
DREW BAGLEY: Welcome, everybody, to our CCT meeting number 76, and we will kick off the call shortly after I first ask if anyone has updates to their statements of interest. Okay, seeing none, then let's go through the agenda. So we are at the end of the end, hopefully, with regard to tying up all of the loose ends that we have for the final report. Today, we'll go around and give updates on the action items from last week and then see if there are –

JONATHAN ZUCK: Sorry about that, Drew, Brenda is [busy in Wisconsin.] Go ahead.

DREW BAGLEY: Oh. No problem. Can I continue?

JONATHAN ZUCK: [Yes.]

DREW BAGLEY: Yes? Okay, fantastic. So, yes, after this meeting, we should then just basically approve these final edits if there is not anything still outstanding, and then we have one item that I know will likely still be outstanding that we need to wrap up this week. So Jean-Baptiste, do you have by any chance a status update for the things you've put in last week's e-mail for the action items?

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JEAN-BAPTISTE DEROULEZ: Yes, Drew, thank you. And in fact, the remaining action items are mostly applying to David at this stage, and David, I'm happy to see you on this call. So those are the four action items that are currently open, and just after that, I would like also to review with each and every one how the other action items that were assigned to you, Drew, and Jamie, and also to Jordyn have been completed. So we'll look into that just after. But before we move on, I just wanted to ask [inaudible] David whether there is already a new version up for recommendation 15.

DAVID TAYLOR: Hi, Jean-Baptiste. So there isn't a new version. I've been through Jordyn's – I think we're down to one last aspect from Jordyn's last e-mail which I've been through, and I've put in some thoughts which I've pinned to Drew for Drew to see whether he sees eye to eye with me, and then I was going to send that around leadership as soon as Drew sees eye to eye with me. If he does see eye to eye with me. So I don't know whether Drew does see eye to eye with me or whether you need a bit of time to look at that, Drew, and then hopefully, we can send something around. But I think we're close, we've just got some wording, one sentence of wording. But I think we're differing on what that wording should be.

JEAN-BAPTISTE DEROULEZ: David, is there a possibility we can do that right now on this call?

DAVID TAYLOR: Happy to try. Shall I – how can I do this? Drew, have you managed to read my e-mail [inaudible]?

DREW BAGLEY: I'm just seeing it right now, the one from three hours ago.

DAVID TAYLOR: Okay.

DREW BAGLEY: Yeah. Okay. So I will look at that, that way I can –

DAVID TAYLOR: I just [inaudible] the one from last week, but I'll let you off.

DREW BAGLEY: The one from last week didn't have solutions.

DAVID TAYLOR: I did. I had exactly the same wording. Anyway, not to worry.

JEAN-BAPTISTE DEROULEZ: And Drew and David, if there is something that can help the discussion on today's call, something we can project, if you can send that to me and to Brenda so that we can project it.

DAVID TAYLOR: Okay. Let me see. Is Jordyn on the call? Are you on the call, Jordyn?

JEAN-BAPTISTE DEROULEZ: He's in the Adobe Connect.

JORDYN BUCHANAN: Yeah, [for now.]

DAVID TAYLOR: Okay, cool. Just I saw you said you couldn't make it, and I thought it was a bit pointless discussing it if you couldn't make it. But if you are on, then that's helpful.

JORDYN BUCHANAN: Yeah. I mean [I'm going to] drop off soon.

DAVID TAYLOR: Okay. I shall – let me send this then. I'm trying to think how can I send this to – right, let me – should I e-mail this to you, Jean-Baptiste?

JEAN-BAPTISTE DEROULEZ: Yes.

DAVID TAYLOR: Okay. And then you can project it.

JEAN-BAPTISTE DEROULEZ: Thank you.

DAVID TAYLOR: And then – lucky I've got e-mail today. Okay, you should have got that, or it should be on its way to you.

JEAN-BAPTISTE DEROULEZ: Thank you.

DAVID TAYLOR: I'm trying that again, [inaudible] Okay, that's gone again. I've just replied in the chain so you've got Jordyn's comments as well. So it's been back to his e-mail as opposed to the one I circulated to you, Drew. So you'll get the same one there. Otherwise we might talk across purposes.

DREW BAGLEY: Okay. And right now, David, do you want to go over the other action items while we're waiting to discuss the DNS abuse [inaudible]?

DAVID TAYLOR: Can do. Yeah, I haven't read them, so I see them, I've got the e-mail now which him looking at. So, do you want to just read them now? These are fairly minor, [I think it said,] Jean-Baptiste.

JEAN-BAPTISTE DEROULEZ: So I've just received your e-mail. Is that okay to put it on screen?

DAVID TAYLOR: Yeah. Fine.

JEAN-BAPTISTE DEROULEZ: Okay. Just one sec. There we go, David.

DAVID TAYLOR: There it is. Okay. Super. So, trying [inaudible] what the best place to start is. Am I scrolling this for everybody now?

JEAN-BAPTISTE DEROULEZ: You can if you wish to be a presenter. Right now, it's not on, but I can make you presenter. Is that better?

DAVID TAYLOR: Okay, might be easier, then I can point to, I suppose, what I'm talking about.

JEAN-BAPTISTE DEROULEZ: Sure. There you go.

DAVID TAYLOR: Okay. Super. Thanks. So I suppose just to backtrack a little bit, this is the new – is recommendation 15, the new one, which is what Drew and I put together and sent out to Jordyn. And Jordyn's comments are in red here, so we've agreed all of these apart from one, so it's there. And I

don't know how many people have read the recommendation 15(b), so I'll just go to the modifications. Or do we need time to read the full modification? Sorry, the full recommendation. Was that covered on the call last week? Because I wasn't on that.

DREW BAGLEY: I wasn't on that call either. Jean-Baptiste, do you know, was this discussed at all on last week's call?

JEAN-BAPTISTE DEROULEZ: No. I believe since David was not there, we haven't.

DREW BAGLEY: [inaudible]

JEAN-BAPTISTE DEROULEZ: What was mentioned on the last call was that the two recommendations, 15 and 17, were merged based on the discussion [inaudible] and that we're currently discussing with starting on a new version.

DREW BAGLEY: Okay. So I'll just give a very brief, high-level recap, and then David, you can kind of dive into where we are, and then we can go through this with Jordyn. So the big, high-level recap is that there were previously two recommendations, both of which went out for public comment, one of which was calling for a method for ICANN Compliance to go after

systemic abuse, and another recommendation that had the same goal but was proposing the creation of a dispute resolution mechanism to also help accomplish that goal.

And after much discussion with Jordyn and with others, we decided that it would probably be best to consolidate the two recommendations into one where the overarching problems that both were seeking to address was identified, and then we came up with more clear criteria as to when an investigation into systemic abuse should be triggered and how it should be addressed to prevent what we saw in the DNS abuse report with regard to these operators with such high levels of abuse that there's no excuse, essentially, for it occurring, particularly with what the community identified as being potential problems with the expansion of the new gTLD program.

And so then what we're down to is with the combined language how we word the extent to which a dispute resolution mechanism, the DADRP, should be considered by the community as a supplement or a complement to enhance powers with ICANN compliance. And so David and I drafted a modified version of this recommendation based on the feedback we got a couple weeks ago, and this incorporated Carlton's feedback and Jordyn's feedback, and one-off feedback we got from a few others.

And where we're at now is we sent this out, and then Jordyn had feedback on the way in which we reference the need or the potential for a DADRP, and so that's the language we're down to. So then in response to Jordyn's e-mail with his proposed new language, then David

has written back proposed new language. And I think that's pretty much the recap, David, if you want to take it from there and add anything.

DAVID TAYLOR:

Yeah. Thanks, Drew. That's right. So effectively, as you said there, we blended it, so [inaudible] down here. We blended it, and this is the e-mail [inaudible] to leadership, etc. We took out the idea of an independent advocate, which is something which we'd suggested. We brought in the double threshold, which is something Jordyn had suggested, which is very good. And so we got rid of the DADRP as a standalone recommendation, which I know Jordyn's feeling quite strongly about that. So that's gone.

It's combined together, and Jordyn's pretty happy with the combined – so this is the combined text, recommendation 15(b). So all the blues agreed, and the small modifications of Jordyn was this. “If to the extent ICANN may be ill-suited or unable to enforce,” so changes, “If the community determines that ICANN org is itself unsuitable or unable to enforce.” So I'm good with that.

The prerequisite, we've got a prerequisite in there, “Provisions to address systemic DNS security abuse should be included in the baseline contract for any future new gTLDs.” That was a modification [of Jordyn in,] so we're good with that. And then – sorry, going down. “In addition [inaudible] should be considered to the extent the community concludes that ICANN Compliance is there and certain procedures [should apply] if ICANN Compliance were not the right body to resolve a complaint.”

So this is the only bit here which I don't agree with, and I think – so what I've done in this, going up, just concentrate on that sole language. Sorry, I don't know why it's all over the place scrolling here. I can't seem to stop it. Okay. So this is the original language [inaudible]. “Such a procedure could apply where ICANN Compliance is unable to resolve a complaint blatantly DNS security abuse and the registry operators or the registrars are identified as having excessive levels of abuse.”

And Jordyn's preferred wording was, “Such procedure could apply if ICANN Compliance were not the right body to resolve a complaint related to DNS abuse and the registry operators or registrars are identified as having excessive levels of abuse.” So I've put together some combination language which I thought covered both of those, because there's a slightly different aspect in there where Compliance is unable to resolve a complaint for whatever the reason that may be, or where they're not the right body to do so.

So the suggested language there is, “Such procedure should apply where ICANN Compliance is either unable to resolve a complaint related to DNS security abuse or where it may not be the right body to do so in the circumstances.” And then Jordyn, you had come back and you had said that you thought if we think ICANN Compliance is the right body to resolve these things, then we don't need the DRP, which is where I don't necessarily agree with that, because I think there are situations which we may not be thinking of where it's not the right body or they're ill-suited to do so.

But I think the language which I was proposing captures it. So my proposal there instead of three was we match the language elsewhere

in the recommendation where we say that if the community determines that ICANN org is ill-suited or unable to enforce such provisions, we just match that, so proposed language would be, “Such a procedure could apply if ICANN Compliance were not the right body to resolve the complaint related to DNS security abuse or is ill-suited or unable to do so, and the registry operators or registrars are identified as having excessive levels of abuse.”

