a much better base. Exactly how well it addresses all of our prior demands and requests I'm not sure, but it's just a so much better base to work from.

Regarding the unilateral change provisions, which as everyone has pointed out have been controversial, I suspect ALAC is going to come out for them. The reason is, and that's one of the reasons I asked about the specifications, the way the documents read it almost seemed as if the specifications could be changed on the fly and would apply, and therefore affected registrars immediately. If that is not the case, there needs to be some escape clause.

I am probably as uncomfortable with the current implementation even though there are some checks and balances in it as many people are. On the other hand, as the world changes five years is a very long time. Five years plus the time it takes to negotiate a new RAA or to implement a new RAA regardless of the mechanism is a longer time, perhaps seven years. There needs somehow to be a way to do things in a quicker path, as there is with things that are within the proverbial picket fence, things that are subject to consensus policies. And I think that there needs to be similar clauses in the other areas.

I won't pretend I know how to write them and I'm not totally happy with what's there today, but I believe that there needs to be some level

of provision like that. I don't have a lot of other specific comments. As I said, the overall document is still complex, but it's a lot clearer than the previous one was.

I do have two questions which came up as I was reading it. The first is I'd like to hear how ICANN is planning to implement this RAA. The current RAA, which we're running under, has some very convoluted statements that are interpreted differently by different people.

The last go around for the 2009 RAA, the clauses were read such that the GNSO had to approve the new RAA by a two-thirds majority before it can be enacted by the Board. The question is, are we still running under those game rules? Or, is there some other methodology that has been agreed to by all parties?

The reason is relevant not only because of the unilateral clauses to amend, which clearly half of the GNSO would object to, but the GNSO also was of the opinion last time that it did not want to be given an RAA that was negotiated and discussed outside of the GNSO and asked to rubber stamp it. So I'm quite curious, what is the game plan for amending the current RAA to get this one in place?

The second one is a question. I note that the ERRP, the result of the PEDNER PDP has not been incorporated into this RAA as, for instance, the EDDP was in the last version. On that basis I take back some of my compliments about easy to read because the ERRP completely changed some of the provisions in the RAA and in the text they're still there. That makes for about as much obscurity and opaqueness as I can imagine.

So at some point, whether immediately or later on in the call, I would appreciate the answers to those questions. But those are my only comments. Overall it's a breath of fresh air which still clearly needs some work, but much better than what we've seen before. Thank you.

OLIVIER CREPIN-LEBLOND: Thank you very much Alan. I have received a request through another channel. Volker wanted to have the floor for a moment. Volker Greimann? You might be muted. Is it *7 to unmute?

GISELLA GRUBER: Yes, *7.

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VOLKER GREIMANN: Can you hear me now?

OLIVIER CREPIN-LEBLOND: Yes, we can hear you now Volker. Go ahead.

VOLKER GREIMANN: Thank you very much. I'm sorry I couldn't raise my hand. They disconnected the office line to reboot for some security measures. I first of all wanted to thank Alan for his praise so far and point out that it won't be seven years until we have the new RAA. We started negotiating before the current RAA expires, so we're hoping to be able to renew under the new RAA. It's more like five years for the next iteration of the RAA to come into place.

                         Actually one point that you raised was something that we've been very keen on as well. As you may know there are still registrars under the 2001 RAA. That has been one of our asks to ICANN from the very beginning to get some form of assurance that these new rules will be applied to all registrars, or at least the large majority of all registrars at the same time to not create an uneven marketplace.

                         For that reason we have also worked very hard to get some amendment language into place which would allow us to amend the entire RAA for every registrar under it at the same time. So, if there is something new to be changed in the RAA it can be made applicable to all registrars under that RAA and not require a new negotiation and a difference in adoption by all registrars at the same time.

                         Regarding the ERRP, you must recognize that we started negotiating the RAA two years ago. Back then the results of the ERRP weren't there yet. I agree that we may have to look at those again and change the language accordingly, but we wanted to get to the finish line as soon as possible so we at that point did not go into the new policy development. But I agree, it would be a good idea. Yeah, that's mainly my point that I wanted to raise.

