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ICANN Transcription

Joint Session: ALAC & GNSO Council

Tuesday, 06 June 2023 at 13:00 UTC

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TERRI AGNEW: Good morning, good afternoon, and good evening, and welcome to the joint session with ALAC and GNSO Council taking place on Tuesday, the 6th of June, 2023. I would like to remind everyone to please state your name before speaking for recording purposes and to please keep your phones and microphones on mute when not speaking to avoid any background noise. Recordings will be posted on the Wiki shortly after the end of this meeting. As a reminder, those who take part in ICANN multi-stakeholder process are to comply with the expected standards of behavior. With this,

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I'll turn it back over to the GNSO Chair, Sebastien Ducos, please begin.

SEBASTIEN DUCOS: Thank you, Terri, and good afternoon, good morning, good night to everybody joining. And welcome, I guess it's a joint session, so we're cross-welcoming our GNSO and ALAC friends. And I don't have much to say, as I've said before the recording, I'm in my car, so not in the best auspices to have a long speech. I wanted to thank Justine, you had a hand in preparing this agenda. Lots of interesting topics, but you'll find we've organized for some of our speakers, more astute speakers than I am, to discuss these topics. So I'm probably not going to keep quiet until the end of the hour. But without further ado, Jonathan, if you wanted to make some intros, it's all yours.

JONATHAN ZUCK: Thanks a lot, Sebastien, and it's always a pleasure to meet with the GNSO and help to strategize the best way forward on topics that I think that we have in common, common concerns and sometimes divergent recommendations. And so I'm always glad to have these discussions. Justine does an amazing job keeping us up to date with goings on in the GNSO, with extensive reporting and discussions within our CPWG calls. But having occasional face-to-face or face-to-screen meeting, I think, is a very useful exercise.

So I think that Eduardo Diaz, who is an ALAC member and is going to be the one moderating this session, and I've been

assigned a topic later in the discussions. But I think without further ado, I would either pass it to Eduardo or back to whomever on your side is organizing.

SEBASTIEN DUCOS: No, I think it's all Eduardo. Go ahead.

EDUARDO DIAZ: Okay, thank you. I just want to mention, well, my name is Eduardo Diaz. I'm from ALAC, the North American region from At-Large there. So in any case, considering that we have a full agenda and a very tight 75-minute timeframe, I'm proposing to streamline an approach on how we do this engagement today. And if you have any questions for our speakers, please submit them via the chat box with a square and a Q. So we know it's a question, it's not a statement for everyone. And then the speakers, I will ask them to be aware of the chat. So if you can answer the questions yourself as part of your presentation, then that would be better. And then we will take the questions at the end or whenever you feel like that you need to do that. If anyone wants to contribute verbally, then raise your hand and I may prioritize giving the floor to some of the participants that I believe are more familiar with the topic. But at the end, we can take those questions if time permits. So without further ado, since Jonathan already talked and Sebastien, we can give the chair to who is going to lead the second part first, Justin or Paul? I think it's Paul. You have the floor. You're in point two of the agenda.

PAUL MCGRADY: Thank you. Paul McGrady here. And I have a bit of a scheduling thing on my hands. This call was scheduled obviously, but my wife didn't know that when she scheduled the movers to arrive with all of our furniture at exactly the same time while she goes to New Orleans for a conference. So you will see lots of activity. My daughter is here to oversee things. But if I end up dropping off the call after my little chunk of it, please don't take offense. I think the other topics are really interesting and I wish I could stay. So I will watch the chat and try to answer questions as I go along if that's okay.

I don't have any particular slides for this section. So I'll just give you guys the view from 25,000 feet. And I know Justine has been following along on this topic as well. And we'll have some issues to raise or questions. Zak says to leave on my video so you guys can see this. If you've never seen a piano delivered, you've not lived.

So Justine may have some things to add to what I have to say. And as you guys know, Justine is an international treasure. Sometimes we have to remind ourselves that she's the ALAC liaison rather than just a garden variety GNSO councilor like the rest of us because her contributions are so important. And she's just so aware of everything going on. So I hope I know you guys treasure her like we do.

So where we are on the small team, the board sent back 38 topics, which they were not quite comfortable with going ahead to vote on and sending to the Org for the IRT to begin implementation. These various topics really boiled down to eight or nine different subject matter issues. And I don't want to highlight

any particular thing at a cost of another. But there were some of these issues that really were boiled down to that they didn't like the wording in a recommendation because it was too prescriptive. Or there may be some missing details. And those I think are easier to handle.

Whereas some of the other recommendations they sent back really are very chunky. And the one that comes most immediately to mind are the issues surrounding the PICs and RVCs, the registry voluntary commitments, and the question of whether or not those are enforceable under the current bylaws. That's a major topic and we're currently wrestling with what that means in terms of looking at the bylaws as they exist now and making a recommendation about whether or not a fundamental bylaws change process is necessary and what that process would look like.

So we have a handful of different buckets. One is when we look at the topics, one is we might issue a clarifying statement and that might take care of the issue. The other bucket, for example, we just talked about is exploring a bylaws process. There are other things along those lines. And so, Justine, if you want to jump in here, is the goal of this session, and we didn't really have a chance to talk beforehand, but is the goal of this session for me to walk through each of the topics and give a highlight of where we landed? Or is it to talk about the buckets? What would you like to see happen here?