And that matches the ill-suited or unable to do so is what's matching – if I scroll down – the rest of the now, “If the community determines that ICANN itself is ill-suited or unable to enforce.” So I'm just chucking that language and hoping that that works. If that works for you, then that recommendation's good to go.

JORDYN BUCHANAN: Hi, David.

DAVID TAYLOR: Hi.

JORDYN BUCHANAN: So just to reiterate, my concern here is strictly like – I think the community needs to decide in advance what the right forum to adjudicate these disputes are, we can decide that ICANN Compliance is the right place to do it, in which case that's fine, then ICANN Compliance will need to staff up and build the capability to resolve these issues. Or like we did with URS and UDRP and PIC DRP, we can say, “Oh, you know what? This is not the sort of issue that ICANN

Compliance is really equipped to deal with, so when these sorts of disputes arise, then we'll have a third-party deal with it."

What I'm not comfortable with at all is deciding halfway through, sort of saying, "Oh, well, we'll sort of look at it and ICANN Compliance will look at it, and they'll say, 'You know what? This one – or like ICANN will try and they'll come to a conclusion, and then someone else will decide, "Oh, never mind, that was a bad decision, ICANN, we're going to complain about it outside of the usual accountability channels," so there's the special accountability just for DNS abuse then gets invoked.

And so it's the "or" in your sentence that is problematic for me. I think if we just changed it to say, "Such a procedure could apply if ICANN Compliance was not the right body to resolve a complaint." That would be fine. Or [inaudible] just like where we say – where it seems like we decide in real time whether or not a dispute gets routed to ICANN or to the DADRP. I think the community should decide in advance and it should be a procedure. It should not just be like, "Oh, we to halfway through resolving something and decided it needed to go one way versus the other."

DAVID TAYLOR:

Yeah. As I said, I can see you just don't want any possibility of that happening, and this language would potentially allow it. But for me, I think that's where I have a problem in that language, because as you then conclude in your e-mail earlier, or later on as you say, "Well, if ICANN compliance doesn't –" I don't remember what it was not. What is

it? Sorry, I'm lost. "If we think ICANN Compliance is the right body to resolve these things, we don't need a DRP."

So effectively, I know you don't want a DRP, so I can see where the community would go with this with the registrars, registries. It's very clear ICANN's the right body so we don't need a DRP, let's get rid of it. So I'm not happy with that.

JORDYN BUCHANAN:

I don't think it's obvious at all. We have plenty of precedents that we just talked about, URS, UDRP, PIC DRP, PD DRP. There's a bunch of things where the community's decided that ICANN is not the right body to resolve those concerns, in which case you need a DRP. But there's literally – if you can find a single precedent for there being a two-track mechanism within ICANN, then I feel like this is a more reasonable conversation to have. But there are other DRPs, but they're all known from the outset, that's the procedure you use for that type of complaint. There's no circumstance in which you get partway through a process and then say, "Oh, you know what? I didn't like what ICANN did there, I'm going to have –" and there is like a general purpose, right? There's reconsideration requests, there's IRPs, there's generalized mechanisms to say, "I wasn't happy with what ICANN did in that particular scenario." You don't need a special DRP to deal with that. But there's literally no process where there's a third-party dispute resolution procedure that is either ICANN or that like partway through. It's like from the outset, you know which of those two procedures you're going to go through. I'm actually totally fine either way, I don't care if there's a DRP if that's the way that the community's decided to do things. I'm also fine with it

being ICANN if that's how the community decided, I'm just not fine with it being indeterminate for each particular complaint.

DAVID TAYLOR: So are you just wanting the "or" out of that then? Is that two characters is what you're wanting out? Is that what the problem is? Because the wording [inaudible] we got earlier, "If the community determines that ICANN org itself is ill-suited or unable to enforce such a provision," and that's elsewhere in the recommendation, are you okay with that? It's just this last one? And [inaudible] that wording, so the only difference is that "or" that I can see which might [inaudible].

JORDYN BUCHANAN: Exactly, it's the "or".

DAVID TAYLOR: So "If such procedure [inaudible] ICANN Compliance –

JORDYN BUCHANAN: Yeah, so show me like –

DAVID TAYLOR: "are not the right body to resolve a complaint related to DNS security abuse itself is ill-suited or unable to do so," [inaudible] then you're fine?

JORDYN BUCHANAN: I would probably just say to use the language that we used earlier, “Such a procedure could apply if ICANN Compliance were not the right body to resolve a complaint related to DNS security abuse because the community has determined that it is ill-suited.” Right? That would be fine. Instead of “or,” say “because the community determined.” That would be totally fine.

DAVID TAYLOR: “Are not the right body to resolve a complaint [inaudible] the community determines ICANN org itself is ill-suited or unable to enforce such provisions –” Yeah, I’m just trying to understand sort of the ramifications of the difference and what one would catch and what one doesn’t catch. And I suppose your main concern is a procedure where ICANN Compliance is – I don’t think they’d stop and say, “We’re ill-suited,” but I could see ICANN Compliance – you’re saying you don’t want a DADRP to be used where ICANN Compliance has made a decision. Is that what you’re saying?

JORDYN BUCHANAN: I don’t want a special DADRP just for this if ICANN Compliance has made a determination. That’s right. I want there to be a source of truth, right? Like if you know there’s going to be a fight about DNS abuse, you either go to ICANN or you go to this other body, and that’s whoever decides that’s the correct outcome, right? Not correct, but that’s the agreed upon forum.

DAVID TAYLOR: [inaudible]

JORDYN BUCHANAN: And there's no ambiguity and uncertainty that that might not be the right forum. Now, obviously, there's existing – like I said, there's like reconsideration requests and IRP if you're not happy with the outcome, there's accountability mechanisms to go back and sort of say, “Hey, that was a wrong decision.” There just shouldn't be like a special procedure just for DNS abuse to second guess ICANN Compliance.

DAVID TAYLOR: So I get that's where we do have a fundamental disagreement on it then, because I think it should be there, because I think it's too easy for registries that – the solution that you're proposing effectively is “The wording will be in the contract, trust us, it'll all be fine, just like it want in 2012” because it wasn't fine, which is why we're looking at abuse today that exists because the contract provisions which were negotiated then were not suitable to deal with this abuse.

So we have to trust that the new contract provisions will be suitable, and that was the whole point about the DADRP for me, was that if they are suitable – and I've put that in writing – that the DADRP is pointless, because the contractual provisions do what they say on the tin and they do work and they haven't been negotiated out of having any sort of power for compliance. So in that sense, you would never use the DADRP. But my argument on this would be that the DADRP would be something which would be brought in in five years' time if we find that contractual

provisions – which we have no control over – are then not sufficient for Compliance to take action.

If Compliance are the ones taking action and we discover that those actions are not able to take down the DNS abuse, then we're saying – or you're saying – there that the DADRP wouldn't be able to be used, so to my mind, it's defunct and we delete it. We just leave it to you and ICANN to discuss and have another round of negotiations with the registries, and we just have to cross our fingers this time, you'll do it right. And I think that's unsatisfactory.

JORDYN BUCHANAN:

So now I think we're back to what Jamie was concerned about last time – it's too bad he's not here – that there always has to be contractual language that's going to be enforced, right? Like it can't be that registries sign up for a contract and then people are like, "Well, we don't [inaudible] contract that you signed, I'm now going to file a dispute against you because you're doing the things that you agreed to but I want you to do other stuff."

Obviously, no registry or registrar's ever going to be comfortable signing up for an environment where they're potentially [on] hook for things they didn't agree to in the first place. So there always has to be language in the contract that's the basis for a dispute, just like there's rules for UDRP, right? It's not like someone gets to go through a UDRP and then say, "Well, you know what? Even though I couldn't prove bad faith, I think it's unreasonable – there's a lot of trademark abuse that doesn't have bad faith, [inaudible] shouldn't have put that in the UDRP

in the first place, so I just get to file – take down domains even though I can't prove bad faith because I don't like the fact that the provision that's in the UDRP procedure." Right?

Obviously, the community would have to agree on a new procedure and not just have some ability to change the rules of UDRP on the fly, and the same thing should apply here, right? Like we should agree on what the rules are, and then there's the question of who should enforce it. Now, I'm pretty agnostic as to – I agree that if ICANN exists, ICANN Compliance owns compliance for the issue, then DADRP isn't useful.

The whole point here is we could say, "You know what? ICANN Compliance isn't the right body, let's just shunt all this stuff to the DADRP. We need technical experts or people who really understand DNS security abuse to resolve it," just like for trademark disputes we need trademark experts to resolve it. That's fine.

We just don't want a system – the system that you're describing terrifies me where ICANN and the registries and registrars agree to something, that gets properly enforced, and then people are just like, "Well, you guys did it wrong, bad contracts, now we're just going to have [inaudible] anyway and take away your registry even though you're doing everything that's described in the contract." That seems crazy, why would anyone ever agree to do that?

UNIDENTIFIED MALE:

Can I [inaudible] something here?

DAVID TAYLOR:

I suppose it goes to the heart of the difficulties which are faced. And if we look at the registrar accreditation agreement, which is an issue which we have – and the article 3.18.1 in that where you’ve got a registrar is obliged under contract to take reasonable and prompt steps to investigate and respond appropriately to any reports of abuse,” I don't know who negotiated and how that negotiation went and where that wording came from, but you do notice that it doesn't say anything about taking any action whatsoever to abuse. So that negotiation, to me as an outside lawyer, looks inadequate. And that clause looks inadequate to deal with abuse.

ut that was what was negotiated, so either it's very clever negotiation to avoid any need to do it, but that is something we come up against weekly and we cannot do anything about it because a registrar will not deal with this abuse, the abuse which we have identified in the CCT Review Team, and the registrars ignore it. And I have some clients who are happy to pay large amounts of money, but the bulk of clients just wave their arms and going, “It's a sham between the registrars and the registries.” That I hear daily if not weekly. And if you look at some of the registrar terms and conditions, you'll see that they state in their terms and conditions that they will not consider abuse complaints. So separate to their agreement, they will not consider abuse complaints.

So you end up in a very difficult situation and you go to ICANN Compliance, so already, you're writing to the registrar, and then you're arguing with them, and then they get nasty back, then you go to ICANN Compliance or you threaten to go to ICANN Compliance. I could show you at least half a dozen e-mails from registrars where they laughed at me, quote, “They will never do anything, they never do.” I'll share those

e-mails if you want me to start sharing. That is the view, and I think that's a sorry state of affairs for us to be in if that's the view of registrars.