OLIVIER CREPIN-LEBLOND: Thank you very much Volker. Back to you, Alan Greenberg.

ALAN GREENBERG: Thank you. Thank you Volker. I have comments on your comment. If indeed one were to find in the RAA an ability to renegotiate a new one and everyone starts using it immediately even though the five years have not expired, that would remove a significant part of the need or the desire for the unilateral change.

If you say you want to make a change it is negotiated and then there may be registrars who sign a new RAA the day before the new one comes into place. It could be as much as seven years or so. So if in fact everyone could agree on methodology to change the RAA for everyone at the same time once it's agreed to that would significantly alter the position of some groups on the unilateral change provision.

In terms of the ERRP, the reason I asked the question is I was explicitly told by ICANN staff that there is no intent to roll it in and that it will always stay as a separate document. That's what drove the question, not just why isn't it in the version that came out today. Although I will note that the Board approved the ERRP provisions a year and a half ago. But nevertheless, I was told explicitly that they would not be incorporated, which looks like a recipe for confusion. Thank you.

OLIVIER CREPIN-LEBLOND: Thank you very much Alan. I now have a cue already. James Bladel.

JAMES BLADEL: Thank you Olivier. Hi Alan, how are you?

ALAN GREENBERG: I'm getting better.

JAMES BLADEL: I wanted to just respond real quickly to two issues that you raised. Real quickly I wanted to point out that I hadn't thought of the issue of the new policy versus the RAA. I think it is probably okay that that remain as a separate document, however I think I agree with you that we need to go back and make sure that any expiry provisions that are hard-coded into the 2009 RAA are struck so that they don't conflict with this new policy.

I think you may have hit on something there that is kind of another to-do list or box that has to be checked before this thing can be born. I think that we probably also need to go back and do that with the RAs for the various registries because there may be conflicts that were not anticipated there. So thanks for bringing that up.

I think it is okay for that to live in a separate document, but I think that it does create a little bit of homework for us in that we have to make sure that we're not contradicting ourselves in two documents that are supposed to be binding.

Then the second thing that I wanted to point out is that you were mentioning that you would feel a little more comfortable with removing the unilateral amendment if there were other mechanisms for making level-set changes to the RAA simultaneously. I just wanted to point out, and some of this probably echoes what was discussed in a staff document, that there are right now two mechanisms to make those kinds of changes that you described.

The first is a PDP, which we all know, love, and recognize as the appropriate bottom-up, multi-stakeholder (and throw in all of the other good adjectives) mechanisms that we know and love. But it does take a little bit of time, it is slow, and it can be contentious. I think that I certainly do working on the PDPs that I Chair is to make them a little more efficient so that people have a renewed sense of confidence in that mechanism.

There is additionally a temporary policy mechanism that allows, and staff may have to correct me here, but it allows the ICANN Board to make a change that is affecting to registries and registrars on a temporary issue or an emergency issue. That affects stability and security or I think other marketplace types of things that would expire I think in 60 days, 90 days, or something like that.

One of the things that registrars have proposed is that we take that mechanism that already exists, beef that up a little bit, and maybe broaden the types of things that could be covered by a temporary emergency policy. And, maybe extend the timeframe from 90 days or whatever it is to 180 and give it enough time for a PDP to get up and running.

Thirdly, a new mechanism that was proposed was the ability for registrars to change the contract themselves and say, "We see this problem in the marketplace. We see some change we hadn't anticipated, so we want to have a vote amongst our stakeholder group," both in terms of a plurality but also a market share coverage and then we would essentially change our own contracts.

So I think all of those mechanisms are there. What we're seeing is I don't believe that we need a fourth one. We need to take a look at the mechanisms that we have and try to find ways to stabilize this agreement so that we don't have to continuously go back to a negotiation platform and so that we have some degree of certainty in the lifespan or the term of this contract; that it's going to change under certain ways and under certain mechanisms.