JUSTINE CHEW:	I guess a couple of things. Thanks for coming on the call. I think we did the prep run and I think we missed you there. So anyway. So I've only been able to update the At-Large group on the status of the four buckets then, as of 25th of May. So of course, we had the extraordinary Council call earlier today. I want to say today because it's my today anyway.
	So I've given my report, but it would be nice for you as Council small team lead to perhaps just give an overview of where we've landed on some of these things. And if you wanted to seek the ALAC's input or feedback on certain of these things, I'm happy to provide that. How does that sound, Paul?
PAUL MCGRADY:	That sounds good. So I think that makes sense to me. And let me just do a little bit of that. So for example, the things that fall into the provision of clarifying information to the board would be things like the recommendation that the working group made that applications must initially be assessed in rounds until the scale of the demand is clear.
	The board had some concerns about rounds and we're looking more for a steady state. They understand the first process will be a round, but after that, they're hoping for a steady state rather than rounds, which as we see could be years or decades apart. They don't want to build up and tear down the machinery of the new gTLD program. That makes sense from a efficiency standpoint.
	And so with this particular one, we are looking as a potential landing spot. There's a clarification statement that we expect to

write essentially saying that we think the recommendation can be adopted as it is. And we think the GNSO council will be happy to engage with the board to talk about potential steady state process for essentially after the next round, but the discussions will begin now, but it's not a dependency. And so the next round issues essentially are tied into a clarification statement.

Part of the registry voluntary commitments or public interest commitments that we talked about had to do with not so much the PICs and RVCs themselves, but having to do with certain exemptions from the specification 11 issues. And so for that particular one, the current landing spot looks like, and again, the council has not voted on any of this, it's not final, but where it looks like now is that we may end up with that one having to ask the board to non-adopt it and send us its reasons and see if council could come up with a supplementary recommendation on that one.

That scenario also would apply to recommendation 18.3, which had to do with the changes to the terms and conditions of the program in relationship to maintaining the covenant not to sue, the working group wanted to see that predicated on the adoption of an appeals and challenge mechanism. And again, that's one that the board has signaled they're unlikely to adopt as is. And so we may end up in a non-adoption situation where the board sends it back to us with its reasons and council sees whether or not it can come up with any kind of supplemental recommendation. Should I pause? I'm toggling from screen to screen. Justine, your hands up, go ahead. Sure. And Justine, why don't we do a rule?

Because I'm on a back patio with one screen. So here's the deal. You interrupt me whenever you'd like.

JUSTINE CHEW: Well, I have a short term memory that's not so good. So as you roll along the topics, I have certain things that I want to say as well. So if you go too far ahead, I might forget. So first off, I would just like to say that in terms of the 38 recommendations, as you say, there isn't really 38 issues per se. There's only about maybe five or six real mega big issues of which the 38 sort of fit into. So we're not talking about 38 issues, really. We're talking about a handful of them.

And insofar as that is concerned, the ALAC doesn't actually have a position in all of those. So we have certain priorities that we're looking at and certain things that we prefer to not comment and just leave it to GNSO to talk to the board on.

So some of the points that you brought up, some of the issues that you brought up in terms of the applications having to be still assessed in rounds, our position on that is that that is the policy, that is the consensus policy. The already adopted from GNSO, sorry, the SubPro PDP is the fact that the recommendation says that we will continue to do things in rounds until such time the policy changes.

So we would agree with GNSO in terms of providing clarification to the board that it is going to still be rounds. So the application process is still going to be conducted and still going to be evaluated by way of rounds until the policy changes.

The only concern that we have is because of some confusion with first come, first serve, which is kind of different to steady state. So there was a mention of first come, first serve, and we can definitely say that we are opposed to first come, first serve. And that is the indirect conflict with the policy which talks about rounds. So there you go.

And we don't have necessarily a problem with steady state because the recommendation already provides for the possibility of steady states in the future. So that's one. In terms of the PICs, that particular PICs that you talked about, which is recommendation 9.2 really, the waiver on spec 11.3(a) and (b), the obligations for DNS abuse, whether that waiver should be a blanket waiver for all single registrant dot brand applicants or TLDs.

Now I have to qualify by saying that we are quite respectful of the multi-stakeholder process. So we don't aim to relitigate things unnecessarily. Of course, there are exceptions. And I think this is one exception because there is new information coming in from the board. And I think the ALAC sort of is taking on board the board's concerns. So we would like to see GNSO resolve this issue with the board in terms of possibly looking at a case to case waiver instead of a blanket waiver or making sure that there are some clear criteria by which we would allow a waiver of 11.3(a) and (b) in terms of the DNS obligations. What was the next thing that you brought up? Let me stop there and throw the baton back to you.

PAUL MCGRADY: All right. The next thing that we had, let's see, I want to make sure that I'm ... Oh, was that, Justine, it was the terms of use containing a covenant not to sue so long as there was a challenge mechanism. Does ALAC have thoughts on that one?

JUSTINE CHEW: Yes. All right. So with the two kind of parallel ones, the challenge mechanism and the covenant not to sue, I think they're sort of back to back, right? Or they're sort of related to each other. We don't have a comment on it. We don't have a position on it.

PAUL MCGRADY: Great. Okay. Next up was topic 19 having to do with application queueing. There was some concerns about the precise number related to batching and things of that nature. And with this particular one, it's possible the board may accept it as it is. We are working on a clarification statement anyways. The idea is to let them know that the point wasn't to be prescriptive about batches, but rather to affirm the underlying reason for this one, which is that we do not want internationalized domain names to be left behind. The idea is that there's a bit of a formula here to make sure that IDNs are not given any kind of lower state or less importance in the process. So this one may either go away by the board accepting it moving on or with a clarification statement for us that would go into the voting record. Justine, reactions to that one?