And one of the more recent ones, the question is, do we now take it to ICANN Compliance? But on previous ones with ICANN Compliance, ICANN Compliance have said that it's been investigated and they've responded, and they can do no more. So there we have the predicament. So there's a contract negotiated, but it doesn't do what it says on the tin or what it should do, or the intention of what we should, as a CCT Review Team, want it to do. Because we want to be able to deal with that abuse.

So that's why this idea of a DADRP is a backup, that if for any reason that situation reoccurs, then there is the possibility to go to the DADRP, and somebody there who's a third-party adjudicator says, "Yes, this is actually unsatisfactory, and this is clear abuse because we're talking 10% or 30% or 40% of this registry which is full of abuse, and for some reason – we don't know what it is – ICANN Compliance hasn't been able to do it or do whatever they've been able to do – or not been able to do, sorry –" so they then look at it. So I think it's a strength to have that as an option, and the strength hopefully is that it will never be used, because we'll have contractual provisions in place which do not say the equivalent of, "The registrar or the registry has to take steps to investigate and respond." And that's it.

Because that doesn't help us, that's why we've got some 50% of domain name abuse, because there's no way of stopping them. Otherwise, eight cents a day would have taken those down, wouldn't they? They wouldn't be here now. And they've been around two and a half years

since we've been doing the CCT Review Team report. So how do we deal with that? We're back to the same question. So the DADRP was another means for us to have a bash at doing it. So that's why I think we're in agreement with all that recommendation 15, the whole text there, and I just feel quite strongly on that last point. I think that last phrase is the true intent, that it's there as an option. And it's for the community to decide.

If the community decides they don't want it, then we won't have a DADRP. And if there's a vote and there's a certain dominance in one way and other people are told to be quiet, then that's it, but at least we've said we think it should be there. And we can't make it be there, but we can say we think it's a good idea that something is there as a backup or an alternative. So as I said, that's why I think the wording there works, because if the community determines that ICANN org itself is ill-suited or unable – it's the ill-suited or unable, either of those – if they can't do that to enforce such provisions, then this is where it would come in. But if they are well-suited because there's great contractual provisions in there, or if they're able to, then this would never be used. And I hope it never is used, because then we'll have a good, clean DNS going forward.

JEAN-BAPTISTE DEROULEZ: Thank you, David. We have a queue, and we have Carlton, then Jordyn, I believe, and then Jamie.

CARLTON SAMUELS:

Thank you. I hope you hear me. We have a situation that we're trying to [inaudible] There's no doubt that Compliance today is configured to look at abuse in the singular form. I know many of them, they look at them [simply] and separately. We have seen where there is serial abuse, and the feeling is that those who commit repeated and serial abuse, there should be some sanction against them. And that is the reason for the DADRP. That's my understanding of what we're trying to accomplish.

What Jamie has said is that there has to be in the contract some element that says you have broken the contract, and therefore, we need to go to the sanctions route. That is where the level of [and type of] abuse [inaudible] somewhere in that contract, we're saying we have to put in the contract notice to the contracted party that if you go beyond this level of abuse or you attract this level of sanction, then we are going to use another dispute mechanism to [get some results]. If we can [put that in clearly,] I think it will work.

What I found was missing was what Jamie pointed out. You have to have that [inaudible] some action associated with some kind of level in the contract that [inaudible] "Oh, you're in violation of this, and this is where we have to go." I thought if we put that in, we should be alright. Am I getting this wrong?

DREW BAGLEY:

I think Jordyn might be responding in the text, so maybe let's move on to Jamie, and then I see Jordyn has his hand up again, so let's do Jamie next.

JAMIE HEDLUND: Sorry. Technical difficulties. So first of all, apologies for joining late, and I've already put my response in the chat. I missed the beginning of the thing, but if the issue is there has to be justification for a dispute to go to a DRP, that's currently not the way it works now. And I know one PIC DRP where the complainant specifically asked for it to go to a DRP, and so it did go to a panel, and in another one where Compliance on its own gave it to a panel to resolve. So I'm not sure – [the parking issue,] whether or not there should be a DRP in this instance to deal with DNS abuse, I don't know that it's really necessary to have any language setting the grounds for when something could go to a DRP.

DREW BAGLEY: Thanks, Jamie, and thanks, Carlton, for your previous comments. Jordyn, are you next, or is that an old hand and it's Carlton next?

JORDYN BUCHANAN: I think I'm next.

DREW BAGLEY: Okay. Go ahead.

JORDYN BUCHANAN: So I just wanted to sort of reiterate what I said in chat, which is Carlton has described the problem perfectly, which is the reason why no one is dealing with systemic abuse today is because there is no contractual requirement to deal with systemic abuse today. So we need to fix that,

right? I think we all agree that's bad. The current model is fixated on individual instances abuse. It's bad, I think, for two reasons.

Number one, because registries in particular, and registrars to a lesser extent, can't do very much about individual instances of abuse. And registries in particular are terrible for them, to deal with abuse, because they have no relationship whatsoever with the people engaging in the abuse. However, I think we all agree that when you see like 5%, 10%, 30% abuse, that's not because there's a bad guy or a series of bad guys in a TLD and they're just totally overwhelming the registry's ability to deal with it. That's because the registry has made some choices that are encouraging systemic abuse.

And so it would be great if there was an expectation that registries had an obligation to not make those choices and to actively work against systemic abuse. And if that expectation existed, then we wouldn't get into the situation – like on the one hand, it wouldn't solve David's problem of an individual complaint not being resolved by a registrar, but on the other hand, if there's an expectation that at 10% abuse, there's a default that you're not doing it right and you're in breach of your contract unless you can prove otherwise, that puts a really high burden on registries and registrars to not get into that situation and to be able to demonstrate what they're doing if they ever do get into that situation.

And so the discussion of the DRP is, I feel like, largely a sideshow, which is – the reason why we're not happy today is because the contractual model is wrong. Like Carlton just pointed this out, we're fixated on trying to play whack-a-mole and not looking at the systemic abuse problems at all. There's literally no provision in any contract for ICANN

Compliance or anyone else to resolve the issue. And so let's add that, and hopefully, that will fix the problem.

Now, if your concern is ICANN Compliance sucks at their job and they're not enforcing the contracts properly, there's a whole separate process for – if that's really what we think the problem is, then we should be having a recommendation to – whatever, Jamie should be fired. Or at the end of the day, ICANN org is accountable to the community, right? Like we elect the board of directors, board of directors decides who the CEO is, just like in any organization. And if we think that ICANN Org is doing a bad job, we should use accountability mechanisms and the fact that we do elect a board of directors in order to actually hold org accountable and make them do a good job.

But I don't think that's the problem. The problem is not that Jamie is bad at his job, the problem is the contract doesn't say anything about systemic abuse. So if we think that's a problem, then we should fix the contract, and then I don't care about the DRP. Like we can choose one. Jamie's point, the PIC DRP process is fine, right? It has elements for both Compliance and a third-party DRP involved. Basically, ICANN Compliance initially vets the request, and if it looks like it's a meaningful dispute, then they can pass it on to a DRP.

That's fine. That's predictable in advance. I just don't think it's even possible to imagine registries and registrars ever being comfortable with a system where we say, "Let's agree on a contractual language, but if the result of the contractual language that's agreed upon between ICANN and the registries and registrars makes the community unhappy, then there are some other random people that just get to decide that

the registries or registrars are doing a bad job and take away their accreditation.

[We can't] do business like that. No one would ever be expected, in any other industry, to do business where we say, "Okay, here's the rules that you need to operate under, but if some set of people get angry, we're going to have some dispute resolution procedure that has nothing to do with the contract you signed, and we're just going to be able to take away your livelihood."

That doesn't make any sense, doesn't have any precedent anywhere else, doesn't have any precedent in any procedure today, and that's not the way we should think about this. We should think about it as how do we look at the problem in the contracts today, let's fix that, and then let's figure out the right enforcement mechanism for it.

DREW BAGLEY:

Thanks, Jordyn. And I'll have comments about your comment and other comments after Calvin speaks. So Calvin, you're next up.

CALVIN BROWNE:

Okay, great. [inaudible] as you're speaking. I've been on the receiving end of ICANN Compliance, both as a registry and a registrar, and I listened to David's exchange of e-mails with absolute – I'm not sure what the word is, incredulous. I just find it extremely interesting that people have that attitude, and that's because of how I've experienced ICANN Compliance.

My view and my experience has been that they start the process, and that process needs to get stopped by you coming into compliance. And you have to demonstrate through various means that you're in compliance. And once that process stops, a countdown timer almost kept running, and very early on in that process, you are – and I'm going to probably use the wrong word, but [let me go this way] you're threatened with EBERO and things like that, and dire straits and so forth.

So I find it extremely interesting to say, “Well, ICANN Compliance would be useless.” Because we have – and I don't want to use the word – broken the contractual [inaudible] but where we get into situations where contractual [inaudible] could be broken, I found them to be very effective to a point of almost being overbearing or something like that. it's like, “What the hell is going on here? What have we brought upon ourselves?”

So as far as I'm concerned, if you're looking for an effective [organization] or an effective department, being on the receiving end of Compliance, [I would say that they seem to be] fairly effective from my point of view and from my experience. But of course, it does help if they can have some contractual language to work to. If they don't have that, then obviously, they can't do anything anywhere. My two cents.

DREW BAGLEY:

Thank you, Calvin. Does anybody else have any other commentary? Because otherwise, I can kind of jump in with some of my responses. Okay, so I agree with everything that has been said. I don't think any of it's actually all that incompatible with this language right here. So

definitely, there's a diversion of opinions over what a DADRP could look like if adopted by the community and whatnot, but I don't see the current language with the "or" as being anything that is going to really affect that outcome to the detriment where this still wouldn't need to be grounded in some sort of contractual mechanism that creates it and some sort of community mechanism that in fact adopts it.

So I think that as a whole, we obviously all agree with the problem that was identified, the systemic abuse, we agree that it needs to be tackled through changes to the contracts themselves and that ICANN Compliance need to be empowered, and there seems to be open mindedness at least to a DADRP being a mechanism if in fact it is not the case that ICANN Compliance can tackle this alone. If ICANN Compliance can tackle this along, then it seems that there's consensus that there is not a need for a DADRP.

