ICANN Transcription

New gTLD Subsequent Procedures PDP Working Group

Thursday 11 July, 2019 at 0300 UTC

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JULIE BISLAND: Good morning, good afternoon, good evening, everyone, and welcome to the new gTLD Subsequent Procedures working group call on Thursday, the 11th of July 2019.

In the interest of time, there will be no roll call. Attendance will be taken by the Zoom room. If you're only on the audio bridge at this time, could you please let yourself be known now?

Okay, then I would like to remind all participants to please state your name before speaking for transcription purposes, and please keep your phones and microphones on mute when not speaking

to avoid background noise. With this, I will turn it back over to Cheryl Langdon -Orr. You can begin, Cheryl.

CHERYL LANGDON-ORR: Thank you very much, Julie. Hopefully I can be heard alright. I'm using the phone input. And if not, then someone can let me know in the chat box and I will do the VOIP. Fingers crossed this will work okay.

First of all, the usual administrivia. Apologies for a slightly late start. If there's anyone who has an update to their statement of interest, if they could let us know now, that would be the perfect time for this.

Not seeing anybody's hand go up, and not hearing anyone, we will assume that no incredible changes have happened in our employed lives. [inaudible]. Never mind. Happens occasionally. And we will move on to the rest of a fairly simple agenda today.

As most of you will know, we are now running two calls per week to move through the workload as we have previously discussed. That's to try and keep our timeline going. Today's agenda is quite light. We will be continuing our review of the summary documentation, and we'll be getting in at the global public interest topic. And then we'll have the possibility, time permitting, of moving us to the next subject, verified TLDs, which will be at

that stage page six of the document. And of course, Any Other Business.

Before we move into our primary agenda item then, if I could ask if anyone's got Any Other Business that they'd like to flag now, noting we will of course ask again before the end of the call. But if you have some that you'd like to [inaudible] now, please do so now.

Again, not seeing anything come up in chat. Let's move in and on to – thank you very much, Steve. We've gone over to the substantive work for the day, which is continuing on with our summary documentation. Can I remind you all, as Steve wanders down to the get to the public interest part of the [inaudible], this document is our working document, it's where we are trying to capture our discussions and our overall agreement or otherwise or any recommendations or comments or otherwise on our review – which we've already completed – of our input for our public commentary.

So this is where we begin to get the final [reading] together of opinion and the [working out] of any particular outcomes. I would ask you all to note that we will be running a timer which will magically appear at the appropriate time. I think we'll probably do a two-minute to start with, intervention on anything. A follow-up intervention from anybody will be dropped to one minute. I would ask you not to take time to just have "me too" or "I also

believe the same sort of thing" type input. That's what the chat can be used for. And I think I've actually managed to filibuster enough now for us to get to the right place in the document at the high-level agreements part of the section. And if I could see what page number in the document, I would let you know. Looks like page two is where we're showing, and I believe that Julie will probably also put the link to the Google doc in chat. So anyone who wishes to follow on themselves can do so.

Right. Thank you very much. Thank you, Steve. High-level agreements. So let's get started. And we seem to be in PIC territory, so let's jump right in. First of all, I'm assuming again that you've had time in the agenda, that people will have done their homework and [done the pre-reading.] We can, if you wish, go through the high points and holidays here point by point, but we will move through them relatively quickly, assuming that you're not going to require a deep analysis of each of them, unless of course you wish to pull one or other of them out. And if you do want to do that, then I will take a queue as we go through.

So with that, let's jump right in. So in terms of the high-level agreements that we believe we have – hello. We have a hand up from Christopher. Christopher, just before I get into it, what can we do? Over to you, Chris.

CHRISTOPHER WILKINSON: Good morning. It's 5:00 in the morning here. Cheryl, I don't want to elaborate to take your time, but I want to put down a very clear marker that the public interest issue in this context is not limited to PICs. There are a whole range of issues and problems arising which affect the public interest long before you get to the PICs. But I note that the document seems to imply that the whole question of public interest in the new gTLD program is about PICs. I think that's an oversimplification. Thank you.

CHERYL LANGDON-ORR: Thank you, Christopher. I don't think people would be believing that public interest commitments are the sole tool or mechanism by which the matters of public interest in the world of new top-level names is going to be dealt with. It certainly is a significant tool, and one which of course has drawn a goodly amount of comment, and indeed debate. We certainly have in some cases almost bifurcations of opinion between parts of the ICANN community on this.

Okay, so with that, let's see if anyone wishes to pull out anything in particular. We'll note here that in the redline, the addition and the bullet point three, there is the added text which will be as a result of previous discussions. After all, we did indicate we would review what we believe we have agreed upon. The statement, this includes all types of applications, not to the exclusion of any type. That's an important addition here.

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Steve, I think you've got a hand up. Perhaps you are [wanting] to make an addition other than on that redline. Please go ahead. Apparently, I sound distorted and unstable. I hope that's just the audio, not me. I'll switch to the VOIP in a moment them. Steve, go ahead, please.

STEVE CHAN:

Thanks, Cheryl. Yeah, it sounds a little distorted, but I'm glad you're not unstable. So as you're doing it, I think it probably makes sense to go over the high-level agreements and principles again as we went over most of the section, and we'll pick up with verified TLDs, I think.

