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CARLTON SAMUELS: This is Carlton.

DREW BAGLEY: Hey, Carlton. How are you doing?

CARLTON SAMUELS: [inaudible].

DREW BAGLEY: David, did you want to go over your? I know we're not going to do recommendation D yet, but did you want to go over your other part first?

DAVID TAYLOR: I can say where we've got to. I can give an update, yeah, if that helps.

DREW BAGLEY: Jean-Baptiste [inaudible]. There's one other thing I think you were going to go over maybe with rights protection mechanisms for recommendations 40, 41, and 42.

JEAN-BAPTISTE DEROULEZ: [inaudible] last week at ICANN. I can give an update for the people here if you want.

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*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.*

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DREW BAGLEY:

Yeah, okay, great. So, then I can just quickly go through the recommendation consolidation and then pass it on to you, David. Then we can both talk about recommendation D.

Welcome, everybody to the Subteam Call. Laureen is not able to make the call today, so we're going to proceed without her and we're going to go ahead and go over some recommendation consolidations that we've already discussed and present their hopefully final form and then David and I will give an update about where we are with recrafting and updating one of the DNS abuse recommendations in light of public comments in our own internal discussion.

Starting off, Jean-Baptiste sent an e-mail around with my revised recommendation C. This recommendation has now been updated. It received widespread support from the community and we already discussed the public comments. This has now been updated in light of the fact that it pretty much obviates the need for recommendations – and Jean-Baptiste, you'll have to correct me – I think 19 and 34, which called for additional DNS abuse related research, one of which was being pretty specific and prescriptive about looking at different types of registrations in correlation with the DNS abuse and another one that was broader.

So, I've updated this language slightly for recommendation C and now I think it encompasses pretty much what we were going for with our initial recommendations as well as what we were thinking about when we came up with recommendation C a few months back and taking into account the public comments. Jean-Baptiste sent this around a little while ago, which is my fault because I did not [inaudible] until late. I

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guess has everyone had a chance to read it? Otherwise, I can read it to everyone. Is there anyone who hasn't had a chance to read it yet?

DAVID TAYLOR: My hand is up. I haven't I'm afraid, Drew.

DREW BAGLEY: Okay. Anyone else? So the edification of David and only David ... Sorry, what was that?

UNIDENTIFIED MALE: I read it.

DREW BAGLEY: Great. Okay. I'll just read it real quick and that way if anyone has any opposition to it in its new form, let me know. Otherwise, we can go ahead and send this out to the group for approval. The recommendation itself now reads: Further study the relationship between specific registry operators, registrars, and DNS abuse by commissioning ongoing data collection including, but not limited to, ICANN domain abuse activity reporting initiatives. For transparency purposes, this information should be regularly published, ideally quarterly and no less than annually, in order to be able to identify registries and registrars that need to come under greater scrutiny, investigation, and potential enforcement action at ICANN Org, upon identifying abuse phenomena. ICANN should put in place an action plan

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to respond to such studies, remediate problems identified, and define future ongoing data collection.

So, it reads nearly identical to the one we all reached consensus on. Slightly modified to encompass the notion of the future ongoing data collection being something that occurs much more regularly.

Then, in the rationale, we explained that the DNS abuse study was meant to be a baseline and that we're calling for those to be ongoing data built upon that. That one is longer, so I'll go ahead and let ... David, for example, I'll let you just glance at that via e-mail [inaudible].

DAVID TAYLOR: Thanks, Drew. I'm reading it now.

DREW BAGLEY: Okay, great. Does anybody have any opposition to putting that out to the group for approval?

DAVID TAYLOR: I have one question, if I may.

DREW BAGLEY: Yeah, sure.