And so what we're attempting to do with this recommendation is just not box ourselves into the future when we know that it could be that ICANN Compliance is adequately staffed, that the language is proper and that it works fine, or it could be that it may not be and we end up in a situation very similar to where we're at now.

So with this sentence – I see David has now added something in the chat about losing the "or". Alright, so the sentence reads – so David has proposed getting rid of the "or" and changing the sentence so that it reads, "Such a procedure could apply if ICANN Compliance were not the right body to resolve a complaint related to DNS security abuse." I think there's a typo, David. Maybe there's supposed to be an "and" or something, or an "or".

DAVID TAYLOR: There was an “or,” but I've taken the “or” out. So I'm just [chucking] the wording elsewhere.

DREW BAGLEY: Oh. Do you want to read what you intend for that to say maybe real quick? Because yeah, grammatically, it's not making sense right now.

DAVID TAYLOR: No, we're getting down in the weeds, and it's very difficult, this, but now I've taken out the “or” which Jordyn didn't like, because Jordyn –

DREW BAGLEY: Are you punishing people with grammar?

DAVID TAYLOR: Well, no, I've just taken out the “or”, because it looks to me it could read that way, “Such a procedure could apply if ICANN Compliance were not the right body to resolve a complaint related to DNS abuse, security abuse, is ill-suited or unable to do so,” which is the wording we've got elsewhere. So I've taken out the “or” that Jordyn didn't like, but then it doesn't quite work grammatically, which is the only reason I've put the “or” in there in the first place, because I thought that kept that sentence correct grammatically. And I just suggested the bit there which Jamie had put in there, that ICANN Compliance themselves can refer a case to the DADRP, which I assume are the PIC DRP, which I think is very

valuable. And again, I wasn't wanting to go into the details here as to try and say "We can do this, we can do this, you can't do this, you can't do this." It was trying to be fairly open so that when somebody looks at this, hopefully, they then start looking at it and saying, "Okay, this is the situation where it would apply," we're not prescribing anything.

DREW BAGLEY:

Right. Yeah, because to I guess Jamie's point, even though – and Jamie, I do not intend to put words in your mouth, but Jamie's point about the fact that we would not need to be overly prescriptive in telling the community how the DADRP would work or under the strict conditions over which something could be referred or not referred, the first several sentences of this paragraph already basically do that work of saying that we think a DADRP should be considered.

So this final sentence should just be helpful to the community, and that should be, I think, our overall intention, is when they wonder how were we thinking about a DADRP existing, this sentence just needs to include enough language to conceptualize that without being overly prescriptive, because as Jordyn is pointing out, it needs to be grounded in some sort of actual legal basis and contractual language, and as you pointed out, David, we can't think of every scenario in which a DADRP would be useful, and that's part of why we're actually proposing it, because we've seen the ways in which other dispute resolution mechanisms have been useful.

I see that there's a few responses in the chat right now. Let's see. Okay, I think we're pretty much all in overall agreement if we can just figure

out this sentence itself. Let's see, Jordyn has just sent a new proposed sentence. What do you think of Jordyn's proposed language?

DAVID TAYLOR: [inaudible] Oh, yeah, go on.

DREW BAGLEY: I'll read it. I don't know if you've seen that, but it looks like we're making some headway between the two of you going back and forth on this. Alright, so Jordyn just proposed, "Such a procedure could apply if ICANN Compliance were not the right body to resolve a complaint related to DNS security abuse because the community determines it is ill-suited or unable to do so and registry operators or registrars are identified as having excessive levels of abuse. Alternatively, it may be useful for Compliance to be able to refer a case to the DADRP." Do you have a reaction to that, David?

DAVID TAYLOR: I'm just trying to scroll down to read it. Yeah, I think –

DREW BAGLEY: It's hard to scroll when everybody keeps typing. But then we want people to keep typing so we keep [having to go down.]

DAVID TAYLOR: Exactly, yeah.

DREW BAGLEY: [It's an Adobe Connect fault.]

DAVID TAYLOR: I want to make the chat bigger now. I want to make the chat big so I can sort of sit on the corner here, because I can't – okay, I'm scrolling now. It's working better. [inaudible]

DREW BAGLEY: And to Jamie's point, I think Jamie brought up this great point which I was making earlier – so that means I was not putting words in Jamie's mouth, which his good – is that already in this paragraph, we already make enough of a recommendation that a DADRP should be considered, so that's why to the extent we even have this final sentence, I think that should just be something that's a useful guide.

So I think that final sentence is really coming down to this back-and-forth between you and Jordyn with some of the feedback we've gotten from to hers being incorporated into that. I guess let me know what you think about Jordyn's latest language , which includes two sentences.

DAVID TAYLOR: See, I think when we drill down onto it here, the "ill-suited or unable," I suppose the language there throughout the rest of the recommendation is – I would agree with that, the community determines that ICANN Compliance is ill-suited to deal with it. The "or unable" is ICANN Compliance being unable to do it. So that would tie in

to Jamie and what Jamie had said, and Jordyn, what you'd proposed at the end there. So you then say, "Alternatively, it may be useful for ICANN Compliance to be able to refer a case to DADRP," which would be the point when ICANN were unable to.

So I think all the words are there, and I think we're very close. If the community determines it's ill-suited or ICANN Compliance determines it's unable to do so, again, that's – I wasn't being prescriptive, so by my wording there of saying, "ill-suited or unable." It was not overthinking things, they're either ill-suited or unable. Some scenario arise where they're ill-suited or unable to do so, but if you want to make it specific that the community determines that they're ill-suited and ICANN Compliance feel that they're unable to do so, then yes, it may be useful for Compliance to be able to refer a case to DADRP. If we can capture that, I'm okay.

DREW BAGLEY:

Are you suggesting using Jordyn's exact wording but just adding the word "community", so "Such a procedure could apply if the community determines ICANN Compliance..."

DAVID TAYLOR:

Well, Jordyn's already got that in, he's got the "Because the community determines it is ill-suited." So there I'd suggest putting in "Or ICANN compliance –" But again, I think we kind of –

DREW BAGLEY: Well, he has a sentence about ICANN Compliance potentially being able to refer cases. Because [he has the] end, two sentences. Yeah.

DAVID TAYLOR: But the way it's set out now, we've got "Because the community determines." So how is the community – it's just getting – because we're getting into very – we're trying to be very specific now, so it's difficult.

DREW BAGLEY: Right. But I guess like I said, my sense really is that this sentence should really just be a guide to the community when they're considering, when the board and others are considering our policy recommendation and are trying to figure out what our intent was and what the purported goal was and what the means to accomplish it were, that these sentences kind of serve as a guide of what we were picturing with the DADRP.

DAVID TAYLOR: Yeah.

DREW BAGLEY: And where we have consensus is – because we seem to have complete consensus as a team that if ICANN Compliance is doing a great job, then ICANN Compliance can keep doing a great job, can handle this, but a DADRP might be useful where that is not the case. And obviously, we're

debating how to define where that's not the case, but regardless, we're seeing this as a mechanism that can help with the same goal.

So I think that either we completely drop this sentence [in all areas of] the paragraph, or I like Jordyn's proposed language, and I like what you're saying, [sorry,] if there's something – which I don't think are different at this point, so if there's something where you want to just copy and paste what Jordyn has and word it slightly differently with what you're thinking, then we can consider that. But I think we're almost there if we want to keep this language or keep [to the form] of this language.

DAVID TAYLOR:

Yeah. I suppose my concern would be insertion of where we have the ICANN community is determining something. I'm not sure how they're able to determine whether ICANN Compliance's view of a particular complaint – putting that in, it seems to me just – it seems to be an overall brush of saying, "We'll punt this back to the community because the community of registrars and registries will agree it this way." And that's the problem. I think it's more of an ICANN Compliance thinking they're not able to deal with it for whatever reason.

So that's why I like the addition there where you've got in, Jordyn, about bringing in ICANN Compliance, it may be useful for ICANN Compliance to be able to refer a case to DADRP. I think that's fully the intention, in my view, if ICANN Compliance can't do something, to say, "Well, we just can't do this, we want somebody independent to look at it, because we don't know what reasonable is." And the example on

that, when I mentioned that clause before, the registrar agreement clause where you've got that 3.18.1 where it says the registrar shall take reasonable and prompt steps to investigate and respond appropriately to reports of any abuse. The registrar doesn't have to do anything, so what's appropriate? That becomes a question which is for a court or a dispute panel to say, "Well, appropriate is not an out-of-office reply. Appropriate is actioning or doing something, not saying, 'We've looked at it and we don't find any abuse.'" So I think that's the difference and that's where ICANN Compliance could go to a DADRP and pass it on, the same as a PIC DRP.

DREW BAGLEY:

Right. So I think that final sentence perhaps encompasses that, unless you want to slightly modify that. Jordyn has his hand up, so Jordyn, why don't you jump in?

JORDYN BUCHANAN:

Yeah. So Drew, you just said something that made me a little nervous, which is, "I think we all agree that the community can decide – that we should deal with systemic abuse and that the community can decide that ICANN Compliance is the right forum to resolve abuse." I don't think I agree, and I don't know what other people agree that the DADRP should be viewed as like a "Jamie is doing his job badly, therefore we get a second bite of the apple in order to solve problems."

[What I think is] totally reasonable – I think we all agree on at least one thing, which is there should be contractual language that addresses systemic abuse. Right, so that's issue one. I think we all agree on that.

And then I agree that as part of deciding to how to implement that contractual language, the community can decide that ICANN is the right forum, the DADRP is the right forum, that there's some mechanism by which ICANN starts, and then if they feel like they're out of their depth, they can refer it to a DRP.

But I strongly disagree that there should be a special mechanism just for DNS abuse where third parties can decide, "Oh, I don't think ICANN Compliance is doing a good job, therefore I want to be able to separately initiate an alternative dispute resolution process." Right? because we don't have that anywhere else, and we have other proper accountability mechanisms that the community has built up, and I feel like that's solving a totally separate problem. If we think that Compliance is doing a bad job, we should fix the fact that Compliance is doing a bad job, not try to create an alternative dispute resolution mechanism.

So Drew, you just said, "Oh, we want to have this as a backup if we think ICANN Compliance can't do it." And I think that's true if we agree in advance they can't do it. We just – I don't think there should be a backup on the fly to say, "Oh, I didn't like that decision, I'm going to second guess it."