But before we do that, I just wanted to note that one of the action items out of the previous meeting was to include some of the comments that seem to have been left off for some reason or another. Within the mandatory PIC section, there's actually opposition amongst some of the support that was there. There was also opposition to mandatory PICs from the public interest community. You can see that in redline or suggestion mode here.

In addition, in the voluntary PICs, there's again opposition from the public interest community which you can see here. Hopefully you can see the color coding. So they had opposition, but they also had concerns, and then as well as new idea in the section two.

So as I said, this was an action item of the last meeting, and just wanted to make sure you all are aware it's actually incldued now. So please take a look.

And the last thing is there's actually divergence for voluntary pics from the NCSG as well. That section was – I guess their opposition from voluntary PICs was actually provided in reference to mandatory PICs, so we had to pull that out of there, and I think we missed it the first time just because it [wasn't reference] to where we expected it to be.

So again, hopefully I've stalled long enough for Cheryl to get her VOIP set up, and just wanted to let you know about the changes. Thanks.

CHERYL LANGDON-ORR: I sincerely hope you did as well, because my assumption now is that both my sound quality and my stability will be no longer in question. And thanks very much, Steve, for going over with apparently greater clarity and capability than I was attempting to, to show what we have changed in this living document. And when I mentioned earlier bifurcation, perhaps that was a term that confused some people, but it was that divergence that we were now making sure was reported that I was referring to.

So thanks. Heather noting in the chat that there was just a typographical fix that also needed to be added. So, is there

anyone who wishes to queue and comment on those changes to the high-level agreement section? This is a little bit like checking the minutes from a previous meeting, I suspect. Obviously, we can loop back to this later if we so desire.

I'm not seeing anyone's hand up. I must say I also didn't ask, was there anybody who in fact was only on audio? If you are only on audio, then please just say "Hand up" and we'll put you in the queue at the appropriate time and place. And not seeing any of that, let's get into our next section, which I think is the following part. Scrolling down to what must be page four, is it? There we are, I was t wo out. Page six. Perhaps my stability is in question.

Here we go then. Verified TLDs. So again, some of you may have done your homework. And if you have done so, feel free now to let us know if there's an issue with any of the bullet point captures here. But we will take a brief time to go through what the observations were, and that is as followed.

Verified TLDs, under the issue of whether registries meeting certain requirements must operate as a verified TLD, we had the following outcomes from our input from public commentary. From quite a group, INTA, CCT RT, ALAC, IPC and the GAC, there was agreement. We have a little puddle of green in our color coding there.

But note we also had from the CCT RT report a new idea which was recommendation 12 to create incentives and/or to eliminate what they saw as a disincentive that encourages gTLD registries to meet user expectations. So there is a new idea for us to chew on, should we do.

The question there from Heather also is, was there something missing from the rest of that sentence? And indeed there was. There was a specific point after the word "regarding." And I also note that she seems to have an additional question. Heather, your hand is up and the floor is yours. Please, over to you.

HEATHER FORREST: Thanks, Cheryl, very much. That fourth bullet there, IPC, I'm not sure about the word "likelihood." I wonder if that's coming –as I remember the IPC point, it was decide applications on a per application basis rather than group them together, so I think we can probably safely delete likelihood. But can we at least throw a question around it as to whether that needs to be there so we can follow up later? Thanks very much. And thanks, Steve, for fixing that CCT RT comment. Thanks, Cheryl.

CHERYL LANGDON-ORR: Thanks? Heather. Eagle eye, and certainly one appreciated there. Steve, I think Heather is undoubtedly right, but would it be not safer for us to square bracket the term "likelihood" at this stage

rather than delete it? And just double check with IPC commentary before we make that deletion. I'm not going to be hysterical about it unless someone from the IPC community is, but to err on the side of caution, I would have thought just square bracket and note that that needs to be checked. Heather, correct me if you think I'm overreacting there, but as we get towards final commentary on a lot of these things, I think we should err on the side of caution, because sometimes a word can make quite a difference.

So let's make that an AI. We'll double check with the IPC community on that and interact with that square bracket between this call and the next. And thank you very much to offer to follow up, Heather. Greatly appreciated.

Right, good catch. We skipped one there, which is another new idea, which was from the ALAC suggesting the use of a panel with panelists skilled in the field of consumer trust. That's all very nice. And we can so note that and mull over that, should we wish to.

Moving now then down to what would be bullet point number five, which lists some of the concerns – and this here is of course first of all the GAC concerns – here the suggested review – and as we roll over between – for those of you on their own document, [between] pages six and seven, the GAC concerns refers to the CCT RT report's sections regarding safeguard advice, public interest commitments and implementation by ICANN. They also noted in the final report of the CCT RT that there were difficulties

assessing such effectiveness of new gTLD consumer safeguards, particularly the PICs in their view, due to reporting frameworks or lack thereof and associated data. It is a concern well noted, and of course, one that we of course could make commentary on, and [inaudible] in predictability, which is one of our main overall objectives I certainly would argue is reasonable, fact-based decision making and effective [inaudible] to getting that done is of course timely and appropriate data reporting, capture, and so it may be something in the final documentation that you might wish to also consider the partnership between predictability and when one needs to review the success or otherwise of an operation as the CCT RT report mentioned in a number of ways and is one of the GAC concerns obviously here, is the availability, quality and relevance of associated data to make such an analysis. Obviously, you can tell that's something I use dot do when I was once a gainfully employed individual. Gone are those halcyon days.