DAVID TAYLOR: [It was just forming] quite a bit of feedback and discussion I was having the benefit of going to an ICANN meeting on our recommendations and

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this is one which it wasn't specifically called out, but it was one where I was just reading it. When I read it, everyone seems to forget the rationale and related findings. The number of discussions I had where I would say, "Well, that's in the rationale." Oh, is it? No one seems to read them. It seems our report might be too long. Everyone just copied the recommendations and considered the recommendations and comments on the recommendations and never looks at the rationale.

When I read the recommendation C, obviously it's critical to have the rationale to understand why on Earth we'd be [studying] a relationship between registry operators, registrars, and DNS abuse and commissioning blah-blah-blah, etc. Why on Earth would we be doing that? It doesn't jump out immediately.

When I was just going [through] that, it seemed to me to almost be saying that recommendation C – and maybe this is more generally – but for this one, if we started it by saying, "In view of the DNS abuse study commissioned by the CCT Review Team, which identified extremely high rates of abuse, associated with specific registries and registrars, we recommend that further study of the relationship ..." It just seemed to me to make it a much more hard-hitting recommendation by just having that slight introduction to the beginning of it. So, that was my thought. I don't know if that's something else everyone thinks or whether it causes a problem with other recommendations, but they're not set out in that way. It just does really seem to miss. Unless you've read the rationale, [inaudible].

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DREW BAGLEY: This one is ... This is focused on data collection. Maybe it's something slightly broader than that, but in light of ... [inaudible] be even broader than the DNS abuse study because there's other analysis we did in our chapter that led us to this conclusion, too. There was obviously analysis we did that led us to even commission the first DNS abuse study. I like that idea, though, if that's something where it would be more sensible.

DAVID TAYLOR: Again, I might be laboring the point, but it is [inaudible]. We're putting this one in because of the extremely high rates of abuse, which we're seeing concentrated in certain registries. And that point seems to be lost via the people who don't read the report or they don't read the rationale and they just read this recommendation. They go, "Yeah, okay, why not?" They just miss completely this point which we've been making about that [inaudible]. That's why I just thought something a little bit more broad if you want. But, the introduction of the first line of the rationale was pretty good, so we can make that a little bit broader, and if we put that in the beginning, I think that's ideal, personally. But, open to anybody's thoughts.

DREW BAGLEY: Okay. I'll go ahead and take a look at that and add some language and send it to you.

CARLTON SAMUELS: So, that changes the model for all the answers because every single answer is predicated on the rationale that we posted. If we want to do

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that, why don't we [inaudible] say higher rates of abuse require extra attention and maybe [inaudible]. That would [inaudible] with that sentence. That [inaudible] immediately.

DREW BAGLEY: In the recommendation itself?

CARLTON SAMUELS: Yeah, in the recommendation.

DREW BAGLEY: Okay, at the beginning. Similar to David's suggestion, but rather than specifically pointing to the study, instead say this circumstance requires this action, and then going to what direction [inaudible].

CARLTON SAMUEL: That's right. That's [inaudible] David's comment. I take the comment and it makes sense, but why not be more direct [inaudible] than David is suggesting?

DREW BAGLEY: Okay. Yeah. So, maybe ... The other thing with this is even before we saw the results, we anticipated we'd want this because it's necessary to understand if policies are working or not working. Had we had a nice data [inaudible] when we first came in to do our review, we would've benefitted. It's that there are these existing high levels of abuse, so obviously our finding is it wasn't that the new gTLDs magically had more

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than the old, but nonetheless abuse still ... [inaudible] was able to migrate and exist at high levels in new gTLDs as it does in legacy gTLDs.

So, there's the high levels of abuse, but then there's also just the notion of being able to understand if policies are working or not working and see those trends over time, as well as then that other component of the potential for enforcement action where things aren't working.

So, rather than maybe saying just high levels of abuse require more attention, maybe I'll think of some other sentence that does something like that. That ongoing data flow. Okay, I'll add some words and I'll send it out and see what you guys think. Or, if you guys have suggestions, even better. Just e-mail me.