JUSTINE CHEW: In sync with GNSO, we are.

PAUL MCGRADY: Great. Next up is topic 26. This is the working group came up with a recommendation that emojis and domain names at any level must not be allowed. This was one that is based upon work from the SSAC and others. There seems to be agreement across the community that this is something that can't happen, not just shouldn't happen. I think there was some concern that emojis are speech and the board was looking for some more information from us about that. And so this one also landed in the bucket of a potential clarifying statement that the recommendation is only in respect to domain names that are allocated at the registry level. And so we are planning on doing that. Justine, reactions to the emoji issue?

JUSTINE CHEW: This one, we don't have a particular comment, but I have informed that I believe GNSO has a resolution with the board which satisfies both sides in that this recommendation is only intended to apply to registry operators that distributes domain names at any level. So no real comment from us.

PAUL MCGRADY: All right. That's perfect. Next up was recommendation 29.1. And this was just that ICANN must have ready prior to the opening of the application submission period a mechanism to evaluate the risk of name collisions in the new gTLD evaluation process as well as during the transition to delegation phase. The bottom line here is that we're going to do a clarification statement, but essentially

just letting the board know that we don't believe this recommendation needs to be actioned until after the NCAP study two is complete. And that seems to be a path towards resolution with the board on that one. Justine?

JUSTINE CHEW: Yep. ALAC is on board with that.

PAUL MCGRADY: All right. Next up is recommendation 32.1. And this is that the working group recommended the challenge and appeals process and it applied to all kinds of evaluation challenges like background screening, string similarity, you name it. And this is one where it's currently listed as TBD, further dialogue needed. This is one of those thorny issues. And the small team isn't at a point where it knows what to recommend to council on this. And we intend to engage in additional dialogue with the board on this topic. So this is one that would, Justine, if ALAC has inputs into the proposed appeals mechanism, that would be good to hear.

JUSTINE CHEW: That one, we don't have a particular position right now. I think we probably need to do some work in helping out to flesh out how the challenge and appeal mechanism is actually going to work in parallel with the existing accountability mechanisms.

PAUL MCGRADY: Yeah, I think that's right. There is a concern of redundancy and people gaming through appeals and challenges. It does seem to be something to be concerned about. So we'll look for if ALAC has more to add on that one, we'll look forward to getting the update, Justine, on that. It is like I said, it's a thorny one.

Section 34.12 deals with the process to develop evaluation and selection criteria that will be used to choose a community priority evaluation provider, or as we call them, the CPE provider. And so this is one where the board was concerned that we wanted to have too much information and we might leak into confidential information like payment amounts and other things that they didn't want to disclose. This one looks like it will be resolved by a clarification statement from council basically letting the board know that what we really care about is the criteria related to CPE and not the personal or private information that really shouldn't be shared. That seems like it will satisfy the board, we hope. So again, a clarification statement is the current plan. Justine, anything on the CPE provider?

JUSTINE CHEW: That we are on board with GNSO on that. We only are concerned with aspects that lead to the selection of the provider, not so much what the providers need paid and that sort of thing. So confidential information is not a priority for us.

PAUL MCGRADY: Perfect. All right, next up is the topic on auctions. This is the auction topic that was sent back from the board to council. And

this is one where the recommendation itself makes reference to private auctions. The board was concerned that we were accidentally trying to create policy that either enshrined or disallowed private auctions. And that wasn't the goal of topic 35. The goal of topic 35 was to create some anti-gaming factors, the sort of the bona fide good faith intention to operate the gTLD so that people aren't just applying and warehousing them with the goal of just making money, selling away their right to apply, the right for their application to be considered.

And so for this one, what seems to be what the board wants is a clarification statement from council, making it clear that we're just acknowledging that private auctions existed in the last round, but they shouldn't be seen as an endorsement or prohibition of the continued practice in future iterations. In other words, the GNSO is not taking a policy position on whether or not private auction should or should not be a thing that exists. Justine, you have thoughts on this one?

JUSTINE CHEW: Insofar as the intention here is not to either endorse or prohibit private auctions, and that is my understanding of the GNSO position, we would agree with that position. But we also state that we are in full support of the board's intention and approach to get in external auction expertise to sort out the auction issues. So we're hoping to provide input in that. And we have a session during ICANN 77 that attempts to do that.

PAUL MCGRADY: Great. Yes, and there are other things under this particular issue of auctions that, I mean, basically it is the same response, which is a clarification issue. Justine, how detailed into auctions do you want to go now, or do we just say we're having a further discussion of it and we move out of the clarification statements and into the other buckets? I don't want to give it short shrift because as you reminded me on a recent phone call, it may not be as simple as I'm making it out to be.

JUSTINE CHEW: Well, I mean, we stick to the path to do with the 38 recommendations right there. We don't really need to talk about auctions in depth because auctions is not really part of the 38 per se.

PAUL MCGRADY: Perfect. Okay. Well, I'll just reiterate Justine's commercial then for joining us at that auction section. Based upon the pre-call last night, it should be a fun one. All right. We are moving on then to the next bucket, which is buckets where the council really believes that the issue just can simply be resolved during implementation. These are some of the easier ones that I mentioned at the front of the call. S

o for example, topic six fell under this bucket, recommendation 6.8. And this is one where the recommendations made a reference to the cost of the program should be established during the implementation phase by the IRT, the implementation review team in collaboration with ICANN org. The board was concerned

about that and wanted it to be clear that ICANN Org is the counter of the beans. The council currently plans to do a clarification statement on that, but it may be that the board can accept it as is given the information we've already given them. We agree. I don't think that recommendation was ever meant to make the IRT the group holding the purse string on that. And so Justine, any reaction to that?