DREW BAGLEY:

Yeah, my comment was not implying that there – or did not intend to imply that there's consensus that there should be forum shopping. That was not at all the intent of the comment. I meant we have consensus that we need to fix this problem, and then we have consensus that

we're going to mention a DADRP as a potential means as part of the solution to this problem.

But I don't disagree that – obviously, like with any dispute resolution system, you would have to have the procedures and the applicability, and then the legal basis for an advance before it would be used, before it would be an on-the-fly system. So I don't disagree with anything you just said, and sorry if my language was broad or something and implied something else. But that's not what I intended. I see David's hand up.

DAVID TAYLOR:

Yeah, thanks. I think I forgot what I was going to say now. I suppose I'm just – conceptually, I'm trying to understand how this is so different to a PIC DRP or the PDDRP, so maybe I need to get my head around those aspects, because as far as I can see, in the contracts – correct me if I'm wrong – we're not supposed to have trademark abuse [inaudible] trademark abuse, but we still have a UDRP which can be brought in and used by third parties through an independent panel. Is that statement incorrect? Am I wrong in some way here?

JORDYN BUCHANAN:

So David, this is the point I keep making. Yes, but you don't first go to ICANN Compliance and then say – and then they resolve or they try to resolve it, and then they say, "Oh, you know what?" They make a decision and then you say, "Well, I didn't like that decision. I'm going to use another DRP instead." Right? You decide in advance.

“[inaudible] decided ICANN Compliance is not the right forum to resolve trademark complaints. Instead, we’re going to allow experts to resolve trademark complaints,” and so when you start a UDRP, you know you’re going to go to a trademark body. When you start a PIC DRP, there’s a procedure. You start with ICANN Compliance, it can go to a DRP, but ICANN vets it first, and then ICANN either based on the request of the complainant or ICANN itself, they can refer it out.

But it’s not like you make a PIC DRP or DRP complaint and then ICANN resolves it, and then you’re like, “Oh, never mind, I didn’t like that outcome. You guys are bad at your jobs. Let’s refer it out now.” Right? So it’s totally fine to have a procedure that builds in a third-party dispute mechanism in order to deal with matters that ICANN Compliance is not the right body to resolve. I think we all agree on that.

It’s just the only complication is when you say, “Oh, well, I want to have contractual language, I want ICANN Compliance to do it, but then if I don’t like the outcome, then I’m going to get grumpy and go to this other DRP instead.” That’s the only issue I have.

DAVID TAYLOR:

I suppose I don’t look at it as clear lined and black and white as that because I can think of many occasions where we would consider for the same fact scenario going to ICANN Compliance or filing a UDRP, and they’re not mutually exclusive in any way. And we may go to ICANN Compliance, they won’t do anything about it, and then we’ll file a UDRP and win it. But that [doesn’t preempt – the] fact that ICANN Compliance, you can use a mix and a match of different things and you’re trying to

find the most appropriate one in all the circumstances for the infringement or the abuse you're looking at.

JORDYN BUCHANAN:

I would seriously hope that if you went to ICANN Compliance and said, "I have a trademark dispute about this domain," they would say, "Well, that's what UDRP is for." Because there's literally an explicit mechanism for that. And I agree there may be other things going on with the domain [inaudible] the complaint, but –

DAVID TAYLOR:

Yeah, that's the thing. This goes to [inaudible] exactly. Yeah, there's a mixture of everything going on. And I'd just sort of identify again, one of the first things we spoke about when we were doing this on the CCT review – and you might remember that – was the PDDRP and how that came about.

And the example which I mentioned on one of our first meetings was when we were instructed to deal with a registry operator who was running a TLD – and I won't bother mentioning which one, but that registry operator had registered via a third party 25,000 domain names which infringed mostly trademark infringement, not necessarily all, but of the 25,000 names, most of them were trademark infringement.

One of our clients, a very small one, got caught up in that and said, "Why on earth are we registered or someone registered us under this top-level domain?" We went to ICANN Compliance who didn't do anything, we filed a UDRP, the result of the UDRP [was we] got the

domain name transferred and 24,999 domain names cancelled. So there is an example, which is ten years old, and that is one of the driving factors which [puts me pushing for] a PDDRP, for a registry operator that does something like that.

So I fundamentally don't see a massive difference here to a registry operator that allows 25% of its domain names to be malicious and feeding off people and making money from people to refund such registrations, etc. And a similar situation. I don't see a fundamental difference in that. I don't really [inaudible] language where we've said something where we're saying we need to do this, we need to do that. I think a group can get together and find a similar way of doing this, and it's probably not us at this point.

DREW BAGLEY:

So yeah, many of these DNS abuse situations are complicated and can involve trademark and involve so many other things while involving the abuse that's currently in contracts and everything. So yeah, there's certainly potentially going to be situations in which ICANN Compliance would refer something to a DADRP or for which, perhaps by design, a DADRP would be created to hear.

I think though with the current language proposed, I don't see that we – where we've gotten with this consensus language is incompatible for either of your views as to where the community might land and how this is established. I do not think anything in our recommendation creates a situation in which anything's going to be done just on the fly and without any sort of procedure.

So I guess right now, we need to decide, do we want to keep language at the end of this paragraph which is not necessary for just the proposal of a DADRP to be considered, we're already doing that, but this, like I said, should be a guide to those considering a recommendation. So with Jordyn's two sentences, David, do you have any suggested modifications to those? Are you happy with that? What are your thoughts on that?

DAVID TAYLOR:

I'm happy with the last sentence, "Alternatively, it may be useful for Compliance to be able to refer a case to DADRP." I think that's specifying what we thought and what was part of the thinking [on] the DADRP in the recommendation 15, so I think that's good to specify that. And I just feel I'm a little bit tied up in knots with the community – "Because the community determines it is ill-suited or unable." I'm not sure how the community determines that ICANN Compliance is ill-suited or unable. And I just think that I have a problem with that. I'm struggling. I don't know how to word it. I think it should be less specific, so maybe we should simplify it.

"Such procedure – I'm just thinking out loud now – could apply if ICANN Compliance are not the right body to resolve a complaint." I just think "To DNS security abuse or they are ill-suited or unable to do so." That seems to – if we don't go into the meaning, that covers what Jordyn wants. It's open, it's not prescriptive. [inaudible]

JORDYN BUCHANAN:

It [inaudible] the "or." Literally, that just takes us back to where we started.

DAVID TAYLOR: Yeah. I know. I just feel it too prescriptive when we say the community should determine that ICANN Compliance is unsuited or unable to do something. I don't get that. I'm struggling.

JORDYN BUCHANAN: The idea is there's nothing [determinate] on the fly, is that we decide, "Oh, these are complicated technical matters, ICANN Compliance isn't the best body for it. Let's set up a DADRP instead." Right? But the idea is not to – for an individual complaint, the community decides. The community decides in advance that either compliance or the DPR or some combination of the two is the right forum to resolve these things. To your point, David, this language about the community deciding –

DAVID TAYLOR: Yeah, I agree with that.

JORDYN BUCHANAN: Twice before.

DAVID TAYLOR: I think your wording there works, or some combination of the two. Then [one's not] preempting the other, I think that works, because the community or ICANN Compliance or some combination of the two decide that it's ill-suited or unable to. But again, we're getting complicated in the language. But that captures it then.

DREW BAGLEY: Yeah, I think just keeping the language as simple as possible. Oh, yeah, Jamie. Sorry, I didn't see your hand.

DAVID TAYLOR: Yeah, go ahead, Jamie.

DREW BAGLEY: Or you didn't raise your hand. So you're just jumping into the queue. Okay. Go ahead.

JAMIE HEDLUND: I can go back in and put my hand up if that would make you feel better. I'm confused, are we asking the community in its comments on the report to say, yes, the UDRP is justified because Compliance will not be always – [inaudible] may in some instances be ill-suited, whatever, to handle individual complaints, and therefore a complainant can request a DRP or Compliance can refer a complaint to a DRP? Or are you saying – because I don't think it's really clear, at least not to me – that in every instance in which there is a complaint and the complainant wants it to go to a DRP, that the community has to weigh in on whether or not Compliance is ill-suited to handle it itself?

JORDYN BUCHANAN: Yes, so Jamie, I just tried to clarify that. The intent of the language is the former, not the latter. It is not that the community should decide in

each instance, but that – so just to backtrack us to where this conversation comes from, the last time we talked about this, I think we all agreed that there should be language, contractual provisions to require registries and registrars to deal with systemic abuse, right? So we're all on the same page.

And then there was some debate about whether a DADRP was necessary or not. And Jamie pointed out that there were some scenarios today where the community has decided that there's – alternative dispute resolution procedures are appropriate in order to enforce particular parts of the contract, which I think is totally fine, right? And so the idea is that we recommend that there needs to be language to deal with systemic abuse, and then during the implementation of that language, then the community decides, oh, what's the best place – if there is systemic abuse, who should take a look at that to decide whether or not the registries or registrars are actually dealing with it appropriately?

And it could be that the answer is Compliance, it could be the answer is DADRP, it could be it's like a complicated procedure like PIC DRP where it's a combination of the two. All that's fine to me, but I just – David keeps saying something that freaks me out, and I just don't want that to be captured in this language, which is like, "Oh, look, we agreed on this contract, I don't like the results of the contract, and therefore, there should be a DRP that allows people to go back and say, 'Oh, the contract sucks but I'm going to take away a registry's accreditation anyways because I disagree with the contract.'"

I disagree with that premise that there should be some way for third parties to take away an accreditation based on something that's not in the contract. I'm totally fine with us all agreeing that we need to deal with systemic abuse in the contract and then letting the community decide, however it wants to, what the right enforcement mechanism for that provision is, whether it's a DRP or Compliance, or some combination of the two. That's fine, it's just like the, "Oh, I see these situations where the contract didn't work. I want a way for us to be able to second guess the contract." That is terrifying to me, and I think it would be to all contracted parties.

DREW BAGLEY: Jamie, did you have a response to that?

JAMIE HEDLUND: Yes, and I even raised my hand because I wanted to make [inaudible]

DREW BAGLEY: Okay. So then Jamie, go ahead, and then after you, or while you're talking, I see that David has pasted new text in the chat.

JAMIE HEDLUND: So I agree 100% with Jordyn, and this goes back to the original thing, the problem, which was the DRP only enforces – it is limited to enforcing the contract that Compliance was limited to enforcing. And if we beef up that contract with additional provisions, that means that both Compliance and the DRP have expanded authorities that they did not

have before, but it doesn't mean that the DRP goes beyond [the contract, because] that would be just unsupportable in the whole struct you're of ICANN, the multi-stakeholder model.