In general, everybody is okay with recommendations 19 and 34 going away after we've tweaked this recommendation C?

CARLTON SAMUELS:

Yes. [inaudible] highlight three elements and those are highlighted there.

DREW BAGLEY:

Okay, great. Thanks. I guess I will pass the baton to David unless anyone else has anything else to say about this topic. David, [inaudible] for the recommendations 40, 41, and 42.

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DAVID TAYLOR:

Yeah. Okay. So, just an update. At the ICANN meeting last week, I discussed these to try and get as much input as I could from various people, including Kathy, to the various groups that had made some comments. I spoke to registries, registrars, NCUC, IPC, INTA, etc. So, I did the rounds.

I explained where we were on that to each of them and basically confirmed what we said we were going to do, which was, although it wasn't quite clear because we had our subteam call where we were all in agreement, and then we had the main call where Jordan wasn't in agreement. So, I'm trying to take that on board and find suitable wording which makes everyone happy as much as we can make everyone happy.

But, on the recommendation 40, we've just agreed that we were going to amend it somewhat to put in some wording to say that we need a higher and more statistically significant response rate.

On the recommendation 41, in view of Jordan's comments, I actually [inaudible] reword the entire thing, so I started doing that. I haven't finished. I'll have to reword it. But, it's [complete rewording] now, so it's a little bit strange on the recommendation which is in there for two years, but now we reword it completely. But, we've got this juxtaposition which we discussed as to whether or not we should even take it out, now which I'm struggling with because there was no responses to the public comment saying that we should take 41 and 42 out and it seems that it should still be in, but then it might be useful to take them out because then we can call them successes. I'm sort of trying to paraphrase the main call we had.

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When you then discuss – and I went into depth with the RPM Working Group and I tried to follow that during the ICANN meeting. So, when we say that we spoke about it and we spoke – and Jordan I think had said that the clearinghouse was done, the review on that was done, so we could take out that review, that recommendation 42. It turns out it's not done, so they're still doing it and there's more to come back to. So, when you start delving into the detail, it gets incredibly complex.

So, that's still ongoing. The URS is still ongoing. There's also potentially the URS may not actually be treated in the PDP Working Group until it's done with the UDRP in a second phase, which might be three or four years away. It raises so many things in the air that it's quite a struggle to figure out how on Earth you make suitable wording which matches where things are in reality and where they might go and cover all of those off. I'm sort of 75% of the way to something which I think almost does that, but I wouldn't sound ready to share it but I'm happy to read out where I am if that helps some people and want to give comments, but it might be easier to circulate it by e-mail when it's done.

Also, just on the last e-mail, when I did circulate these before the last call which was two weeks ago, and [inaudible] I'd put on there that I'd certainly welcome any comments from anybody, but I didn't get any comments from anybody, which is fine so I don't have to change anything for anybody else's comments. But, I was just letting you know that's where we are currently. So, if that works for everybody, I will try and put these together, circulate it to this group. Then if you can all confirm that we're good to go with those, then we can circulate it to the wider group.

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I'm happy to take any questions if anybody wants to ask anything.

DREW BAGLEY: Any questions for David?

CARLTON SAMUELS: So, it seems that maybe what we have to do is be aspirational. We recognize the problem and we know that there's ongoing work, so maybe the best response is that we recognize the problem, [inaudible] what we think would provide a solution or improve the situation and [inaudible].

DREW TAYLOR: Yeah. Thanks, Carlton. To share some of the wording which I've got where I'm amending it and to try and cover this, for instance I've put this new wording, so this is the recommendation 41 for the URS where we're saying a full review of URS should be carried out. I'm including wording in there, for instance, which says ...

RECORDING: The host has left the meeting to speak with meeting support and will rejoin soon.

DREW TAYLOR: Is everybody still on if the host is gone?

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SPEAKERS: I'm here, I'm here, I'm here.