JUSTINE CHEW: Agreed. Agreed.

PAUL MCGRADY: Recommendation 16.1. This is one where the recommendation used some words like extenuating or extraordinary circumstances in relationship to how quickly the application window should move. We think this is one that the IRT can sort out what those meanings are. The same thing for topic 18 under the terms and conditions that uses the word material. And we think that's something that the IRT can define. And so we're hoping that those are things that can be handled by implementation.

JUSTINE CHEW: We don't have an issue with those. And in fact, even with the applicant support one, we're in agreement with GNSO that I think we can sort this out in IRT.

PAUL MCGRADY: Perfect. The next one is this is where things get a little bit detailed and in depth. This is an interesting one. The next group are issues where we explore whether or not starting a bylaws amendment process is necessary. And then if it isn't, providing rationale for why we think that is the case. If it is, exploring how that would work practically, how long that would take. And then lastly, what happens if the community does not go along with a proposed bylaws change. So this one is probably the trickiest out of all the ones that we are looking at. This particular issue I mentioned at the beginning, because it's probably the main show. This has to do with whether or not PICs and RVCs are enforceable. And if not, what's next?

And so for this one, we're going to be doing two things. One, looking into whether or not we think they are enforceable under the current bylaws. And if so, providing that rationale to the board. And if not, talking to the board about what the bylaws process would look like. But also, the board has asked GNSO council to gauge essentially the appetite in the community for such a bylaws change and whether or not those in the community would support it. This is squarely at the further dialogue needed place. And we're going to be having that with the board. But we would be very interested in the ALAC's thoughts on the substance, about whether or not the current bylaws make room for PICs and RVCs. And also the ALAC's appetite for engaging in the community process around bylaws amendments.

JUSTINE CHEW: So the position of ALAC has always been that number one, PICs have to be enforceable. And I think there is probably a stronger

leaning towards the fact that we think that the bylaw already allows for that. But having said that, we are not opposed to entertaining the idea of a bylaw change. Of course, it would depend on what that looks like. And I believe the board is actually responsible for that. And they want to, well, they have to initiate it and they have to propose a draft to us for us to consider. But I think in principle, we wouldn't have an objection to a proposed limited bylaw amendment.

EDUARDO DIAZ: Sorry, this is Eduardo. Anne has her hand raised. You have about 20 more minutes to go. And I don't know if you're close to wrap up this discussion and continue to talk because of the [inaudible].

JUSTINE CHEW: I don't think we have much to go, Eduardo. So if you want to take Anne's question, that's fine. Or comment, I think it's fine.

EDUARDO DIAZ: Anne?

ANNE AIKMAN-SCALESE: Thank you. this is just more of a methodology question. I noticed that we're not linking the chart that has these 38 issues in it and the work of the small team. Is that, folks, because the council, the full council has not yet approved that chart? It just strikes me that we're sometimes discussing issues that are quite complicated in terms of the specific recommendation. Has ALAC ever seen a

version of this chart? Are we able, Paul, to circulate it or is that not the case because council's not approved our chart?

JUSTINE CHEW: I can answer that. As you know, I've been a member of the small team, right, which Paul leads. So I have been kind of updating ALAC and I did do a presentation at the At-Large Consolidated Policy Working Group on the 31st of May, I believe it was. And I presented the state of the 38 recommendations, the pending recommendation, as at 25th of May. So I think what Paul is trying to do is provide maybe an updated version based on the extraordinary council meeting that we had earlier today.

ANNE AIKMAN-SCALESE: Great. Thank you. I don't want to take more time commenting on RVCs. I think that that topic will be addressed pretty thoroughly at the meeting. And so I appreciate getting the link to the chart. Thank you.

JUSTINE CHEW: And the ALAC is aware that things are moving. So even from one meeting to another meeting, things get shifted around in the groups, in the buckets. So they are aware that things are progressing and things move around. Sorry, Paul, go ahead.

PAUL MCGRADY: Oh, it's all right. Thanks Justine and thanks Anne. Yes, I went ahead and put the link to the chart in chat. There's absolutely

nothing secret about that link. This entire process is the documents are open. Observers are welcome on the small team calls. The observers are not limited to anybody. Anybody that wants to observe can do so. So by all means, if those that have an interest, grab that link and put it in your favorites. It does evolve. And the latest evolution has been the potential landing spots column all the way to the right, which is where we're really boiling things down.

All right. I think that takes us to the end of the sort of explore the bylaws bucket. There are lots of different sub recommendations that fall into the RVC and PICs issues. So for those of you looking at the chart that will more detail, you can find it there.

The next bucket is dialogue between council and the board. These are things that we just know we have to keep talking to the board about. We're not ready to recommend anything to council at this point. And this recommendation 17.2 is the first one of these. This has to do with expanding the scope of financial support provided to applicant support program beneficiaries beyond the application fee to also cover costs such as application writing fees and attorney's fees. And this is one where the board was a bit concerned about having a blank check written. And so we're in dialogue with them about that. I will say that I have a bias on this one. I think that the more applicants for applications we can get in the door, the better. But it's ultimately that the board is the holder of the check, holder of the money. So we're discussing this with them. Justine, any ALAC positions or comments on this one?

JUSTINE CHEW: We're a great supporter of applicant support as well. So I'm very glad to hear that you are a supporter of applicant support. So it makes for a stronger argument that no, we need to get this done.