But from an implementation perspective, again, it would be helpful, I think, for org, for the organization to understand that if the community adopts a DRP, what has to happen for someone to invoke it? Is it enough – as it is, I think, on a PIC DRP – for the complainant to say, “Hey, I don't want this to [go before a panel, or enough where just Compliance on its own] because it's Thursday, it wants to refer to a panel.” Or if there's some condition that has to be satisfied first, and then who is the arbiter of whether or not that condition has been met? Thanks.

DREW BAGLEY:

Thank you, Jeremy. So everyone, David has pasted new language in, so with regard to Jordyn's comment and Jamie's comments, this seems to still work with this notion that whatever this process is going to be by which a DADRP would be used would be established in advance by the community, even if there are exclusive ways in which a case gets to a DADRP or hybrid ways where it's referred by ICANN Compliance, whatever that is, I think that this proposed guiding language, like with Jordyn's last iteration of it, I think is compatible with what the comments said. So I would encourage everyone to chime in on the latest language to see if we can adopt that today maybe.

And I'll read it in case anyone's listening by phone. Let me just get it – okay, so this latest language slightly modifies Jordyn's language and

reads, “Such a procedure could apply if ICANN Compliance were not the right body to resolve a complaint related to DNS security abuse, it is ill-suited or unable to do so, and the registry operators or registrars are identified as having excessive levels of abuse.” The next sentence reads, “It may be used for Compliance to be able to refer a case to the DADRP.

Then we just need to grammatically clean that up slightly, but let’s see, Jordyn just proposed something. And then Jordyn is now – for those of you listening along instead of reading along – Jordyn has proposed, “The community may create such a procedure if ICANN Compliance were not the right body to resolve complaints related to DNS security abuse, is ill-suited or unable to do so and the registry operators or registrars are identified as having excessive levels of abuse. It maybe useful for Compliance to be able to refer a case to the DADRP.” So David, did you want to chime in on your proposal and Jordyn’s proposal? And then Jordyn, do you want to chime in? Because I think we’re getting somewhere.

DAVID TAYLOR: I'm glad you do.

JORDYN BUCHANAN: Yeah, I was just trying to clarify that the community would create this process in advance, right? Not that each individual complaint would be – to Jamie’s point, we’re not trying to say you're going to resolve individual complaints like this, it’s just that the community is going to figure out, “Oh, we think these sorts of things should go through Compliance, these things should go through a DADRP.” Who’s going to

decide that? That's all we're saying here, is this is an option in order to enforce this new provision that we're proposing in the contract, not – the problem I have [with David's wording is it talks about "a" complaint,] is it sounds like each individual complaint, you would go through this calculus as opposed to just sort of deciding in advance what the right procedure would be.

DREW BAGLEY: David, so do we have consensus on this latest version of the text, the last one in the chat?

DAVID TAYLOR: I'm uncomfortable with it still because I just think it means the community may create such procedures, so the community – effectively contracted parties – vote and say, "Well, we don't think it's necessary," and it dies. Which it will, let's not kid ourselves. [inaudible]

DREW BAGLEY: Okay, but either way, the procedure would have to be created, whatever our recommendation is. So what's the alternative, I guess?

DAVID TAYLOR: [See, this to me –]

DREW BAGLEY: Now that we've narrowed down the rest of the language in there.

DAVID TAYLOR: Yeah, this is going down a slightly different wording where the community may create such a procedure, so the community [inaudible] Compliance is not the right body to resolve complaints, but we're deciding – and as Jordyn said, we've all agreed that ICANN Compliance is the right body to resolve complaints, so therefore, we don't need DADRP, so we just stop it. That's what you're wanting. That's what you said.

JORDYN BUCHANAN: I totally don't agree with that.

DAVID TAYLOR: [This kills it.]

JORDYN BUCHANAN: I said numerous times it is totally fine with me if we decide that Compliance is not the right [inaudible] body. I just totally don't agree with that – if the idea here is we can't adopt anything that requires the community to take action because registries and registrars are going to kill it, then we might as well just not pass our report, right? Because all this needs to go through the community. We don't get to unilaterally decide to do anything.

DAVID TAYLOR: No, we're not – certainly not unilaterally deciding to do anything, but I've had that comment several times now that the CCT Review Team report means diddly squat. Which is very frustrating when people say that to you and you spent two and a half years, but there you go. So I do question whether it's of any value.

DREW BAGLEY: Okay. So with this language, we're already making the recommendation for the DADRP to be considered, because earlier in the paragraph in the language we have consensus on, we say, "However, in addition, a specific DADRP should be considered to the extent the community concludes that ICANN Compliance may be unable or ill-suited to deal with certain situations related to abuse." I'm looking at the most recent version from the e-mail, but – or is that the older one?

DAVID TAYLOR: I was just going to say that I'm just reading Jamie's comment, Jamie, where you've said, "Maybe [inaudible] to Jordyn's phrase and the community would determine the conditions under which a complainant can invoke a DRP." Yes, I agree with that.

DREW BAGLEY: Okay, so we already in our recommendation – now I'm reading the current version. I think I actually still was before, I was just reading [down in the details.] So the current version of the recommendation part itself, we still already make this recommendation that a DADRP should be considered. So that's there already as part of the

recommendation, with all the caveats that come with that, with our recommendation for that.

So really, with this sentence here, this is in the details, and like I was saying before, it really comes down to how we're guiding those who will create this mechanism into creating it. And so if we provide no details, then we risk that they don't understand where we thought it could be used, so therefore, for these final sentences, I don't see how it changes anything whether we mention the community or don't mention the community, because the community's still going to have to create this.

So really, we should be focusing on where we think that this would be useful, and whether the latest version of the language, whether we say "such a procedure" or we say "the community may create," I really don't think it matters one way or another. The community is creating it regardless of which of those we have. So, is the rest of the sentence correct? And then we can dispute [inaudible] whether we have to preface "the community may create," but either way, do we have consensus now on the latest version of "Such a procedure could apply if..."

LAUREEN KAPIN:

So –

JORDYN BUCHANAN:

[inaudible] There's a queue, but I'll just [add too] there's a difference in the language between what David proposed and what I did, which is mine is plural and his is singular, and the point is just to say that the

procedure should apply to all cases, not just be like a random – decide on the fly. Right? That’s what I’m trying to get at, that there should be an established procedure in advance, not on the fly, deciding whether or not a DADRP or the agreed upon procedure.

DREW BAGLEY: Right. And just to clarify since I was reading it in the text, your language is exactly the same as his previous language, except for that, except for making it plural because of the purpose you're saying to make sure we’re being clear that this is a process and a procedure that applies to all cases. But is that the only edit you made?

JORDYN BUCHANAN: Yeah, exactly.

DREW BAGLEY: Okay. Thank you. Alright, so now let me [inaudible] queue.

JORDYN BUCHANAN: I mean there's the community thing that you mentioned, yeah, [inaudible] later.

DREW BAGLEY: Yeah, okay. And then – yeah, so sorry, so in that latest version, Jordyn, the only thing you added was that preface, “The community may create...” Is that correct?

JORDYN BUCHANAN: And I made it plural. Those are the two.

DREW BAGLEY: And you made it plural. Okay. Perfect. Thank you.

JORDYN BUCHANAN: Yeah.

DREW BAGLEY: Okay, so then Jamie, and then Lauren.

JAMIE HEDLUND: Sorry, that's an old hand.

DREW BAGLEY: Perfect. I like old hands because they go down quickly. Alright, Lauren.

LAUREEN KAPIN: First of all, I've missed most of the call because I was on another ICANN call, so apologies if I'm asking what sound like silly questions. But I just want to get my brain around this structurally so I can perhaps offer some input. What we're basically recommending here in addition to possible contract changes to deal with this level of systematic abuse is a parallel or alternative – I won't say parallel, that just sounds wrong. AN alternative procedure which is this – I'm getting the acronyms wrong,

but this alternative procedure where if Compliance is not the right body to address this issue of systemic abuse, there's this parallel procedure to deal with it. Is that basically – that's basically what this recommendation is saying, and then the debate here is whether – it's how to put that into effect? I just want to make sure I'm coming at this from the right perspective.

DREW BAGLEY:

Sure. Yeah. Great question. So basically, where we are is we seem to – and I say seem to because we've not taken a vote as a full group with all of our members on the call, so based on the chat and the dialog so far, we seem to have consensus over just about this entire recommendation, except for two sentences now. And these – so we are recommending the contractual language be strengthened, that ICANN Compliance be empowered to deal with that situation. We're also recommending that the community consider a DADRP which may be used in addition or sometimes instead of ICANN Compliance, but only as part of an overall process that's created by the community as to when and where that happens. And the language providing now and that we're debating is basically kind of our way of guiding those who will consider this recommendation and how to create a DADRP.

So a DADRP, as we've discussed on this call, would potentially be used in a situation in which ICANN Compliance is not the right body because maybe it's a highly technical complaint, maybe it's a complaint that in addition to involving DNS abuse involves other things that ICANN Compliance generally does not consider, there's hypotheticals, but what we agree is there's potentially unknown future situation where a DADRP

could be useful, and there could even be situations in which ICANN Compliance would refer a matter to a DADRP.

In addition to that, there is of course this notion – and this is where there's tons of controversy, but just to say what things that have been discussed – that ICANN Compliance may not be right because they're just not dealing with it or something like that. But at the end of the day, since a DADRP would have to be grounded in some sort of actual legal language that would bring it to fruition, maybe when the community adopts it, they would consider those circumstances.

So as a kind of guidance to them, we already have advice about considering a DADRP where ICANN Compliance may be unable or, quote, “ill-suited” to deal with certain situations. So that’s really where we’re at, and so all we’re considering are the final sentences – sentence originally, but now potentially two sentence at the end of the paragraph. And let me – I’ll scroll to that sentence for you, Laureen, and – Jean-Baptiste is more organized than me, maybe he could better scroll.

LAUREEN KAPIN:

Oh. Yeah, because I'm scrolling down on my phone.

DREW BAGLEY:

Okay. So that’s where we’re basically down to. And so where there's also disagreement is whether or not our language sufficiently clarifies that this would have to be something established as a process and procedure or whether the language in fact implies something else that there can be forum shopping every time or something. That’s part of

where we're at, but the reality is that our paragraph as a whole already encourages the community to consider the DADRP. We even already draw the analogy to a trademark TDDRP, so this final language is really about saying where such a procedure could apply, and that's what we're down to. And we're so close. So Jordyn's final version of his language and David's final version of his language are nearly identical, but not identical, and that's where we're at. And so Jordyn, if you want to chime in before you jump off, since you're jumping off in a minute.