Okay, moving on to other concerns and our next bullet point at the top of page six with the Business Constituency concerns that there was an issue about likely to invoke a level of implied trust from consumers as a term that is a bit of a wooly statement and they would like to see that clarified. I guess here we've got this dreaded term of "likely", and how one measures what "likely" is or is not. In fact, that's the long-standing issue of the difference between qualitative and quantitative analysis, something that follows us around in the world of ICANN almost continually. But

that's what nonparametric analysis exists for, people. I just say that because Steve loves it when I say nonparametric analysis. Don't you, Steve?

Then we move on to a divergent comment from the Registry Stakeholder Group, and here we should not that the Registry Stakeholder Group does not support requiring registries to operate as verified TLDs. They believe that existing procedures already provide sufficient opportunities to address these concerns associated with TLDs related to highly regulated or professional sectors.

Let's just briefly hop over to our world of the chat and note – thank you, Steve – that the full context of this quoted concern comes from section 2.3.2.e.6, which he has put in I believe probably the [inaudible] into the chat for everyone's reference. It is up to you, ladies and gentlemen, if you wish to have that additional material or a mere reference to that. We could put a reference in there if you wish, and just pop into chat if you would like to see us make a specific reference to that context of 2.3.2.e.6, or indeed the quotation in full, and we will make it so between now and the next meeting.

Which leaves us then to the concern about the verified TLDs, registries from the Business Constituency again that registries should abide by their own standards and not allow fake or false information to be provided to [register for a domain name.] A

concern of course which would not, I believe, be limited to only verified TLDs, but to TLDs in general. But one of those, and so noted concerns I would believe.

So before we move to other comments, let's open a queue and see if there's anything else we would like to add, delete, discuss, square bracket or otherwise on these issues. A request from Justine coming in. Can staff please remind us if the Registry Stakeholder Group elaborated on what he existing procedures were? My remembrance is of course it is internal procedures that usually are pat of the contractual interaction or requirements about not giving false or misleading information. But let's make sure staff do as requested, and I'm going to ask Steve to just make a short intervention on this based on the input or knowledge of what the reference is to. Over to you, Steve.

STEVE CHAN: Thanks, Cheryl. I'm trying to find the quoted text. I think I might have found it. I haven't had the chance to read it in detail yet.

CHERYL LANGDON-ORR: [inaudible] hot water occasionally. It makes me feel all warm and fuzzy.

STEVE CHAN: I'm going to drop the text in, but I actually do have a comment that might help people think about this section a little bit – I don't know, "better" is not the right word, but the verified TLD section that we're looking at right now, I do not believe there were any preliminary recommendations regarding verified TLDs, so I think the section we're looking at now was responses and comments received in relation to a question. So from that context, when you look at all these comments, I guess the point is to determine whether or not verified TLDs are something that the working group supports. So just want to provide that context. Thanks.

CHERYL LANGDON-ORR: Thanks very much for that, Steve. And whilst you find that text, you can drop it in the chat when you do, and we'll move to Christopher. Christopher Wilkinson, your hand is raised. The floor is yours.

CHRISTOPHER WILKINSON: Thank you. Cheryl, as you know, the question of protection of ISO 4217 currency codes has been referred by the Work Track 5 to the full PDP, and I look forward in a future meeting to discussing it. Meanwhile, it does occur to me that there may be a solution to the financial risks associated with the currency codes that as verified TLDs, there could be a solution to the problem. For example, in my view, [inaudible] the risks associated with the

currency codes are very similar to the risks that are associated with the pharmaceutical TLDs.

So I don't want to sound negative about the currency codes, but we certainly have to make quite sure that they're never used in any high-risk sense for the financial sector. Thank you.

CHERYL LANGDON-ORR: Thanks, Christopher. And I think it's a very opportune point in our discussion for you to make that observation. Thank you for that. I recognize that you have been the champion of the concern with regard to the risks of currency codes being used in a way that would mislead or misguide, or even worse, consumers well beyond confusability, and perhaps you would care to pen a paragraph or two into the list traffic between now and next week's call so that the working group can chew on such a possibility. I'm assuming you're putting your hand up just to say yes, Christopher. Feel free to type into the chat. I don't want to spend too much time on putting in new material into our workflow today, but you're certainly welcome to do so in the offline world. And we're going to go to Gg. Gg, my apologies. I obviously should have a glass of water or something. Gg, over to you.

GERTRUDE "GG" LEVINE: Thank you. It might be helpful or beneficial to talk about what a verified TLD is in this context. As it's been applied, a verified TLD is one that verifies a potential registrant meets registry standards prior to registering a domain. So for instance, the registry operator might require registrants to be appropriately credentialed to practice where they do business, and that's where that implied trust comes in, I think, so that end users can trust that domains in that TLD are going to be authentic.

So if you've got an issue where medical or financial wellbeing is at stake and there's a high potential for fraud, it does seem that a certain amount of verification would be in the best interest of end users. And in terms of [garnering] trust for the DNS in general. Thank you.

CHERYL LANGDON-ORR: Thanks, Gg. I appreciate that. If we were to pin that sort of brief paraphrasing of purpose, I'm assuming that you would suggest that be inserted at the top of this section as a small intro piece. Am I correct in that?

GERTRUDE "GG" LEVINE: Yes, I think that would be helpful.