PAUL MCGRADY: Perfect. Yeah. And again, I don't know if that's the council's position. I just wanted to disclose my own personal bias. And I think that that bias has only grown stronger because I am the council liaison to the GGP on applicant support and for some good arguments on why we need to make sure that this part of the program is a big success.

The next one under the further topic of discussion with the board is, again, a topic 18.1 having to do with under what conditions the ICANN board can reject an application. And the recommendation listed out the criteria, which we thought were pretty broad. The board, however, remains concerned. They want ultimate freedom to operate under their fiduciary duties. And so we continue to have a discussion with, we think further discussion with the board is necessary on this one. We understand the board's desire to have as much freedom as possible, but we also want to understand the consternation caused by some of the decisions in the last round, which not only affected applicants, but frankly, I think might have had some effect on ICANN's reputation as well. And so that we have continued discussions on that one. Justine, reactions to that?

JUSTINE CHEW: No comment on that one.

PAUL MCGRADY: Okay. The next one under the board dialogue is recommendation 30.4. And this is one where under the 2012 applicant guidebook, there was a statement that the GAC consensus advice against a registration will create a strong presumption for the ICANN board that the application should not be approved. But the working group noted that the part of the bylaws, which allowed for that kind of thing didn't make it in through the 2016 bylaws revisions and suggested that that language be cut from the applicant guidebook.

The council is sort of not an observer, but a participant in these next steps, because it's not really a discussion with the board, with council, it's the board's discussion with GAC on this and the GNSO council is signaling that it wants to be helpful and friendly and help find solutions. But ultimately, this is a GAC board issue. Justine, reactions on that?

JUSTINE CHEW: Agree that it is a GAC board issue. But we had supported the recommendation throughout the PDP stage. So we don't have any plans to overturn that support. It's up to the GAC to convince the board then, I guess.

PAUL MCGRADY: Perfect. All right. Thank you. And the next two, 30.5 and 30.6, have to do with early warnings. And again, these are GAC board discussions, but with the council doing its best to be helpful.

JUSTINE CHEW:	So all the ones to do with GAC early warnings and GAC advice kind of sit together.

PAUL MCGRADY:	So I think that takes us to the end of our chart. And Anne's hand is still up. I don't know if that's an old hand or she has a new comment. I think we've got in the agenda, I don't know, three more minutes or two more minutes to field any questions. But if there are no questions, then we can give three minutes back, I think, to the agenda.

EDUARDO DIAZ:	Yeah, you got 12 minutes, but that's fine.

PAUL MCGRADY:	Well, so I hope there's not 12 minutes' worth of questions because I'm not as bright as Justine. I have to work off of charts. I don't hold all these things in my head like she does.

EDUARDO DIAZ:	So do you want to take more questions now or Justine, you go with the closed generics?

JUSTINE CHEW:	Yeah, we can move on to closed generics. I mean, there's 12 minutes, right? So let's move on to B unless—I don't see any questions in chat. I think Terri's monitoring it for us. Oh, Jonathan has his hand up. So there you go.

JONATHAN ZUCK: I just raised my hand to cause some trouble because that's what I do. But I wonder—what I'm trying to derive from the discussion we just listened to, which I found very informative, is, are there areas in which the ALAC and GNSO need to buckle down specifically because of discrepancies in our priorities or objectives? Because this was a great overview of the 38 and the GNSO small team response to it, etc. And we heard some back and forth on this. But a part of me wants to see if there's areas of conflict, not because I seek conflict, Paul, I'm just going to preempt your comment, but because that's where our work is in a way, right? And so I guess between the two of you, is there a way to identify the three issues that are, hey, we really need as two bodies to engage on these issues to resolve or try to attempt compromise on those issues rather than just battling it out in rhetorical fora? I guess that's my question. I don't know if that's a fair question for you guys, but that's what sort of came to mind. This was an incredible overview. But are there areas where the two of us should be buckling down?

JUSTINE CHEW: Paul, you want to take that first or you want me to go first?

PAUL MCGRADY: Yeah, so I think, Justine, if you could take it, I'd appreciate it because I don't have a good line of sight into where the ALAC disagrees with that. And again, this is all the current thinking because this has not been the council yet. This is just what the small team has been developing.

JUSTINE CHEW: I think one thing comes to my mind, and it's not necessarily a conflict, per se, between the two groups, the ALAC and the GNSO. But I think it's something that the ALAC and GNSO could cooperate in hunkering down and doing the work, which is the bid on PICs and RVCs. Now we know the bylaw change, the proposed bylaw amendment, right, is only one aspect of it. And according to the board members, they haven't even decided that they want to go ahead with it yet, right? It's just one avenue by which to deal with the problem, so to speak.

But what we see as a more practical issue would be, it's still fuzzy how we're going to handle the receipt and drafting of PICs and RVCs. So we know that in some cases, RVCs or even PICs—right, so let's talk about RVCs. In some cases, RVCs are submitted to address an objection or a comment or a GAC advice or GAC early warning, right? But there isn't a clear path as to how that RVC gets written up, gets commented on, gets molded into something that is enforceable and can be enforced. So there isn't a process by which we have to tell the applicants, "Hey, this is the problem. You want to propose a solution, yes, but your solution has to have this, this, this, this, this, this. Otherwise, it can't be evaluated, it can't be approved, and therefore it's useless."

So that particular path isn't quite clear yet, and I'm not sure whether we're supposed to be addressing that in implementation. But I think ALAC would certainly appreciate the help of GNSO to provide for that more clarity as to that path, because I think it would help everyone to have that path, even if it's ICANN Org or

ourselves, or even applicants, because it gives you a proper way to understand how PICs or RVCs are supposed to work.