DREW TAYLOR: Okay, good. I certainly thought I might be talking to myself there for a while. So, the current wording I've got is instead of the simplified one saying the full review of URS should be carried out on how it should interoperate with UDRP, given the PDP review, which is currently ongoing, [inaudible] take on board that report when published and indeed may not be necessary if that report is substantial in its findings.

That was where we were, and then the detail was in the rationale, hence my points about the other rationale, because [inaudible] discussion we had on this, people said, "That's not in, that's not in, that's not in." I said, "It's in the rationale, it's in the rationale." Everyone said, "What rationale?" That was the rationale and recommendation issue which I was raising.

So, I'm suggesting putting in as the new one saying something like since our initial draft recommendation, the PDP review of all RPMs has started reviewing URS in detail. This is currently ongoing. Given this ongoing review, the CCRT recommends that the RPM Working Group continues its review. Having said this, the CCRT recommends that the interoperability of the URS with the UDRP needs to be considered and it would appear that the appropriate time for this will be when the UDRP review is carried out with the PDP Working Group, and at this time consideration be given to how it should interoperate. The CCT Review Team has encountered a lack of available data in many respects, and the PDP review of all RPMs appears to also be encountering the same

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issue and this may well prevent it from drawing firm conclusions. If modifications are not easily identified, then the CCT Review Team suggests continued monitoring until more data is available for review at a later date.

That's the one where I'm trying to capture everything in one recommendation, but it's not final. But, that's where I'm on, so if you've got any comments on that, feel free to shout. Otherwise, I shall refine a little bit further and circulate.

CARLTON SAMUELS:

It sounds like you've got everything you need. You identified the problem. You outlined the problem that we saw. You recognized that [inaudible] might be [inaudible] by saying you're hoping that what's been [inaudible] PDP will eventually do that. You give some indication of what to expect about, that you would find it reasonable. So, I think you've covered it.

JONATHAN ZUCK:

I think I was going to say something pretty similar to Carlton. I know that part of what you were trying to do was address Jordan's concern about throwing out recommendations that might already be covered. I feel like you did a good job of saying we anticipate this being the work of rights protection work group.

DAVID TAYLOR:

And it was useful being at the ICANN meeting, because obviously being able to speak to people face-to-face. Then, of course, you've got the

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various different interpretations of where the RPM Working Group is. I felt like I was opening a complete and utter can of worms at each step. It's why I captured that. That was actually captured on the plane on the way back because I thought my mind is going mad with this now. But, I did want to reflect on it a little bit and share it just to make sure I wasn't going mad. That's useful. Thanks.

Well, I'll finish those up and I'll circulate those as soon as I can. I need to reflect a little bit more on the 42, which is the clearinghouse one, to sort of try and get some sort of reflection in a similar sort of way given that people are going to be looking at that again.

The one thing I do say is I do think the RPM Working Group looks as if it's going to be reviewing the URS in detail and it's in excessive detail, in my view. I mean, there's only 800 cases, but I know they're going to go out to practitioners and ask a variety of questions, so they're drafting their own questions, so it's a far more detailed thing than the impact study was doing, so they're going to town on it. But, it's certainly quite detailed. When you look at some of the questions being asked, they're overly detailed in my view for something which has had so little use and I think they're going to struggle to get valid replies and valid data back again because it really is in-depth, which is why I was sort of trying to capture that thing of saying if you can't, at the end of the day, draw firm conclusions, then we're saying we do think you should continue to monitor and that's the important thing.

And maybe we should put in something here with recommendations to a future review team that this is then picked up there to ensure that it has been carried out or something to that effect.

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I'm done, so back over to anyone.

DREW BAGLEY: Yeah. So, I guess we can just briefly discuss recommendation D.

DAVID TAYLOR: Do you want me to start on that, Drew, and then ...

DREW BAGLEY: Oh, sure. That would be great. Yeah.

DAVID TAYLOR: I'm happy to.