CHERYL LANGDON-ORR: Great. Okay. Guess what, Gg? Guess what I'm going to ask? Are you ready for this? Would you care to briefly write pretty much what you just said? You can pop it into chat, and then during this call, staff will input it. I know, people who work with me long enough realize I'm really quick to give out small homework assignments. Sorry, but I can't help myself. And I've never been a schoolteacher, but I think rather than paraphrase people's excellent interventions, they can parse and analyze their own sentence and we can all look at it when we review next week. Thanks for this, Gg. Just drop it in the chat and staff will make it so.

Okay, so with that, I'm just also replying to Heather in chat, and we will scroll down to any of these other comments, so down a little further on page seven, Steve. Apologies for my terrible spelling and typing while I'm multitasking, but I don't spell or type very well even when I'm not multitasking, so there you go. Alright, other comments?

We had – and of course, we had significant input from the Council of Europe in very broad based and overarching aspects, and it is important that we have indeed slotted them in, often in repetition mode, to the right bits of the document. So our compliments to staff in doing this. If you believe, of course, that we've missed it at any point in time, please do raise that with us

as we go through the document. But here's one of those times where the Council of Europe's concerns have been slotted in.

First of all, the concern is that the global public interest – and can I suggest, we should always, even if we are paraphrasing, start with the full terminology in a document, so we need to say global public interest and then GPI. I understand us using shorthand, but we also need to start getting this text in a format that [inaudible] "the average reader." Why an average reader would be reading this, of course, is another question, but should one pick it up, the average reader will be able to understand what it is we're talking about.

So global public interest is not adequately defined, and [protected] within ICANN decision making process. This is something we've heard from the Council of Europe across the board, and indeed we are well aware that they are not alone in their concerns here. But they do go on to say that the identification of the global public interest in their view based on human rights law, etc., does have a strong role here and that they recommend that ICANN state which global public interest ICANN is intending to protect throughout their policies, bylaws and the implementation thereof. Of course, we do, in balance to this input, as we move on to the next concern and new idea from the Council of Europe, recognize that the global public interest is a particular and very important mandate of the ICANN board in

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their decisions, but it is not limited, of course, to that bylaw requirement.

I don't believe that we will benefit in this document of doing more other than making the observation and concern of our intervention from the council of Europe as a note, as an observation, but should anybody wish to discuss or belabor the point, we would be skating terribly close to being out of scope, and certainly, it's not something we would be biting off and trying to chew to delve into the mysterious world of an ICANN-wide "adequately defined and protected" set of definitions relating to global public interest. [I thank] Gg for putting her homework [inaudible] complete with spelling error correction. Thanks, Gg.

Right, if you feel strongly – Gg, was that the reason for your hand being raised before we move on? Yes, it was. Thank you. I am trying to make sure we keep up with the chat as we go. With that, let's briefly go through the other matters raised by the Council of Europe, and that is of course aspects of a new idea as well.

And here, the Council of Europe raise fairness-related issues that require further attention, including ascertaining ICANN policies concerning human rights protections and promotion. They ask that it be noted that the notion of the global public interest – and they've done the right thing, [put in brackets] GPI – is referenced in ICANN's bylaws, and they give us the specifics of that in case we want to dive in and reread them. And that they are concerned

that there is little clarity as to what is considered by ICANN Org and ICANN community as the global public interest. Also a concern about the apparent lack of safeguards within our ICANN decision making process to protect such a global public interest. Of course, that is an opinion, one that would be open to debate, I suspect by someone looking at the importance of the global public interest in the requirements of the ICANN board under the bylaws, but we're not having that debate. This is their concern, and we so note it.

And they have asked that in our final report, we consider providing specific processes to protect global public interest [inaudible] recommendations to take into account aspects of global public interest that they would highlight as important, and they have specified here human rights, sustainable development and corporate responsibility [inaudible].

It would behoove us to note here whilst we're going over this that human rights was a particular and lengthy, and I believe well done and well debated piece of work, including recommendations relating to ICANN's particular remit in the world of human rights, which in itself is wider than ICANN, out of Work Stream 2, and those Work Stream 2 recommendations are yet to be implemented, and that at the time of this meeting, whilst the implementation review team for Work Stream 2 has been convened, it has not as yet met. So we will probably need to come

back to any of that, looking towards what may or may not be referenced or referred to our final report in response to the Council of Europe's intervention on this.

Have I done justice to these very important concerns of the Council of Europe? If you don't think so, then type away in chat, and let us know. And if you do think so, I think we've got a couple of placeholders or things in the parking lot that we will have noted that we will need to circle back on as we move towards the styling and writing of our final report.

I just for the record note that Jeff is apologizing. He had a SNAFU with his calendar. The gremlins that caused my Microsoft operating system to crash in the middle of me trying to juggle three Zoom calls about ten hours ago have obviously gone over and affected his calendar, and he may indeed join us shortly. But quickly, before he does, let's move on to the CCT RT recommendations. Not seeing anybody's hand up or any additional work coming out of the chat, and noticing that we're about 50 minutes into the call, let's continue to power on.

And hello, Jeff. How are you? I think we've done great justice to pages – well, general review of what we had done to this document as a result of previous conversation. I'm just recapping for Jeff, people, if you think I've suddenly had a bit of a loop occur in my brain. We've also moved through pages five, six, and we are now to the bottom of page seven at the CCT RT recommendations

and about to jump into something we have referred to earlier, which is recommendation 12.