PAUL MCGRADY: Thanks, Justine. Yeah, I think that's a great example of it may be that ultimately the decisions reached at the current bylaws support PICs and RVCs. The working group certainly thought that, or else they wouldn't have put them in the way they did. But it may be like, yes, they support them, but here's a clarification statement or some other process from council that says, but the PICs should be detailed, and the PICs should have milestones, and the PICs should have consequences of non-performance, or whatever.

And again, not to be too prescriptive, because the IRT can work out what all those milestones and things are, right, effects, the consequences of non-performance, but maybe to provide a little more comfort to the board that ultimately there's sort of enforceability in the atmospheric way, but also are they practical enough to be enforceable, right, by compliance. And so, again, this is not an area of conflict between ALAC and the GNSO, but the GNSO needs ALAC's help thinking through all of this. I don't think the work sits in conflict necessarily for all of these, the work sits in thinking through it together and coming up with solutions that work for everybody so that we can go to the board and give them the confidence they need to do what they need to do next, which may not be easy for them. So, anyways, thank you. I think, unless there's additional questions, Justine, you're going to tackle a closed generics framework. I know next to nothing about it, because I'm not on that discussion team, so I'm going to take my leave if that's okay.

JUSTINE CHEW: Sure. That's fine. I mean, when we sent the agenda over to GNSO for the speakers, you were the one who was named. So don't blame me. But I mean, we have John on the call, so that's something. So I mean, okay. Yeah. So moving on to -- Eduardo, you wanted to say something?

EDUARDO DIAZ: No, just to wrap it up, we have only five minutes to go on this agenda item. So go ahead.

JUSTINE CHEW: Okay, cool. Yeah. So just with closed generics, I wonder if John could take the mic for a little bit. I think ALAC would appreciate in terms of where the closed generics dialogue is at this point in time. I mean, we keep hearing that the draft framework is supposed to come out. It was supposed to come out on the 31st of May. Today's the 6th of June. And we now understand that it's supposed to come out -- or some version of it is supposed to come out by Wednesday after the small team call on closed generics. Because the ALAC can't really comment or react to anything until we've seen it, right? So we're all waiting for this draft framework to come to the table.

And the second thing I think we want to have some comfort is in terms of the policy vehicle that's being proposed to take forward the closed generics framework. And I know this is something that council has not decided upon. The proposition is to have an EPDP

to turn the framework into some kind of consensus policy. So if you want to comment on that.

From ALAC's perspective, we obviously would wait on GNSO council to determine what the policy vehicle is going to be. As far as we're concerned, we just want to make sure that it is a cross-community thing, whatever shape and form it takes. Thanks, John.

JOHN MCELWAINE: Sure. Justine. So you teed it up nicely there. So with respect to the status of the framework, currently the dialogue group is working on finishing its work. And then at that point, it's going to be a draft version as of after the Wednesday meeting is going to be provided to the GNSO council.

Because I know that there's been questions related to what does the framework look like? Because we as a council, starting on day zero, need to work on a project plan should the framework be, again, agreed upon by the participants.

And I think when you see it, getting to your second question, you'll see that the level of detail there and some of the more important policy-like questions are going to be left to a group to work on. So the framework is intentionally at a high level.

We did have discussions concerning policy issues. But no decisions were made. That would have been beyond the scope and just really not in the spirit of the way that the multi-stakeholder model works.

So again, what you'll see is a framework that looks into an application process, an evaluation process, a post-delegation set of recommendations. That's not really a process. And then some definitional issues. And it's going to be at a high level, which is why I think the discussion so far from leadership, GNSO council leadership and from staff has been that it's not going to be at just a level where the GNSO council can rubber stamp it. There's going to need to be more policy-like work done. This wouldn't be consensus policy, but this is, as you said, a very important issue for a number of different groups, ICANN community groups. So we'll need to do some sort of work that looks an awful lot like a PDP, which is why the suggestion so far has been to do an EPDP on this. And I agree with you, although it's going to be up to the GNSO council to ultimately decide upon how the chartering document is going to work. And part of that would be cross-community involvement. I agree with you personally that I think it needs to involve ALAC, it needs to involve GAC, it needs to look like a cross-community exercise because it has been that part of an issue for the community to deal with.

But again, I think we've come up with a framework that in traditional compromise people can live with, and that policy vehicle is likely to look an awful lot like a PDP. And again, hopefully it could be done quickly, given the importance of SubPro's work. So with that, I'll see if you have any other questions.

JUSTINE CHEW: No, I thank you for your answers. I think that's to the extent we are able to share anything, right, because things are still up in the air

and we really need to see the framework and council really needs to decide on what policy vehicle to take forward. So yeah, we can't hold you to anything. But thank you for your replies. I think we should move the agenda on to the next section. So back to Eduardo, just to keep time.

EDUARDO DIAZ:　　　　　The next section is on the DNS abuse with reference to the GNSO Council Small Team on DNS abuse. We have 20 minutes for this discussion and in the lineup is Jonathan Zuck and Greg DiBiase. So Jonathan, you're first. Thank you.

JONATHAN ZUCK:　　　　Thanks, Eduardo. I guess I was actually going to suggest that Greg should go first, since we're sort of reacting to the GNSO abuse small team. But I can, I was just going to give up the first slot if that made sense.

EDUARDO DIAZ:　　　　　It's what is there, but if Greg wants to go first, please, by all means, Greg, you have the floor then.