As someone pointed out, we signed this in 2009 and we didn't get the full 5-year term through this one, so it's not really that slow. We have been able to turn these around pretty quickly. I think that, and this is me editorializing here, I don't know if the other registrars feel the same way. I'm more concerned about the unilateral amendment's impact on just the whole function of ICANN in general or At-Large.

I think it takes all of the wind out of the sails of various policy development activities and other community activities, and puts everything under the Board, puts everything on their table as a problem for them to solve. I'm concerned a little bit about what the nature of the organization would look like after that. So that's just my two cents on there. I hope I addressed some of your questions. I certainly would welcome any follow-ups you might have.

OLIVIER CREPIN-LEBLOND: Thank you very much James. I now open the floor for questions, since time is ticking by. So questions and answers at the moment. I see the cue becoming large. First is William Silverstein.

WILLIAM SILVERSTEIN: Yes, hello?

OLIVIER CREPIN-LEBLOND: Yes, we can hear you. Go ahead.

WILLIAM SILVERSTEIN: Actually I have a few things. I think part of my comment on the change to Port 43 protocol might be handled by the expiration and synchronization issues on the RAA contract because if it doesn't all happen at the same time it's going to cause a little bit of a mess. If you have some registrars doing the thick WHOIS themselves versus some of the registries, if it's not all simultaneous it may cause some technical issues.

I see from what I read in the proposed RAA agreement, 3.7.7.3 has not been changed. That's a little bit of a problem because the null third-party beneficiary issue that is in the contract and that has been ruled on by the Ninth Circuit in [Inaudible 50:06], which essentially means that that section has no meaning anymore.

Then the third issues is that when you talk about the WHOIS proxy, there needs to be some liability for the proxy service or some responsibility for the proxy service because they're the only known person who has "ownership of the domain name". This tends to integrate a little bit with 3.7.7.3 and the enforceability of that, but also it needs to be somehow…

These proxy services, some of them specifically say, "We do not accept the United States postal mail. You cannot contact us," and pretty much, "Leave us alone and go away." There needs to be some provision for a service of process on these proxy services and liability of these proxy services so that if you have a domain name that has been registered for use in some illegal activity; that these people are on the hook and responsible, as opposed to some hidden person hiding their identity in a cave in Afghanistan along with Bin Laden.

OLIVIER CREPIN-LEBLOND: Okay, Bill. Thank you, William. I see Margie has put her hand up. Perhaps she could respond to your questions.

MARGIE MILAM: With regard to the proxy issues, I invite you to take a look at the specification that was posted because I think that goes a long way in addressing some of your concerns. Although I do point out that the registrars are still considering that specification and may not agree to it

at this point. One of the things that is in there is an abuse point of contact where the proxy or privacy service provider would essentially have a published abuse point of contact that can be reached for situations like that.

With respect to the liability issues, the liability did not change from the 2009 agreement to the current agreement. In other words, there is a provision, and I don't have the number in front of me, related to if there's a licensee of information that it's responsible for the acts unless it discloses the contact information. That provision did not change. I just wanted to highlight those two issues for you.

WILLIAM SILVERSTEIN: Margie, the problem with that is that's actually 3.7.7.3. Now in the 9th circuit in [Inaudible 53:07] he actually sued [Inaudible 53:10] when they had failed to provide this information to him on his attempt to enforce a million dollar judgment. The court had found the provision in the RAA saying that there is no third party beneficiary. It rendered 3.7.7.3 mute because under 3.7.7.3 there is no third party liability.

Any other person who is not the registrant of the domain name is a third party. So for 3.7.7.3 to have any effect the language of it must change. It must specify that there is third party liability for that, as opposed to the third party beneficiary of any portion of the contract which is later in the agreement.