Please note again that this document, we are still in comment mode and that you should be able to see people's as yet unresolved comments and that we have one here from John Laprise from the ALAC talking about the statement from the ALAC regarding their lack of support for new gTLD rounds prior to implementation of specific review team recommendations regarding a new round. And of course, we have Justine on the call, and she can follow up with that if anyone wishes to interrogate the ALAC view further.

So noting that note, which will soon be resolved, I believe, when we have the next iteration of our document, let's jump in. Jeff, I suppose I should ask and see whether you wish to take it from here. Jeff, I can assure you there is not an ALAC resolution, but rather, an ALAC vote on the acceptance of the public comment material which included this view.

This view in fact was a view that was wrought out of the tool that ALAC has for the last 12+ months now – probably coming up to 18 months, Justine can correct me – utilized for a more fulsome and bottom-up methodology of creating public comment where it has weekly meetings of what is known as the Consolidated Policy Working Group where it works on our PDP amongst quite literally every other call for public comment or [inaudible] input puts such

material to a test as to whether or not it has an impact on Internet end users and consumer interests, and if it does, works as a team across all five regions to develop an opinion which is then ratified by the ALAC. So you will not find a specific ALAC resolution referring to only that statement, but you will find an ALAC resolution and vote ratifying the full commentary.

Justine, if you're available, would you care to correct me or otherwise on that? And then I see Christopher's hand up. Justine?

JUSTINE CHEW: Thanks, Cheryl. No, I think you've said all that needs to be said. Thank you.

CHERYL LANGDON-ORR: I try. Christopher, I have you for a brief intervention, and then we go to [Jeff.]

CHRISTOPHER WILKINSON: Yes. Thank you. Just to say that John Laprise's [inaudible] has my full support. I'm concerned that so much work went into the preparation and implementation of the CCT RT that we are still in a situation where ICANN has not implemented the recommendations. And some of the recommendations have been explicitly kicked back to the community by the board.

I personally felt that that iteration was unnecessary. And may I suggest as a practical matter that the staff issue of running updates on the actual implementation of the CCT RT recommendations so that they can be completed before the next round? Thank you.

CHERYL LANGDON-ORR: Christopher, before staff write that down in any way, shape or form as an action item, let me assure you that that is in the mandate and activities of the accountability and transparency review team, the third iteration. It is work we are paying particular and specific attention to. It is running parallel with our won work, but will in fact be completed after our report goes in. So if we need to do anything at all, it would be to [merely] be aware of that review of implementation of other specific review recommendations is being done elsewhere. Christopher, I see you've put your hand back up again, but I am wanting to move through for the remaining 30 minutes of our call, and I see we've got Jeff and then Greg. I would note that Greg is a highly active member of the Consolidated Policy Working Group. So Jeff, if you've got a particular question or issue to raise, it may be that Greg will answer it, so I will encourage him to do so. And I would also ask Justine to pay attention to the question in chat from Heather Forrest regarding anything in the ALAC position [inaudible] or public comment as to whether or not regarding the

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RPM PDP, whether that needs to be completed in both phase one and phase two, or [inaudible] entirety. And Steve has, of course, with his usual efficiency, popped the link in, Christopher, for your and other people's edification, the link to the tracking sheet on the particular CCT RT recommendations that are indeed [inaudible] our work, and note that it has been updated to take into account what the board resolutions passed on to this [inaudible] working group. So with that, let's go to Jeff, Greg, and if needs still be, then we will go to Christopher again. Jeff, over to you.

JEFF NEUMAN: Yeah, thanks. And apologies for my SNAFU. [It won't] happen again. But on this particular topic, a couple things. Number one is the reason I asked the question about a new document was because John has said [– has asserted to] ICANN GDD at ICANN 65 – which just happened – so I took it from that comment that there may be some new document or some record of what was asserted to ICANN GDD.

But I think the comment needs also to be parsed down and become very much more specific. So for example, the CCT recommendations only had certain recommendations that were deemed "prerequisites" to implementing or moving ahead with another round. There were many recommendations that were over the next 12 months, 18 months, whatever time frame, but

they were not indicated in the CCT report as being required prior to.

So I'd be very curious to understand the detailed position, parsing out those very important subtleties as well as the RPM recommendations. I think that's fairly new, that view, and I believe that does go against ALAC's statements from previous years, so that is a new view. So it's curious to me how precedent is looked upon in the ALAC and whether it's just a couple years later, there could be just a complete shift in positions. So that's one of the reasons I'd love to see the new document, the rationale and others, and be very specific on that, on John's comment, because I don't know whether that's intended to mean every CCT recommendation regardless of how the community feels [about] those recommendations, or regardless of whether the CCT review team [said it] needed to be a prerequisite.

So Cheryl, on this, I'll let you continue for the rest of this section, and I'll jump in when we get to freedom of expression. Thanks.

CHERYL LANGDON-ORR: Terrific. I will give you freedom of expression over freedom of expression. And I won't exercise my freedom of expression to respond, although it is sorely tempting, to some of your questions just yet. I will [inaudible] Greg, because he may very well take those and respond to them. But I will also ask Justine to consider

what she will do formally in response to your specific inquiry, which may indeed include grabbing the records from ALAC and At-Large interactions with GDD at the recent ICANN 65 meeting in addition to sending you the link to what I know you have already read, which of course is the full public comment from the ALAC or ratified by the ALAC. Over to you, Greg.