DREW BAGLEY: Okay. Yeah. Go ahead and [inaudible].

DAVID TAYLOR: So, recommendation D, Drew and I had a long session at ICANN and that wasn't drinking beer or having dinner or anything, was it, Drew? It was sitting there around a little conference table flushing out recommendation D and trying to get progress on it.

We were looking at the various comments, some of the issues potentially where there's no factual premise. There's a narrow set of cases, so we're potentially punishing everyone, and how it ties into the

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other recommendations. That was the negative, shall we say, comments.

But, on the positive side, there were a lot of positive comments and a lot of support for recommendation four. To us, it looked as if we've got a situation where there is a lot of support, but where there isn't support it's because something is missing. Is there a factual premise to have this? That's where we were looking.

The thing is, certainly from my point of view, I see a lot of this, so there's a lot of personal examples and issues which we see and that's where we sort of discuss and say, "Actually, it's true people don't necessarily see. We hear stories, but we don't see the factual premise and what's needed."

So, we thought it would be good to get a case study in there of something so people can really see what it is. We've obviously got the [inaudible] example. Again, I stress that's something when you look at the [inaudible] names, where we've identified very high levels abuse in the DNS study, etc. – and correct me if I'm wrong, but I think that level of abuse dates back five years now. So, when you identify something four or five years ago and four or five years later, it's still up there abusing. That's an issue and that's precisely the sort of issue where you go, "Well, this is where it could be useful because this is in addition to what compliance are doing or what compliance are able to do."

We've got another example, which I went through with Drew and we looked at all that and exactly the same thing. We've gone through something there which has gone through to compliance and compliance

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haven't been able to act on it, despite the fact that we're looking at things, which to us, seem completely actionable, but then we're told there's not the powers under the RAA to do anything.

So, then you go, okay, so we're looking at actually ... The only time we'd be able to do anything [inaudible] which is clearly abusive and doing bad things – hence the idea of having a case study – means we're effectively saying we need to wait until there's a new RAA, the last one being in 2013. So, do we hope there's a new RAA before or after the next round of new gTLDs? But, that's where to me it seems insanity to be waiting three, four, five years of effectively saying we potentially can't act in this instance, we can't do anything in this instance, and I find that completely unsatisfactory and compliance finds it unsatisfactory as well.

So, it's something I discussed a little bit more with Jamie as well when we were there and that's where we looked at this and said let's look and try and get a case study together. I said to Drew, "Right. I'll put this together," which obviously is on my list. So, I will put this together. Then, we wanted – when we've got that, and we've got that together, then we can tie that into the wording and then we'll come back to the subteam with that and we can run through and we can all see exactly examples and understand why we're trying to do it.

I think, again, some of the questions were sort of looking a little bit more and saying, "Well, how would it work?" I think this is fear because we haven't prescribed how the thing would work, there's a certain fear that it would be overused which is natural to have that fear. But, that fear has never been realized. When you look at the [PDPRP] for the trademarks, that was a great fear then. This was going to be used by

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brand owners to take down all these nasty top-level domains and they wouldn't be able to survive such use of this tool and it's never been used.

To my mind, this is exactly the same thing. A success would be it's never being used, but the success would also be if we end up being able to take down something or help compliance take down because they don't have means to take it down, then it's done its job and we can have quite a high threshold.

So, also, we said maybe we need to put a little bit more detail in it, so that we see where it's coming from so it's a more detailed recommendation, perhaps.

So, that's where we are with those two tasks to go through and then Drew and I will ping a little bit more and then we'll put that around the subteam. I wanted to check if there's anything else that you wanted to add to that, Drew. That's what I've got anyway.

DREW BAGLEY:

Thanks, David. No, I think that was a great summarization of what we talked about the other day going through all the comments and really taking them seriously, but nonetheless, trying to figure out how we could craft this recommendation to work in a way that addresses a real gap that there is, a real policy gap, and as David mentioned, there really was a lot of support from the supporters than a lot of opposition.