OLIVIER CREPIN-LEBLOND: Thank you for these comments William. What I suggest is for any comments, of course the ALAC is going to be drafting a statement on this. This is really the primary reason for this call. It would be helpful if you could put those comments in the Wiki page which is currently being displayed and which is also in the agenda. That would certainly make sure that they're incorporated in any statement that gets drafted.

We do have the clock ticking so I'd like to go through questions from people. I see Garth Bruen and then Holly Raiche. So first, Garth Bruen.

GARTH BRUEN: Thank you Mr. Chair. This question is mostly for staff, although I know that Samantha has dropped off the call. The WHOIS review team

identified a significant problem with the language in RA378 which basically makes the contract unenforceable on WHOIS inaccuracy. You can find this on page 79. There's no change to this language of 378 in the proposed RAA version. Did you look at these findings of the work? And, why are there no updates to 378 in terms of enforceability? Does the ICANN negotiating team understand the problem with this section?

OLIVIER CREPIN-LEBLOND: Thank you Garth. Margie Milam?

MARGIE MILAM: Sure. Garth, can you just tell me what that section addresses and I can probably answer the question better? Sorry, I don't have the numbers memorized.

GARTH BRUEN: Sure. Basically it obligates the registrar to investigate WHOIS inaccuracy. It does not require that they cancel a domain that remains inaccurate or actually correct the inaccuracy. That basically means that if the registrar fails to delete or fails to correct there is nothing further for ICANN to do, which means that the contract is basically unenforceable in terms of inaccuracy. This was found by the WHOIS review team.

MARGIE MILAM: Okay. If you take a look at the specifications on WHOIS accuracy we did change that language specifically to allow for cancelation or suspension. That's a change to that specific language.

GARTH BRUEN: That actually always existed within the contract. The registrars have always had the discretion to cancel or delete. The issue is that ICANN does not have the ability to enforce because this is not technically a failure of the registrar when they do not delete or correct. That was the finding of the WHOIS review team.

MARGIE MILAM: Okay. The other area I would point you to is that there's actually obligation now for the registrars to enforce their agreements. If you

take a look, I don't have the section in front of me, but if you look in the body of the RAA there is additional language with respect to enforcing its registration agreements as it related to the information that's required under the RAA.

GARTH BRUEN: Thank you Margie, but I think you've kind of answered my question that as long as this particular portion of the contract, that the language remains the same, ICANN really does not have any ability to enforce against the registrars in this area.

OLIVIER CREPIN-LEBLOND: Okay, thank you very much Garth. There are other people in the cue. I see Holly Raiche in the cue. Is she back on the call? Welcome back.

HOLLY RAICHE: Thank you. I have a question on changes to 3.3.1. The language that used to be in the old version says there could be changes to the language of the requirements for what's [Inaudible 58:39]. This isn't changed and what it now says is there can be a change to the actual data specifications and data elements. Is that just a clarification? And, has that always been the case that there could be this kind of change to what is required of WHOIS data of any one in particular? Or, is this something new? Thank you.

And, the section is 3.3.1, and it's the list of (just replying to Alan in the chat) the listed elements as to what is in the WHOIS data, if you look at the very end of that clause there has been a wording change and I just want to understand whether that is significant or not because the way it now reads there can be a change to what is required in the data elements by a particular agreement with ICANN and an individual. If that is what is meant and it is a change then I would find that [Inaudible 59:46]. Thank you.

MARGIE MILAM: Holly, I'm sorry, I'm not familiar with what you're referring to. I didn't understand which section you're referring to. Can you repeat your question, please?

HOLLY RAICHE: It's clause 3.3.1. It's the clause that actually lists what elements of information are required to be made available. If you read down the list and read the rest of that clause that is at the end of that list. The wording has been changed. I'm just asking is that a clarification or not because what the wording seems to imply is that there can be an individual negotiation to change the data elements that are required.