GREG SHATAN: Hi. I don't have the magic key to unlock all of John Laprise's comment, but I believe based on my recollection and the reading of what he wrote that this reflects an oral interaction with GDD at ICANN 65 and not a document that was passed over at ICANN 65 or turned over to GDD at ICANN 65.

That doesn't mean that there's no document that reflects this position, just that the conclusion from John's words that there was a document being referred to, I don't think is correct in that specific case.

To answer one of Jeff's questions, At-Large, ALAC are highly mindful of precedent and specifically [inaudible] precedent when creating any new position document that builds on prior issues. This is probably a bigger discussion and not all the right people may be here to have this discussion, but as Justine has asked [inaudible] put together a list of the questions, some of which have been asked orally and some in chat, can bring it back to the

Consolidated Policy Working Group, and give a more complete answer to the questions.

I think the overarching issue of course is that a feeling, a concern that launching into a new round of TLDs when the review of the rights protection mechanisms, which were created for new gTLDs, is still in progress or has not been implemented. And as to [inaudible] only predicate or prerequisite CCT RT recommendations or all of them, I think that's a question we'll have to take back, because it's not fair to anybody to try to answer it all the fly, but it's certainly a highly relevant question. But the overarching concern continues that [where] protections, whether consumers or any of the issues that have been raised with regard to the delegation of new gTLDs, they need to be addressed before there are any more new gTLDs. Thanks.

CHERYL LANGDON-ORR: Thank you very much, Greg. Appreciate that. I think you've articulated quite well that the ALAC and the At-Large community will take those questions with notice and that we'll expect as an action item to our very capable liaison, Justine, that a future interaction with the Consolidated Policy Working Group will occur. I will note of course that absolutely everything that goes on in the Consolidated Policy Working Group, right down to transcriptions in multiple languages at times, is available for the public record. So the answer to the first question will be

EN

documented undoubtedly, and here is a number of places you can see it.

And I would also suggest that unless the reference John is making – and I do not believe this is the case – was one, in a corridor, and highly informal, that absolutely everything [inaudible] at an ICANN meeting, but not limited to ICANN meetings, anytime a meeting is held with ALAC and At-Large, there are recordings, transcripts and documentation made of it. So they will put together the requirements to respond to your questions, and that'll be one of those "We'll get back to you" things, or "they'll get back to you" things. Greg, your hand's still up.

GREG SHATAN: Old hand, sorry.

CHERYL LANGDON-ORR: Not a problem. Just double checking. Okay, so regarding the [inaudible] etc. however Jeff – because you've indicated you want to drill down on this on what I trust is not going to be a defensive manner, unlike other ACs, we do see change. The opinion and the concerns of the wider At-Large community in a bottom-up consensus building model that At-Large and what they funnel in through the regional At-Large organizations to the ALAC – as it is meant to be – is indeed subject to change as the concerns and experience of the community change.

So in a world before for example a CCT RT even occurred, you may indeed be seeing an opinion out of previous At-Large Advisory Committee missives and comments which is now modified or indeed fully overturned.

I don't think that's a bad thing. I think that this is a very healthy thing in what we believe is a democratic, open and interactive process. That said, I shall get off my [hobby horse] because clearly, I'm a strong believer in that is a good idea as opposed to putting things in clay tablets and never changing them forever more, that we can move on to our next point on the CCT RT recommendations just to finish off the recommendation 12, which we did mention earlier, and we'll note that [inaudible] that was regarding, I should say, points one to, I believe, four if not five that was added in earlier in the document is here in full, and we have of course had a moment of discussion review on this, so this is a repeating opportunity.

If no one has any more information or concerns about this, let's move to the recommendation 14 from CCT RT, and that is the review team suggests to consider directing ICANN Org in its discussion with registries to negotiate amendments or in consideration of new registry agreements associated with subsequent rounds of new TLDs to include provision in the agreements that provide [inaudible] incentive, provides

incentives, including financial incentives, for registries, especially open registries to adopt proactive anti-abuse measures.

I think at this point, we can just note that as she is writ. It is a recommendation, and it is one that we are now aware of. Then they go on to have a listing of another recommendation which has effect on us or that may have an effect on us, we believe, recommendation 23, and here the CCT RT in summary suggested that gathering data on new gTLDs [opening in] highly regulated sectors is an important data capture exercise. The last part of that sentence is an important data capture exercise is me, not in their recommendation.

This goes back, again, to the recognized – I hope – in general importance of fact-based decision making requiring, surprisingly enough, facts that come in in a timely manner. And the note that was in the CCT RT review team's work as well that there was a sad absence of a timely data capture on many aspects of the previous round of gTLDs that they certainly found problematic. That is not [our problem,] but it is an observation that they have made, and it has a trickle down or kick-on effect resulting in, for example, things like recommendation 23.

And then we also note that there were also several recommendations from the review team relating to specifically domain name system abuse. These are articulated as numbers 15, 16, and of course, as we've just said, 23.

Taking a look at the chat, it appears that we've just had clarity on where we're going between Jeff's questions [of] notice and what Justine will be taking back to ALAC and specifically the Consolidated Policy Working Group, and we also note those. Therefore, we look at whether or not there's anything that we need to put in our follow-up or parking lot suggestions, etc.