I'd have to look at the numbers, but maybe we had one more for than against, but either way it was split pretty evenly between the two

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camps. So, I think we'll probably be able to craft something, though, that would take all of that into account and still solve this policy gap that we identified. So, that's [inaudible] for now. So, yeah, David and I have the next round with that and we need to present it to the subteam after we craft new language for that.

I guess Lauren will be able to go over her recommendations that she was going to go over for the consolidation next week. I, unfortunately, do not have anything in front of me about that to go over those, the consolidation of recommendations 11, 13, 15, and 33.

So, I guess I will turn to Jean-Baptiste for any orders of business, or Jonathan if you have anything to chime in about.

DAVID TAYLOR: I've got my hand up, if that's possible.

DREW BAGLEY: Oh, David, [inaudible].

JONATHAN ZUCK: Sorry, I was muted. Yeah. Both of those sound fine. I'm interested in still making sure to build the caveats in the comments into the incentives recommendation. I don't know what state that's in, but that's the one that I feel like there's still some paranoia about that one that I think we should address. Drew? Are you on mute, Drew?

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DREW BAGLEY: Yes, but I'm sorry, you said there's still some paranoia about that one. Then, what did you say?

JONATHAN ZUCK: Well, no, the comments reflect some paranoia about people being able to get incentives but not really ... We're talking about how compliance can't do anything and yet we're talking about potentially creating incentives or reductions on fees or whatever for [inaudible] policy in place.

DREW BAGLEY: Oh, you're talking about the other comments, the other recommendation. Yeah.

JONATHAN ZUCK: So, I don't know what the state of that recommendation is. I just want to build some of those caveats that were raised in those comments into that recommendation. That's all.

DREW BAGLEY: Yeah. That recommendation you have not seen another round of because recommendation A, B, and C have all been updated based on those conversations we had with those edits and with edits that were sent to me via e-mail feedback. But, then, I was at this point going to just potentially wait until we were done with recommendation D to the extent that we need to update the DNS abuse chapter.

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Alternatively, though, I could send out everything but D knowing that we still might add some more to the DNS abuse chapter. But, yeah, I did take all those into account as we discussed.

JONATHAN ZUCK: Alright. Well, as long as that's still in process and I haven't missed it, which was possible...

DREW BAGLEY: No, you haven't missed it. Nothing has been approved in a final form at all. So, those were ... And I can send you what I have even just one on one if you wanted to see if ... But, those were updated. I was receiving forward up through last week on those.

JONATHAN ZUCK: Okay, cool. I don't need to change your process. I just wanted to make sure that I hadn't missed something that had gone out or anything like that. It sounds like I haven't.

DREW BAGLEY: You're good. By the way, we didn't even see each other last week, which is highly suspicious. Neither one of us knew the other one was in PUERTO RICO.

JONATHAN ZUCK: You chose not to come to our vegetarian dinner.

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DREW BAGLEY: You chose to make sure you scheduled it once you knew which days I couldn't make it. I saw how that worked.

JONATHAN ZUCK: Exactly.

DREW BAGLEY: I saw how the Doodle poll was used for bad. Yeah. I guess that's it from my side.

DAVID TAYLOR: I still have my hand up.

JONATHAN ZUCK: We just can't see it, David. Sorry.

JAMIE HEDLUND: I had my hand up, too.

UNIDENTIFIED FEMALE: Hi, everyone. I have my hand up just to say that I joined the call since [inaudible] David speaking. So, I'm on the call. [inaudible].

DREW BAGLEY: Alright. Hi, [inaudible].

UNIDENTIFIED MALE: Welcome.