LAUREEN KAPIN: But essentially, this is like a parallel or supplementary procedure?

DREW BAGLEY: Yeah. So basically, where we're at –

JORDYN BUCHANAN: No, I don't think [inaudible]

DREW BAGLEY: Sorry, I was going to say, wouldn't be fully parallel, you can forum shop, but it would be supplementary in whichever way it was established, where in some ways, the DADRP would be the better forum, and some, ICANN Compliance would refer to the DADRP.

LAUREEN KAPIN: Oh, okay.

DREW BAGLEY: Jordyn, did you want to say anything? I know you have to jump off.

JORDYN BUCHANAN: Yeah. I think you said it exactly right, it's not parallel, it's if the community – it's just like – I think we all agreed last time we talked about this that there may be circumstances in which ICANN is not the right body to adjudicate these disputes, because they're technical, they're super technical, they require domain expertise [inaudible]. Whatever it is, ICANN's not the right forum, in which case it's totally fine for the community to decide there should be this alternative dispute resolution procedure. And there could even be like a two-stage process like DRP where Compliance would start up first and then it goes to this other panel. But it's a parallel thing that you mentioned, Laureen, which is exactly what I think I'm at least worried about. There shouldn't be a, "I'm not happy with the outcome of pass number one, therefore I get to go complain about it and do a second bite of the apple."

LAUREEN KAPIN: Right, so it's either-or. You can't do both.

JORDYN BUCHANAN: It's either-or, and decided in advance by the community. It could be both in the same way that the PIC DRP has things that Compliance does and it has things that the PIC DRP provider does.

LAUREEN KAPIN: Yeah.

JORDYN BUCHANAN: But it's decided -that procedure is defined in advance [if they sort of go to] ICANN and then be like, "Oh, I don't like your decision, ICANN, now I'm going to do it through the third-party instead."

DREW BAGLEY: And you could envision this being— after it's created, being used in a situation in which kind of like what we've seen with DNS abuse study, there's a bunch of trademark infringement being used to perpetuate DNS abuse and phishing, and it's something that's complicated where there's elements like Trademark where ICANN normally wouldn't consider that, and then there's all this DNS security abuse which ICANN Compliance, with the adoption of our recommendation, would be considering, but maybe because it's this complicated matter that involves both, a DADRP would be better suited, or there could be situations like that, for example. And so the final two proposals –

LAUREEN KAPIN: So what's the proposal on the table then?

DREW BAGLEY: Yeah. So the proposal on the table is just dealing with what we substitute for the final sentence in the paragraph of the details for this recommendation, and so David and Jordyn's are very similar but distinct

enough that we're still trying to figure out where we're going to land. So I will paste the two in the chat. You can read, Lauren?

LAUREEN KAPIN: Yeah.

DREW BAGLEY: Okay. So I'm going to paste this too.

DAVID TAYLOR: Can we maybe get them out of the chat and onto the screen? Because it's quite hard to see them in the chat.

DREW BAGLEY: Okay, yeah.

DAVID TAYLOR: [inaudible] on the main screen.

DREW BAGLEY: Let me get them to Jean-Baptiste.

JEAN-BAPTISTE DEROULEZ: Yeah, will do.

DREW BAGLEY: Thank you, Jean-Baptiste.

JEAN-BAPTISTE DEROULEZ: Thanks to you.

DREW BAGLEY: Alright, Jordyn, so you have to jump off. You'll see the update from this call via e-mail, or I can even e-mail you right after this call to update you.

JEAN-BAPTISTE DEROULEZ: Sorry, Drew, I just got kicked out of Adobe Connect, getting back in. Can you see it? Can you hear me?

DREW BAGLEY: Yes, thank you. Yes, so Laureen, you can see the two versions. The key distinctions of these two versions is that one speaks in singular, the other speaks in plural, and the one that speaks in plural begins with the preface, "The community may create such a procedure" whereas the other does not. And so the purported intention of turning it to – of using plural for the second one was to make clearer that his is intended to be part of an overall process and not a one-off sort of thing where each person complains to Compliance and then it's decided there if ICANN Compliance is ill-suited, whereas either way thought, regardless of which of these two languages is ultimately adopted, of course, a procedure has to be created for this whole entire thing anyway.

LAUREEN KAPIN:

And David, what's your view with the differences between these two?

DAVID TAYLOR:

Well, I think that we do have a difference of opinion on when this could be kicked in and when it could operate, and on the part of the call which you missed, I look at this as a way where for instance, the registrar accreditation agreement- and there's a section in there which we come across all the time, 3.18.1, which is the contractually negotiated arrangement where the registrar's obliged to take reasonable and prompt steps to investigate and respond appropriately to any reports of abuse. That's what they do do. ICANN Compliance will go in, and we had issue, many issues where the registrar does look and does respond and says, "We're not going to do anything." And so nothing can be done.

And those ones where I have the issue is not [where there's] trademark infringement, because when it's trademark infringement, I can go off to the UDRP, and if the registry is part of it, I can go off and do a PDDRP. But on something like that, there's no way of doing anything else. So yes, in the DADRP, I was certainly heading to the idea that something goes wrong, we have a similar clause that a registry shall take reasonable and prompt steps to investigate and respond appropriately to any reports of technical DNS abuse. And that's what gets in the agreement in three years' time, and new end up with exactly the same situation today where the registry replies and says, "Yeah, we've looked at it, we'll get rid of it, don't worry." And nothing happens.

And there was a very specific thing in the recommendation D when it was [separate, one,] that it would be a staged process, that it wouldn't

kick in immediately, it would kick in when ICANN Compliance had looked at it and if ICANN Compliance was unable to do anything. So there it comes down to, for instance, what is an appropriate response. So ICANN Compliance may decide, well, an appropriate response is not an out-of-office, but it is a promise to do something [in certain amounts] of time.

And I think it comes down to reasonableness, because the registrar has to take reasonable steps. So who defines that? And I think it could be very helpful for ICANN Compliance [inaudible] a third-party DADRP panelist expert arbitrator says, “Well, reasonable is a month, or six months, or a year,” or there's some sort of decision which enables ICANN Compliance to be able to say, “Well, here's the DADRP that decided that reasonableness In that context of DNS abuse is actually two weeks and not two years.” Something like that.

So yes, I'm trying to capture that the community can go down that route, should it so wish, and try and get something like that included, and not necessarily being something where it's an either-or that we say, “Well, the community thinks that the ICANN Compliance is the appropriate entity to do this and there should not be a DADRP. So I think that they go very different directions.

LAUREEN KAPIN:

Yeah. The second paragraph seems a little contingent to me. So it doesn't strike me as strong because it just sounds a little wishy-washy to me, even though I understand the reality of the fact that the community needs to buy into this. But the first paragraph seems stronger because –

and it might be stronger still if we changed “could” to “would,” “such a procedure would apply,” because as I understand it, you want to make sure that there is this, I’ll say, a backup procedure when it’s not suited for whatever reason for ICANN Compliance and you still have this systemic problem. That’s why you want the DADRP in the first place as I’m understanding it from our prior conversations and this one.

DAVID TAYLOR: Yeah, and I’d agree wholeheartedly with that, with a “could” to a “would.” I haven’t gone there because we’re having such difficulty on it. But yeah, that makes sense to me. And I do think if we read the rest of the recommendation, which you may not have – I don’t know whether you’ve had a chance to read it – because we talk about [the community] elsewhere.

LAUREEN KAPIN: Yeah, no, I did read the rest of it.

DAVID TAYLOR: So we do have that in. There’s Jordyn’s other amended modification, which I was okay with, it was just this last one which I’m struggling with, because I think it takes us down a different path.

LAUREEN KAPIN: So my suggestion then would be – well, my vote would be for the first wording and having that as a “would,” because as I understand, the whole intent here is to have a backup procedure to deal with this issue

of systemic abuse in the event that for some reason, ICANN Compliance is not the right body to deal with it.

DAVID TAYLOR: Yeah, and I think – and just one more thing on that which may help – I don't know that it does – is there was discussion in the chat about whether or not we would have – and I think this is Jamie, I don't know if Jamie is still on the call – about determining the conditions under which a complainant can invoke a DRP. So I wouldn't mind finishing off that recommendation, the top one there where we end up with – we talk about ICANN Compliance can initiate or [foster] DADRP, but we could have the community should determine the conditions under which a complainant can invoke a DADRP. I'm happy with that to be added into number one if that helps people on the call.

JAMIE HEDLUND: Sorry, [would you add that in?]

DAVID TAYLOR: Sorry, Jamie, I missed that. I didn't hear what you said. Sorry.

JAMIE HEDLUND: I was just going to say I'm also happy for symmetrical treatment of ICANN Compliance's ability to refer something. If you want to throw that to the community development of the procedure, that's okay too. It doesn't have to be established head of time.

DAVID TAYLOR: I'll just put that wording in the chat if you want, [then] that helps.

DREW BAGLEY: Okay, so David, what's this? Where would we put this sentence?

DAVID TAYLOR: I think just at the end, it may be useful – so we've got, “Such a procedure would apply if ICANN Compliance were not the right body to resolve the complaint related to DNS security abuse, is ill-suited or unable to do so, and the registry operators, registrars are identified as having excessive levels of abuse. It may be useful for Compliance – probably with a capital C in there – to be able to refer a case to the DADRP, and then the community should determine the conditions under which a complainant can invoke the DADRP.

DREW BAGLEY: Okay. So then our paragraph as a whole –

LAUREEN KAPIN: I like that.

DREW BAGLEY: Our paragraph as a whole now makes the suggestion that a DADRP should be considered, then we go into the details of what we intend with that consideration of a DADRP, and then in the end, we state what

we all ultimately agree, that it's up to the community to determine the conditions for this.

So I think that's good. So why don't we – okay, so why don't we go ahead and we'll – on this call, is there anyone who disagrees with this new compromised version of paragraph one which seems to – but we cannot guarantee because Jordyn is not on the call – hopefully take into account Jordyn's view on this and be compromised language that will work? Are there any objections to modified paragraph one?