MARGIE MILAM: Okay, I think I know what you're referring to. I don't have the contract in front of me, but I believe that was just purely a clarification of prior language. If you're concerned about the data elements I invite you to look at the WHOIS specifications because the WHOIS specification actually lists all of the data elements that are required. It is quite extensive and it in fact has added information as well, so I'd invite you to take a look at that.

HOLLY RAICHE: Margie, other than the RAA itself, where is a list that would be binding in a way that you are suggesting is additional to the contract?

MARGIE MILAM: I'm sorry, I don't understand your question.

HOLLY RAICHE: I didn't understand your answer. To me the WHOIS elements that are required are listed in the RAA. That's where you would go if you were a registrar or a registrant to see what elements you must collect. They are listed and that is in the contract.

It is that particular clause in the contract that now reads that it is possible for an individual together with ICANN to agree to change those data elements. So your response to me was those elements are listed elsewhere and are required elsewhere. I'd like to understand what you mean by that or indeed if that's what you meant by what your response.

MARGIE MILAM: Okay, so I will take a look at that more carefully. I'd have to analyze that, but as I mentioned there is a specification that lists, I believe it's the WHOIS specification that lists all of the required data elements and standardizes the way that they are displayed. That is a change from the 2009 agreement.

If you take a look at that document it'll probably be a little clearer. As we mentioned before, the specifications are to be amended in the same format as the contract itself. So whatever the process is, whether it's the ICANN proposal or the registrar proposal, that would apply to the specifications as well.

OLIVIER CREPIN-LEBLOND: Thank you Margie.

HOLLY RAICHE: There's a follow-up question. What is the relationship between the specifications? Under the contract there has been a change to the elements themselves and that agreement is between ICANN and an individual. Will that take precedence over the specifications?

MARGIE MILAM: I'm sorry, I'm not following you.

HOLLY RAICHE: Let's just say there is a specification and I know and I've read it and it lists the elements. What is the relationship between the contract which apparently can be varied by an individual and ICANN and what is required generally under a specification?

In other words, if people negotiate separately what data elements are required and ICANN agrees to that, doesn't that take precedence over a specification? And if not, then I think you need to understand the relationships between the contract and the, and which holds precedence.

MARGIE MILAM: They are considered the same. They are considered part of the agreement. The specifications are attached and incorporated by

reference, so that's a part of the agreement just as strongly as the agreement itself.

Holly, I don't believe that ICANN would negotiate on a case-by-case basis with a registrar. The principle that we've followed for many years is that the registrars should be on a consistent agreement and that would go against that principle. Again, I would need to look deeper at your language, but that's kind of the perspective, at least from the way ICANN has dealt with contracts in the past.

HOLLY RAICHE: All I am saying is you have given yourselves the advantage. So I will leave it there.

OLIVIER CREPIN-LEBLOND: Okay, thank you very much Holly and thank you Margie. I'll hand the floor to Alan and then Garth because Alan just might have something to say on this.

ALAN GREENBERG: No, just a quick comment. The only place that I see that the list of WHOIS elements can be changed is in regard to a registry needing a different set of elements due to whatever their different requirements are, and that has to be approved by ICANN. I don't see any negotiations with registrars as such as with the registries which may have a business model or a mode of operation which requires something different.

OLIVIER CREPIN-LEBLOND: Thanks Alan. Margie?

MARGIE MILAM: Yes, I actually wanted to go back to Garth's question earlier because I wasn't sure of the answer. As you recall Garth had asked whether the registrars still had the discretion to either terminate a registration for inaccurate WHOIS. We did update that. If you take a look at the proposed accuracy specification in Section 5 it now says that registrars shall either terminate or suspend the registration, or place it on hold until such time as a registrar has validated the information. I just want to point that out to him.

OLIVIER CREPIN-LEBLOND:	Okay, thank you Margie. In fact the next question comes from Garth Bruen.