DAVID TAYLOR: My hand up was just to check on tomorrow when you were saying what we're doing. But, I won't have anything else to say because I need to knuckle down and do some of this drafting with Drew, etc. I could be partially on the call. I'm traveling tomorrow, so I'm [inaudible] during the time of the call. I wasn't sure whether you were wanting the same sort of presentation on RPMs and this recommendation for the plenary or if we skip that, let us do our work and come back next week with the recommendation D and the RPM text so that we can [inaudible] on this subteam and then go to the plenary. It makes more sense because there's just no time between now and the plenary tomorrow for me to do that. I won't have it ready for tomorrow and circulated to this group for comments by this group before the plenary. You know what I mean?

JONATHAN ZUCK: I know who should answer that, necessarily. I think if there are concepts, larger questions, to be discussed that you could create a couple of bullets or something and circulate those just for discussion purposes. That might be worthwhile on the plenary tomorrow, but otherwise I guess I'm inclined to err on the side of drafting. I think we just need to get this written.

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DAVID TAYLOR: If need be, I can put a couple of points together to try and summarize what we're doing and where we are with the subteam [inaudible] report back to the plenary, but obviously [inaudible] tomorrow.

JONATHAN ZUCK: Yeah, just put the [inaudible] you got in case anybody speaks up and mentions something that is useful to you, right?

DAVID TAYLOR: Yeah. But, in theory, we'd get that when we discussed it on our subteam and we're comfortable with where it is, then it's easier to speak in the plenary because then we're aligned and we've done our drafting and we're in the same position. We're running before we can walk sort of thing, otherwise ...

JONATHAN ZUCK: Yeah. I just got off the competition call and Jean-Baptiste said there wasn't a lot to cover thus far on the plenary tomorrow. We may just shorten it to an hour or something like that. Jamie, go ahead.

JAMIE HEDLUND: Sure. I just wanted to recap part of the discussion I had with Drew about his excellent paper, in particular about the DADRP or whatever it's called. That is the reference to whether compliance can't do its job or isn't able to go after systemic abuse.

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What I said was that I think the rule that would be applied by this panel would be the same that compliance would apply, and that's the language in the contract. I'm not going to comment on whether a review panel would do a better job than compliance in actually reviewing any particular case, but if the interest is in enhancing compliance's ability to go after systemic abuse, the main focus would seem to me would be the contractual terms rather than the body that's set to arbitrate or mediate.

So, Jonathan, that sort of picks up a little bit on what you were saying earlier. I have zero opinion one way or another on the need for [inaudible] of a potential review panel, but just wanted to reiterate that it may not be much more effective than compliance is right now if the ...

JONATHAN ZUCK: If the contract is the constraint.

JAMIE HEDLUND: Right.

JONATHAN ZUCK: David, is that something that you can address? I guess my understanding is that the purpose of the recommendation was to create a path. It wasn't just about having a different group review it, but that it was about creating a path that didn't exist for compliance. Is that something you can [inaudible] clarify in the context of Jamie's comment?

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DAVID TAYLOR:

I can try to. Jamie and I had a discussion on that and, again, it was the objective of the DADRP was to have another route to getting the bad guys. That's the pure and one and only objective, if the compliance root for whatever reason is unavailable or cannot be used or is rejected, I suppose, and whatever those reasons are that it's another route. And we did discuss this again with Drew and I, actually.

We said that maybe it's the sort of thing of saying we understand that if the contracts are rigorous and good and satisfactory and take down the DNS abuse, then there's no need to have the DADRP. My argument would be if that's the case when we see examples of abuse which aren't taken down, why is that? So, is it the issue with the contract? Is it the difficulties compliance has? Is it because there's a need for this DADRP?

And perhaps this DADRP will add nothing to it and that bad actor that would stay there, hopefully it wouldn't because we can craft it in a way that hopefully it will be able to deal with that systemic abuse. That's the goal. And whether this becomes even an interim model and we have something in the recommendation that says this should be reviewed in 24 months' time given the evolution of ICANN compliance, etc., and if there's any revised terms which makes this defunct, we drop it. We get rid of it. Anything like that. That's all fine. I'm certainly not averse to anything like that.