GREG DIBIASE:　　　　　Sure. I mean, if you'd like me to just kind of introduce the topics. So on 3A, I don't know if you've seen, but the proposed contractual amendment based on the negotiations between ICANN and registries and registrars is out for public comment. This negotiation has been happening over the past couple of

months. The impetus, at least in some way, was the small team's work in soliciting feedback from the community on where the GNSO can use the policy development process to advance goals in mitigating abuse.

One of the things that was kind of uncovered in the feedback we solicited, that there may be some specific clauses in the existing agreements that were a little vague. And so the contracted parties in ICANN kind of took that feedback, said, all right, let's go to work. Let's see if we can improve the language here. And that's the end result that's out for public comment right now. So there's the actual language in the amendment, as well as a draft advisory kind of stating what this means, what is and is not included there.

So from the GNSO's perspective, I don't think we have a specific public comment on this, or at least we haven't decided whether we're going to comment. I think in general, and maybe I'm speaking for myself, we're encouraged that ICANN and contracted parties could seemingly make some real progress here.

And then as it relates to the DNS abuse small team, after these amendments are finalized, and we've had some time to see the potential results, some runway to see whether that could change enforcement, then maybe the small team will look at whether there is a follow-up policy or something more to be done there. But again, that's all kind of tenuous. We revisit that after the amendments are approved, if they're approved, and give it a little time to move forward.

Want to talk about 3B as well, or do you have any comments on 3A before I go on?

JONATHAN ZUCK: Thanks, Greg. Yeah, I think the ALAC in large measure is going to comment favorably on these proposed contract amendments. It's funny, the word choice that you used, it was revealed as part of this process that there might be some vagueness in the contracts. And I feel like some have been pointing out that vagueness for 15 years probably. So I think we're very excited about the parties being at the table and very hopeful that the changes that are being made will sort of accomplish the objectives of both kind of enshrining some best practices associated with the innocent abuse response, as well as giving contract compliance a more solid ground on which to take action against what vaguely have been called bad actors and things in the past. So I mean, I think we're optimistic about it and excited that this has happened. I guess the one area that's tough to think of it as a recent revelation that this was a problem, just because there was a head of compliance that asked for help many, many years ago and then suddenly wasn't employed anymore. And it was a recommendation of the CCT review five or six years ago. So I mean, it's a tough thing.

And what it really, I think, showcases, and this is part of our challenge, is it showcases that inflection points at ICANN, the fact that we're now seeing land finally associated with a new round, right, after a lot of time at sea, it does lead to a different level of activity than necessarily happens without that view of land, if that makes sense.

GREG DIBIASE: Yeah, that makes sense. And I thought when I said [inaudible], like other people were questioning this and I think even contracted parties were saying, what does respond to abuse reports mean? You know, they were looking for clarity from compliance. And I think this is the first time compliance put down in writing, okay, we can request a response to abuse report, but we're not 100% sure we can request mitigation. Okay, thank you. So I want to give definitely ICANN credit there that they put what they're saying into words and said help us mitigate, right? So I agree. And we're certainly happy to hear that in general, ALAC views this development favorably.

JONATHAN ZUCK: Very positively, for sure.

EDUARDO DIAZ: There is a hand raised by Hadia. Are you ready to take it or you want to continue?

JONATHAN ZUCK: Sure, sure.

EDUARDO DIAZ: Okay, Hadia, you have the floor.

HADIA ELMINIAWI: Thank you. This is Hadia for the record. So I was wondering if actually contracted parties were already taking action on DNS

abuse mitigation and that adding this to the contracts is only for ICANN compliance to be able to assure the compliance of registries to that. So are those actions already taken by the contracted parties? Thank you.

GREG DIBIASE: Yeah, I would say, yes, contracted parties are responding to abuse reports that is in the existing RRA. Kind of what would added was language around like a responsibility to mitigate, which I think most, if not all people thought that was implied, but without it being clear I think compliance wanted that extra clarity. So I think, yes, it's already happening. Contracted parties are responding to abuse reports and mitigating. But if we do run into a circumstance in which a contracted party is not mitigating to the satisfaction of ICANN compliance, they may have more language to stand on to take action against a contracted party that does not seem to be fulfilling their contractual obligation to respond to abuse reports in a meaningful way.

JONATHAN ZUCK: I guess also part of it is that there's not uniformity in mitigation efforts across the contracted party community. There's a whole host of contracted parties that aren't coming to ICANN meetings that we don't talk to on a regular basis. And I think that's been part of the general challenge of this issue of DNS abuse generally is that, and it often comes up in the context of government regulation, too. New regulations only burden the people that are intending to pay attention to them in the first place. And how do

you find a way to enshrine things that are already happening and to create an obligation for those that aren't participating?

I guess one of the issues that ALAC may comment on, just because it's come up, is the year to implement these mitigation efforts. Because again, I think those that are part of the DNS abuse framework and others that are sort of like our friends, our known entities are already doing, and a year feels like a long time to implement the things that are described in the amendments. I don't know if you have thoughts on that or if someone does, but I guess that's one thing that's been coming up in the context of these amendments.

GREG DIBIASE: Yeah, I don't know if I can speak to that right then. But I think, like I said before, this is already happening, right? And so it should be viewed as an enhancement instead of, no one was doing anything before and now people can.

JONATHAN ZUCK: For sure. Okay. Thank you. Yeah. And then I guess the next thing is this issue of the bulk registrations. And it's another interesting problem. And I guess I should stress that I'm not at the moment speaking as the chair of the ALAC, but as the person that my boss, Justine, designated as the holder of the microphone on this topic for this meeting.