GARTH BRUEN:	Thank you Margie. I'm sorry to put you on the spot here without any other staff members next to you. That specification is not within the contract, it's outside of the contract. I think that there are problematic issues with things that are not actually in the contract.
	But in terms of my other question, when it comes to the changes requested to 3.3.6 and 3.3.7, who are the ICANN economic advisors? When do these parties come into the negotiation because these changes were not disclosed in previous versions?

MARGIE MILAM:	I think you're referring to the bulk access provisions, Garth?

GARTH BRUEN:	Exactly.

MARGIE MILAM:	Okay. I don't know the name of the economist. Sam would probably be better to answer that question. Just to provide some perspective on this bulk access provision, it was originally inserted into the agreement to enable competition from Network Solutions when Network Solutions at that time was a dominant player. In the language that existed prior to this draft and that currently exists, it talks about whether there is market power within the registrar marketplace.
	ICANN has done some work on that and believes that market power does not exist at the moment. Hence, you've seen the changes in that provision, but it also allows the contract to be changed again should that situation ever occur again. So that is why the bulk access provisions were changed and ICANN did receive economic opinions that supported that change.

GARTH BRUEN: That's sort of a phantom insert especially since we don't know who the economic advisors are. I am not aware of any of this information being published. Is this public?

MARGIE MILAM: The opinion? No, but I can check on that. I don't know what the status of it is. I can try to provide additional information later.

GARTH BRUEN: If they've done extensive studies you would think that this would be completely transparent.

MARGIE MILAM: I will take that back, Garth.

OLIVIER CREPIN-LEBLOND: Thank you Garth, thank you Margie. If any registrars are on the call or are still on the call, I believe they still are, perhaps they could chime in if there is. I note that Michele was mentioning Jeff or Volker might be able to speak to this. Jeffery? You might be muted Jeff Eckhaus. It's *7 to unmute.

JEFFERY ECKHAUS: The one thing I just wanted to bring up, and I have not seen the economic report from ICANN either, but I will tell you that we have done our own economic analysis using, I think that there are some pretty standard terms about market power and how it's defined; just to let you know that.

We've done the same and we have found that there is no entity that has market power at this time. I know people will look at Go Daddy and say, "Oh, they're the largest. They might have market power," but when you look at it on a specific economic analysis of it using, I can't remember the term at this point, that there is no market power at this time.

We were concerned as the registrars that there could become market power in the future and we would want to have this provision to be able to reinstate it if there is another analysis done. I would also like to see

that economic analysis as well to see who they are and what they're saying. But I think all of the registrars are in favor of this.

Yes, James is helping me out. It was the Herfindahl index is what is used as a standard economic analysis for market power. I'll have to ask my company and see if I can share he analysis that we did and I would share it with others. I think it would match up with what the ICANN economic advisor analysis as well that there is no market power and that is why this piece is being removed from the current RAA with the provision that it would be put back in if market power is founded.

OLIVIER CREPIN-LEBLOND: Thank you very much Jeff. Any other questions or comments to this? I see a number of people typing away. It looks like we've gone through all the questions and all of the issues which we might have. We've got another ten minutes on the call but it doesn't mean we need to remain here for another ten minutes. I'm sure Alan will be able to speak for that amount of time. Alan, you have the floor.

ALAN GREENBERG: I wasn't planning to. I was just pointing out that I did ask a question which wasn't answered and perhaps there's no one on the call who can answer it, but it is, what is the game plan for going forward? Assuming there is no disagreement between registrars and ICANN, what is the actual plan for how to get this adopted given that we're still working on the old RAA for the rules of modification?

OLIVIER CREPIN-LEBLOND: Thank you Alan. I see James Blidel.

JAMES BLADEL: Thank you. I can take a swing at least at a partial answer to that Alan. However I would presume that Margie might have a different take on how she would like to see things proceed, so maybe we should give her the last word.

ALAN GREENBERG: That alone may indicate the problem.

JAMES BLADEL: I think that from a registrar perspective we would probably give a very similar answer to that question now versus coming out of Toronto that we'd like to see the draft position that we've put forward, if you want to call it the registrar version or whatever you want to call it.