Steve has noted – I should have already picked this up in recommendation 23 and the DNS abuse ones that this might in fact be more appropriately [inaudible] ICANN Org, because it relates to the matrix or the desirability of timely metrics. That's a good observation, and one that unless anyone objects to, we will annotate into this section as we resolve that between now and next week. So we can annotate that in and make that an observation, I believe, Steve, unless someone starts screaming at us. And also, the point regarding the DNS abuse ones, which is recommendation 15, 16 and 23 from the CCT RT. These may very well relate to security and stability as such. We may want to [make that] an additional consideration.

Let's just leave that as an unresolved at this point, Steve. I think that's something we might actually note in the follow-up so we can come back to that. So that will now go in there, so we've changed that text. Thank you very much. And I believe then at this point, my current work is done. I'm going to have a sip of water, and Jeff will take us through to the last – let's assume – ten or so

minutes. Perhaps a few minutes more. He might squeeze 15 out of it as we move on to the next section, leaving of course time for Any Other Business, a recap of where we have got to today, and a brief touchpoint on our next meeting. Over to you, Jeff.

JEFF NEUMAN: Thanks, Cheryl. And appreciate that you were able to drive that topic home. So we'll get started with this next one, which in a lot of ways is related to the previous topic of public interest, and you'll see some overlap in some of the topic areas given that there's, in a lot of cases, a balance between freedom of expression and some of the items that are covered in the global public interest.

So the background documentation is pretty much similar to the background documentation of the other subjects, which include the community comments, initial report, and in this case subgroup A's public comment analysis.

This was a very tough subject to kind of narrow down specifically with respect to the subsequent procedures, this PDP, which is why the policy goal that we have – there's only one of them that we were able to kind of glean out of all the documentation and really only one high-level agreement.

So from a policy goal perspective – and this is from the 2008 policy as well, it's that applicant freedom of expression rights

should be considered throughout the new gTLD evaluation, and any applicable objection processes as well as any requests for reconsideration and/or independent review panel proceedings.

Just keep in mind that this – if we do go forward and recommend appeals processes for certain substantive issues and other things, this policy goal may need to be amended to include those types of things as well as the accountability mechanisms. They're not in there now because we are not making the assumption that substantive appeals will be adopted, but we'll just put a note in here that if we do as a group recommend appeals or limited types of appeals, then we may revise the wording of this policy goal.

As far as the high-level agreement in going through the public comments summary, really, the only thing that most commenters agreed on was that it would be helpful to provide additional implementation guidance in support of protecting applicants' freedom of expression rights.

So to the extent that we can when we talk about these individual either objection processes or evaluation processes, to really spell out as clear and concise as we can what particularly should be looked out for in dealing with freedom of expression.

So there were a number of comments from commenters on all sorts of areas that touch freedom of expression or other rights or interests, and so for example the GAC, the Council of Europe and

Christopher Wilkinson really talked about registrant, end user freedom of expression should be considered. The INTA expressed a concern saying that there needs to be a balance against other legitimate interests, and in particular, trademark rights was pointed out, especially in the cases of legal rights objections where INTA pointed out, as we know, that most of the cases were decided in favor of the applicant or against the brand owner because of the concerns of freedom of expression, and because just looking at an application alone, the legal rights objection panels were not able to necessarily infer that applications or that the use of the TLD will violate the rights of trademark owners.

The IPC similarly states that freedom of expression should not trump established intellectual property rights or confuse consumers as to that source of products or services, and the registrars basically stated that freedom of speech should really trump everything unless there's some showing of rights being infringed.

So other kind of areas that were touched upon in this subject. Before I get to Greg, let me just cover a couple more things. The Noncommercial Stakeholder Group states that civil society experts on free expression should be included in the development of materials, and INTA again stated that we really need to make sure that any guidelines within the new TLD process are finalized prior to or settled prior to any new applicant process.

So let me stop. There's a comment in the chat from Heather, and then I'll go to Greg. Heather states, "Given that we only have one high-level articulation of a high-level agreement and many divergent points, it's not clear to me what our overall objective is in this section. Are we hoping to distill outstanding items more points as high-level agreements?

Yeah, I think Heather, at this point we're trying to discuss the other things that are mentioned in the comments and new ideas to see if any of these ideas have legs, meaning that we can come to some sort of agreement on some of these items. And really, that's the main focus right now. If it doesn't seem like there's support other than the individual commenters, then that may not be worth going down the road of having lengthy discussions on.

So hopefully that helps. Greg, please.

GREG SHATAN: Thanks. Could we scroll back up to the high-level agreement? I have a question and concern about that. Thanks. It says here most commenters agree that it would be helpful to provide additional implementation guidance in support of protecting applicant freedom of expression rights.

The word "support" is rubbing me the wrong way, unless of course that's actually what – there was specifically an indication of support. Clearly, there's a need for additional implementation

guidance for what is a very high-level concept at this point. So my question is whether the word "in relation to protecting applicant freedom of expression rights," or maybe just "in relation to applicant freedom of expression rights" would be more appropriate, because this seems to be slipping in the idea that there is a support whereas the new ideas, concerns and divergence, I guess as they would be, are not just supporting applicant freedom of expression rights above any other thing.

So I'd like to nail down what the actual temperature of the commenters is, and if it's just this needs more implementation guidance, then I think the much more neutral phrasing is necessary. Thanks.

JEFF NEUMAN: Yeah. Thanks, Greg. And from reading the materials, I think your suggestion of something more neutral in relation to is really what was intended. Really, when you come down to it, the high-level agreement is that – so two things. The policy goal did seem to have support as well, that freedom of expression should be considered throughout the processes that we have. But then the high-level agreement is that, okay, while we all kind of agree with that policy goal, we need to provide specific implementation guidance of how protecting applicant freedom of expression would be applied in the new gTLD processes.