But, I suppose one of the – to talk about it, a specific point for instance might be where you've got somebody saying where the contract says you need to do something, like respond to an abuse query, and if that

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response to the abuse query is a response, but it's a completely unsatisfactory response, if compliance hands are tied because it says, "Well, they don't have to take down, they don't have to act. That's not in the contract. They just have to respond," you then look at the nature of that response.

I would've thought a panel there might come up with something which would help compliance by saying that response should be prompt, and prompt in various jurisdictions is two days, three days. I know in Germany you've got takedowns for abuse with Facebook which are twelve hours. But, you could say that's prompt. Is it three days, seven days? But, something like 30 days or 21 days or 50 days is not prompt. That's where then there's other action can be taken against that registrar or registry if they keep doing it, because then you can see a pattern of systemic avoidance, shall we say. So, that's where I think a DADRP would have more flexibility to deal with something which compliance perhaps can't.

And if the DADRP then defines prompt – again, I'm just completely going off [inaudible] here. But, if it defines prompt, then that may help compliance to be able to say, "Prompt as per the DADRP is this, so we think you're not prompt enough here and we can do something." Perhaps that helps compliance.

Again, it's not the [inaudible] that decides that. It's going to be the impartial third party who is looking at it and it's ICANN compliance and Jamie sitting saying, "Is that useful? Is that not useful?" And even if it's not used, but at the end of the day, it helps revise the contract or the

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terms to make it clearer and us be able to deal with DNS abuse and systemic in an easier way in the future, then that's a good thing as well.

JAMIE HEDLUND:

Then, the issue is does DADRP interpret the contractual provisions differently than compliance does? There are different rules that apply for repeat offenders, but that's different from definition of reasonable and prompt. So, if the need is for a ... If you think that a panel is going to interpret the contract differently than compliance, that's one thing, but it's still going to be interpreting the same provisions that compliance does currently.

The last thing we talked about is some of these IRPs in other contexts have been really good and really helpful in coming out with their decisions. Others have been a little unexpected.

DAVID TAYLOR:

I think unexpected is a good descriptive term for that.

JONATHAN ZUCK:

Thanks, guys. Does anybody else have their virtual invisible hand up?

CALVIN BROWNE:

Yeah, Calvin here.

JONATHAN ZUCK:

Calvin, Go ahead.

CALVIN BROWNE: Okay. Yeah. I just want to [inaudible], do we have a document somewhere where all these changes have been put together as they go along or are we [inaudible] track each one individually? I think I missed if we have a central document somewhere where these [inaudible] applied [inaudible] move forward.

JONATHAN ZUCK: So, right now, they are individual documents that have been circulated. We're going to have to go through an integration and normalization exercise on them to try to create a coherent document. At this point, things have not been integrated back into the document. They're individual pieces that people have worked on.

CALVIN BROWNE: Thank you. [inaudible].

JONATHAN ZUCK: Any other questions? Jean-Baptiste, do we have any other business? I don't have an agenda in front of me.

JEAN-BAPTISTE DEROULEZ: Hi, Jonathan. Not on the agenda. The only thing left was the [inaudible], but otherwise nothing shared on that. Nothing at this stage, no.

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JONATHAN ZUCK:                    Alright. I guess that's it. I don't have anything definitive to say, David, about the [inaudible] of having a conversation tomorrow on the DADRP, but if there's a couple of big questions or anything like that that you think would help inform your drafting process, then we can circulate something to Jean-Baptiste before the call.

DAVID TAYLOR:                    I think really what we need to do is get the wording and get something [inaudible] down, especially so Calvin and everyone can look at it and we can be discussing something substantial in front of us.

JONATHAN ZUCK:                    Okay. Alright, folks. Thanks, everyone.

**[END OF TRANSCRIPTION]**