But we would like to see that adopted as quickly as possible and immediately move to a discussion of how we can synchronize the implementation issues and shift away from not necessarily the meat and potatoes of the agreement, and focus more on what incentive and grace periods or periods of enforcement or whatever to encourage registrars to walk away from their current RAA, some of whom may have just signed recently, and get them on this newer agreement.

I think that's how I would like to see this kind of taking shape and have the conversation pivot from the contents of the RAA to the adoption mechanism. I think that that second discussion, maybe I'm glossing over it a little bit, it could be as large as some of the other ones. But I think that we'd like to get to that second conversation as quickly as possible.

ALAN GREENBERG: My specific question is, is there still a belief that we have to go to the GNSO and have a two thirds supermajority of the GNSO approve this document before the Board can get it? That's the substance of my question.

JAMES BLADEL: I see. Specifically I don't have an answer for you. Sorry.

MARGIE MILAM: There are several ways to achieve the principle of universal adoption. One way is to go through the GNSO if you want it to be the form that comes up in adoption and on renewal. There is also the incentive that James has mentioned that the registrars would like to see following along the model of 2009. There is also the registry agreement.

As you look at the documents that were filed for the new gTLD agreement you'll see that ICANN has requested that the new RAA be used in connection with the new gTLD program. That would bring in

most registrars that are interested in selling new gTLDs. That is something that the registrars don't agree with and so that's why you're receiving different answers, perhaps.

But we both agree with the concept that the new agreement should apply across the board to all registrars as quickly as possible so that there aren't some on the old legacy agreement and we're just trying to find ways of doing that.

OLIVIER CREPIN-LEBLOND: Thank you very much Margie. It's interesting as I read the chats going on during this call and the link over to the registrar negotiating team issue statement on RAA, which looks like a glass that is half empty rather than the discussion we have here which seems to be looking at a glass that's half full.

There are clearly a few differences of happiness among everyone, but I guess that everyone is really looking forward for a speedy conclusion to these negotiations and for things to be ready well in time for all of the new registries that will arrive very soon with the creation of those new gTLDs. I realize that we only have four minutes left now until the end of the call. What are the next steps for the ALAC itself?

As you know we've called for this call to take place due to the RAA comments that we're going to have to comment on. I really hope that it has been helping all of the people who have been here to form a better idea and a better view of what we need to include in our comments. Alan Greenberg will be holding the pen on this. Alan, do you have any questions or comments you'd like people to think about when they start commenting on this?

ALAN GREENBERG: Everything. I expect people to actually try to read this document before they comment. I don't have any specific instructions and I wouldn't mind leaving this call three minutes early.

OLIVIER CREPIN-LEBLOND: Okay, well I guess that pretty much sums it all up. I see Michele has put his hand up. So Michele, you have the floor.

MICHELE NEYLON: Thanks to ALAC for being able to allow us to speak our minds and give you some of our views on this. If there are any areas around this that are unclear to ALAC as to where the registrar position is coming from feel free to reach out to either me or any of the others who are on this call. Thanks.

OLIVIER CREPIN-LEBLOND: Thank you very much Michele. I have to thank you for having noticed that all the way up to yesterday there was no registrar listed on the list and it was a mishap. We somehow drew this and we were hoping that we would have registrars on the call. It's great to see that we had the ability to have more than just a dialogue with ICANN staff, but also with you and your colleagues.

So with no further ado, I think that we've got one or two minutes. I just have to thank the interpreters for this call. I know we've all been speaking very, very quickly, which is a bit hard for them. Bravo for keeping up.

And of course thank you to all of the speakers. That includes Margie Milam, Samantha Eisner, Matt Serlin, James Bladel, and Michele Neylon as well. I guess I can also thank you one more time. It has been really great, and of course Volker as well. Thanks for taking part. It has been a good call and I hope we'll be able to act a good statement out of that. Thanks everyone and this call is now closed.