So I believe from reading the comments that you're correct, it's more of an "In relation to" as opposed to indicating some level of support from the comments that we need to do more or that we have to have more implementation guidance. It's more that where we do think these interests should be paid attention to, we need to be more specific in the guidebook and other materials as to how to apply that freedom of expression.

So Greg, hopefully that makes sense. Your hand's still up, so if you want a chance to respond to that, and then I'll go to Christopher.

GREG SHATAN: Yes. Just briefly. First, Jeff, that's very helpful and I appreciate that response and endorse it.

One thing I think that will be helpful in regard to that implementation guidance and this whole item is to better define what is meant by applicant freedom of expression, and as noted, there are a number of freedoms that need to be considered, as Christopher notes. A registrant, [both I guess the] second-level registrant and end user, freedom of expression and so forth. I don't need to recap what's already in front of everybody.

And also, I'd note that just in terms of use of terms, freedom of expression at least as I understand it is a broader term than freedom of speech, and we shouldn't be using them interchangeably. Freedom of expression generally includes

freedom of association, of assembly, petition, and also for that matter freedom of the press. So when we're considering freedom of expression rights, if all we're meaning is the ability to use a string as a top-level domain, I think that's a rather – that is not kind of the full panoply of freedom of expression concerns. So it would be good to know if there are broader freedom of expression concerns, for instance what's in the application or how things are going to be marketed, or the like. Or if we're really just talking about the [the right to use a string.]

JEFF NEUMAN: Thanks, Greg. Yeah. And I'll go to Christopher, but it is intended as the broader expression, not just speech, although some comments do point to just speech. But the freedom of expression was intended to apply broadly, as you said, to freedom of association. I'm not sure how freedom of the press fits in there, but certainly, freedom of association and the other ones, right to assemble, things like that. Christopher.

CHRISTOPHER WILKINSON: Thank you. Good morning again. Glad to see you back, Jeff. Broadly speaking, I appreciate and support Greg's overall comment and Jeff's response. Just to note that this issue was discussed very extensively in Work Track 5 months ago, and this is the origin of my comments to the consultation.

Specifically, if you use the argument of freedom of expression to monopolize a geographical terms, there is a serious risk that what you'll achieve in practice is a significant reduction in the opportunities for freedom of expression of many users and the general public in the geographical area concerned. There are other aspects to this which I won't go into now because of the shortage of time. But this is a very serious issue and it will come back to the PDP when Work Track 5 finally gets around to issuing its recommendations. Thank you.

JEFF NEUMAN: Yeah, thanks, Christopher. And I guess the general principle, all of these topics would apply to all kinds of top-level domains unless specifically called out otherwise in, let's say geographic names, so Work Track 5 calls out otherwise, then these wouldn't apply. But to the extent that it's consistent with the outcome of Work Track 5, it would apply. So I hope that makes sense.

And Heather, I don't want to lose sight of Heather's comment, so some question whether the policy goal is achievable because there does need to be a balance, and there may need to be in the explicit implementation which factors would weigh more than others. So there are certainly difficulties, and I think that's why the specific high-level agreement is that, look, we all kind of recognize that there are freedom of expression rights, broadly, but that if we have specific ideas as to how to implement those

freedom of expression rights, we should state so clearly or give that guidance, or require the Implementation Review Team to provide more specific guidance. So those are our options.

I know we are coming up to the end of the call, and I think Steve, just scroll ahead a little bit. Because this is such a broad topic, there are so many things that kind of come in here. So we'll pick up with this on the next – starting at the input on implementation guidelines section on Monday, and then move on to the next topic that is set f or that according to the workplan.

Again, I apologize for missing the beginning of the call, so I will ask if Cheryl wants to do a quick one-minute summary of the outcomes of that, but also to ask staff to publish the time for the meeting on July 15th. So if they could do that in the chat, and then also note that you should expect to receive some e-mails from me and/or Cheryl to start the smaller groups that we talked about with respect to the registry service provider evaluation and the other topics that we talked about creating small groups.

Let me go to Cheryl. Do you have something you want to summarize from the part that I missed, or anything to add?

CHERYL LANGDON-ORR: Thanks, Jeff. I just wanted to note for the record that I think we've done extraordinarily well with getting through what we did today, and I want to thank everybody on this call, which is a known

relatively unfriendly time for many parts of the world, but there you go. 15:00 UTC is an unfriendly time for my part of the world. So, roundabouts and swings.

The document has, I believe, captured either directly or as we've gone through noted where things need to be come back to. We've got one square bracket issue that there's an action item for Heather to follow up on. we've got the matter of the questions you've articulated in chat that Justine will now funnel back into the ALAC and At-Large community for their CPWG, etc. to respond to in a formal set. Thanks very much for that, Heather.

The other things you'll see when you review chat, ladies and gentlemen or anyone who's listening to the recording of this call, do please refer to the chat record as well, because there was some excellent text creation which is inserted now int eh document from Gg for example as we went through.

So with that, thanks, everyone, for their good contributions today and progressing us as far as we have. And note that we will, as we did today, begin next week's call – won't we, Jeff – with a brief recap on where we got to today in terms of changes to the document, albeit in redline form.

And with that, thank you, one and all, and bye for now.

[END OF TRANSCRIPTION]