Okay, no objections to this. So then we will want to – Jean-Baptiste, we'll want to incorporate this modified paragraph into our final text for this recommendation and then see if we have any objections to this modified full recommendation text that we'll send out to the group so that those who were not on the call, including Jordyn, can consider it. And Calvin already had to drop off I think too.

DAVID TAYLOR:

And also accepting all of Jordyn's other suggestions higher up. Those were all fine. On the recommendation.

DREW BAGLEY:

Right. Okay. So hopefully, fingers crossed, we now have final consensus on something that seemed impossible a month ago and completely impossible six months ago, and we have hopefully a very good, strong recommendation based off of our analysis of all the DNS abuse data. And hopefully, it's something that can make a positive impact.

Thank you so much, David, for all of your hard work on this and figuring out ways to reach consensus. So fingers crossed. We still need to send it out to the whole group, see if there are any objections. But we will get that sent out today and have a very short timeline for objection. So if anyone has objections, we'll want those, I guess, by – what's today? Today's Wednesday, so by Friday, we'll want any objections to those.

And then we will need to have this call run a few minutes late because we have some other minor business. Jean-Baptiste, do you want to chime in on where we're at with regard to everything else? I know that was the major thing, so I'm really glad we spent the call working on that.

JEAN-BAPTISTE DEROULEZ: Yes. Thank you very much Drew, and that was a great discussion. So the only remaining action item [inaudible] report, and I believe will be quick to review. First one, David, on the last plenary call, there was this update that was made under the executive summary, and we just wanted to know whether you had any issue with that new text.

DAVID TAYLOR: I'll try and read it. I've been so focused on this recommendation I hadn't looked at that. So I'll try and have a look at it later tonight or tomorrow morning first thing.

JEAN-BAPTISTE DEROULEZ: Can't you look at it now so that it's –

DAVID TAYLOR: I can, but I've got a call in one minute. So put it up on the screen if you want. Is it in there? Is this –

JEAN-BAPTISTE DEROULEZ: Yeah, it's on screen now.

DAVID TAYLOR: Okay, got it. I can see it. "Furthermore, [inaudible]." Is it just basically different in the pink here? Yeah?

JEAN-BAPTISTE DEROULEZ: Yeah.

DAVID TAYLOR: Yeah, good with that.

JEAN-BAPTISTE DEROULEZ: Okay, thank you. So adding to that, there was another one – so this was discussed today, and here, there was a minor edit from Jamie on this sentence, replacing "fairly substantial" with "anecdotal."

DAVID TAYLOR: Is this just on the INTA? [inaudible] Very substantial.

DREW BAGLEY: My understanding or my reading of it was it was based on the INTA survey.

DAVID TAYLOR: Yeah. I think so. So can't remember now. I can't remember why I put "fairly substantial." I do remember looking at this, and I remember having substantial in at one point in an earlier draft and then changed it to "fairly substantial" to take a little bit away. Anecdotal seems a little bit too less, because from my reading when I went through it, it was pretty clear that of the brand owners who are complaining that pretty much everyone is a reluctant purchaser of [summarized] registrations.

LAUREEN KAPIN: [Why don't we just] say evidence and not characterize it?

DAVID TAYLOR: Yeah, [inaudible]. Yeah, I'm happy with that. "Evidence that brand owners..." Yeah. Good with that, Jamie. I'm happy with that. Take them [both down.]

DREW BAGLEY: Yeah.

JEAN-BAPTISTE DEROULEZ: Perfect.

DAVID TAYLOR: Good [inaudible] Lauren. Hey, glad you're on the call, Lauren.

LAUREEN KAPIN: Yeah. You know me, I'm moving the [boat] forward at every opportunity.

JAMIE HEDLUND: What about me, David?

DAVID TAYLOR: Yeah, you always [inaudible] as well. I know. But you're always on the call. Lauren just comes in like – rides in on a white horse halfway through and says, “Just remind me where we are on this before I opine.” Whereas we're stuck in the trenches, Jamie, throwing mud at each other and ducking and hoping that some sticks on Drew. That's just the way it is.

JAMIE HEDLUND: [inaudible]

JEAN-BAPTISTE DEROULEZ: David –

DAVID TAYLOR: [inaudible]

JEAN-BAPTISTE DEROULEZ: And this is the last one, so this is the details of recommendation 29. [inaudible] Okay, where you had written under the details “There appears to be considerable discussion on whether the [inaudible] should be expanded beyond applying to only identical matches and if it should be extended to include [inaudible] of the mark in question.” Do you have more details on the term you are using, “Considerable discussion?”

DAVID TAYLOR: Yeah, it's something which has been discussed many times in – it's just something which we know is discussed, I see it come up all the time, whether it should be expanded or not. And that's something which Deloitte did for their services as well, they expanded it at one point, and I think there that the point was – I wasn't saying whether it should be expanded or not, I wanted to make sure that really the point of it was if there is an extension, if an extension's considered valuable, then the basis of that needs to be clear because there's so much discussion. So I do think there's a lot of discussion on it, but I think it needs to be clear if there is any extension. That's really what I'm saying. So I'm not saying we should extend it. For sure.

JEAN-BAPTISTE DEROULEZ: Would it be possible to provide a reference on this discussion?

DAVID TAYLOR: I'd just start going through e-mails and searching Trademark Clearinghouse and find hundreds [of] thousands of e-mails and drill

down. And I don't know whether there is a reference to that. Maybe in the Trademark Clearinghouse, one of the reports there's been mention of it. It's something which has been requested as well, that Trademark Clearinghouse Plus-Fifty, there's a whole thing on that that was discussed years ago. And isn't it in place now? I think there is something, isn't there? In place with Plus-Fifty? I can't remember. I think something's been put in place. So, is it Deloitte that's done that? So I'm going to go into Google now and see. I'm sure Deloitte put something into place.

Here you go. "Trademark Clearinghouse, how to use it effectively." I'm just looking there. This is just in Google. Good old Google. [inaudible]? No. I think you can choose. "Have you got a list of up to 50 abuse brand plus terms?" [So there's] Plus-Fifty. So that's clearinghouse plus something. I haven't gone into that for so many years, it's just all a bit [fudgy] for me. But that's 2013, so I think – there's another one, Trademark Clearinghouse on the ICANN Wiki. How's that for a reference? "Limited number up to 50 of these may be added to a clearinghouse record." It's something which has been discussed at many – many times over. I wouldn't know where. I don't see it in there.

JEAN-BAPTISTE DEROULEZ: David, while you look at that, if you could provide the reference in the chat, and I'd be happy to add it in the report.

DAVID TAYLOR: Okay. Yeah, I'll try to find something. Yeah.

JEAN-BAPTISTE DEROULEZ: If you can just place that in the chat while we continue. And I believe – so this was the last open action item in the report. So I'll just go back to the slides. Alright, so were there any other comments or edits, objections to the final report that was shared earlier today? Okay, hearing none, after this call, we will recirculate an updated version of the report including the new language for recommendation 15. We'll also change the text on the action item that we have just discussed with David.

And so the review team will have until next – so this Friday, which will be Friday the 7th to raise any final objections, and the leadership will approve the final report and send it to the board. And what happens after that is that some of you will be implementation agents. So basically, what it says, if I just quote your terms of reference, CCT members may be called upon for feedback on the recommendations. After implementation has begun, members may wish to remain available for such post-CCT discussions.

And on that, CCT leaders had volunteered to be the implementation agents. Any concerns on that? Hearing no concerns, moving on with the next steps, so as I just mentioned, 7th of September at 23:59 UTC is the deadline for any final objections and dissent reports, [if any,] to be submitted on the list. And the leadership will approve the final report for board submission. And thank you, David, I just saw your reference.

Is there Any Other Business? If none –

DREW BAGLEY: [inaudible] Jean-Baptiste, is this our final call?

JEAN-BAPTISTE DEROULEZ: Yes, I believe so.

DREW BAGLEY: Wow, everyone.

DAVID TAYLOR: Jean-Baptiste, we should just clarify that. You said you think so, or do you say you hope so?

JEAN-BAPTISTE DEROULEZ: I think so.

DREW BAGLEY: Jean-Baptiste is going to have an existential crisis if this ends. He'll have nothing to live for.

LAUREEN KAPIN: I think there'll be a few [inaudible] to fill the void.

JEAN-BAPTISTE DEROULEZ: And I just wanted to also thank you very much, Drew, for chairing this last call.

DREW BAGLEY: Absolutely. My pleasure.

LAUREEN KAPIN: And I wanted to add a big thank you to all our team members, both on the call and out in the world, for all their hard work, everyone's flexibility and willingness to exchange ideas and listen to each other. And last but certainly not least, the fabulous support staff who have unfailingly and tirelessly guided us through this process.

DAVID TAYLOR: Hear, hear.

DREW BAGLEY: Yes. Thank you so much. We obviously would not have been able to do anything without you guys. So we know that at times, it's been easier to move us along than at other times, but I thank you so much, because I know that particularly in the beginning, we had a lot of studies to commission and everything else, and you guys have just done wonderful in ensuring that we have the resources that we needed to accomplish this work. So thank you so much.

LAUREEN KAPIN: And of course, a huge thanks to our fearless leader who was also endlessly patient in moving us towards the finish line.

DREW BAGLEY: I think the fearless leader had fear instilled in him and left. I don't see him on the call anymore.

JEAN-BAPTISTE DEROULEZ: No, he has left.

LAUREEN KAPIN: Well, when he goes back and listens to the call, as I have no doubt that he will, he'll hear our thanks.

DREW BAGLEY: Absolutely. Alright, well, thank you so much. So Jean-Baptiste, do you need anything from us right now as far as the follow-up e-mail you'll send with the updated language for the one recommendation that still needs – where we still need to see if there are any objections?

JEAN-BAPTISTE DEROULEZ: No. At this stage, I think I have everything to update the final report and [share with leadership.]

DREW BAGLEY: Okay. And then I don't know if you've seen in the chat, but David has pasted a citation, I think, that perhaps could be used.

JEAN-BAPTISTE DEROULEZ: Yeah.

DREW BAGLEY: Okay. Great. Well, thank you so much.

JEAN-BAPTISTE DEROULEZ: [inaudible] Thank you very much.

DAVID TAYLOR: Thanks, everyone.

JAMIE HEDLUND: Thank you, everyone.

DREW BAGLEY: Thanks, everyone. Take care.

LAUREEN KAPIN: Thank you.

[END OF TRANSCRIPTION]