But part of this may come from better understanding the implications of the small team's findings on bulk registrations and what the implications of them are for the next round. Part of what's

funny about this whole new gTLD program is that everyone in a way was frustrated with the last round. There were a group of people that thought that the primary problem or challenges of the last round had to do with the application process itself. It was overly complex. It was unpredictable. It wasn't completely thought out beforehand. So there were things like Digital Archery. There was the inconsistency of string contention reviews, etc. So it was how difficult it was for the applicants, right?

And there's another group of people that felt like that the problems with the last round had more to do with its implications. The fact that DNS abuse swept into the new gTLD right away, the failure of the safeguards, the failures of the applicant support program, the failure of these voluntary PICs. And that ended up being the issue that they considered to be the most crucial.

And that distinction of priorities, I think, is part of the challenge of the discussions that we have. And bulk registrations is something that also is not new, right? It's not a newly raised topic. It's come up for quite some time. Again, it was part of the CCT recommendations back in 2018 to address them. And it's now part of this report, this study that's going to happen. [Internal is the... I keep wanting to say infernal. But the internal] report that's going to happen, and the timing of it is such that we may anticipate some friction between us on the implications of that report when it comes out.

In other words, will the findings of that report with respect to incentives for DNS abuse, why they moved around, and do they have to do with the pricing? Do they have to do with bulk registrations, etc.? Are the implications of that report going to be

actionable in a timeframe that has an impact on this next round? Or is that going to be so close to the end of the IRT, the creation of the applicant guidebook, etc., that dropping it now will feel to us like a mistake? And you may not even know the answer to this.

And I don't mean to put this all on you, Greg, but I'm just sort of describing sort of our own internal consternation about this, because I don't think we believe that bulk registrations are as mysterious a topic as perhaps some make them out to be. I mean, everybody talks about definition. And one possible definition of bulk registrations is registrations made on a page labeled "bulk registration." It's kind of a funny thing to talk about. It's difficult to define. There appears to be a lot of data, although the data is handicapped, because it has to come backwards from the reputational databases as opposed to forward from the registration information. But it seems that there's a clear correlation, an indicator that bulk registrations are frequently used tools for those that have malicious intent, and that some of the ideas that have come out to mitigate that in the inter-isle report, for example, in terms of making it a classification, perhaps reclassifying the registrant as a legal entity if they engage in bulk registrations, don't seem obnoxiously onerous, right? And nobody wants to eliminate them, because I think there is a recognition that there's legitimate uses for bulk registrations, right?

But it feels like something that's worthy of having a discussion of, and what the implications of these mitigation efforts might be, so that we're not finding ourselves two and a half years from now having this conversation where this report says, "Oh, yeah, it turns out that what we've been saying all along is true. There is a strong

correlation between bulk registrations and DNS abuse, but now we don't have time to deal with it as part of the next round." I think that's part of our consternation about this issue. Sebastien, I see you've got your hand up.

EDUARDO DIAZ: Sorry to interrupt, but we have only three minutes to go before the end of the meeting. So I don't know, Greg, if you want to respond to that.

GREG DIBIASE: Yeah, so real quickly before you go to Sebastien, I just want to make clear that by not addressing this in policy development at this time, it doesn't mean that we don't think this is an important topic or something that doesn't warrant further investigation. It was, I think, more that when we got this initial feedback, there was a stress from a lot of groups, any project should be narrowly scoped and defined, and we should have this clear charter to make it actionable, right? And so that's kind of what we took. And then we saw that idea of bulk registrations and said, "Okay, maybe this is a topic that is ready. It's sufficiently defined." Then we took the next step of talking to people, and there was some feedback. We're not sure. There was different interpretations, like you said in the letter, but I don't think you should take that as we don't think this is an issue. And I think even in the letter, we were encouraged for the normal or whatever ominous, like we're encouraged by that, right? The better it's defined, that moves us towards the right place where this can be addressed by policy development, right? So that's just kind of the distinction I wanted

to raise. And I certainly understand the frustration of, we think this is an issue, and it's not that we disagree, it's an issue as to whether it is well-suited for a tightly scoped project, a PDP that can have success, given all the other resource constraints that we have on council right now. So I hope that makes sense. Seb, I saw your hand, I spoke over you.

SEBASTIEN DUCOS: No, no, you said exactly what I wanted to say. So this is definitely a topic that should be discussed, particularly in the density of work that is on council right now. We're not looking for work, and this is not work that is policy ready, in our opinion. But I, and we can discuss this live next week, absolutely, I'd be very interested to have you guys' feedback. I would like to see that discussion existing in some kind of a community, and I don't want to use cross-community or anything, because it's already attached to a lot of existing features. I don't know what it needs to look like. But we need to have that discussion. We probably need to wait for that report too. We need to have better grounds to start building policy from it.

At this stage, we frankly didn't see it ready. Don't forget, ever, that policy is, we briefly touched about it for closed generics, we're trying to find the shortest possible policy way, because it seems like the circle on this particular problem is right there, and yet it is two, three, four years of work. I don't want to put a tag, because it's still in discussion, but it's months of work. And this closed generic topics is nowhere near that. So I don't know that it's the fastest avenue. The examples of contracting and the amount of work that has been done, sorry, in the DNS abuse contract

amendments that you just discussed, the amount of work that was done in establishing best practices before, and the work that the contract parties were doing out of contract just to establish and follow best practices, is in my view, very encouraging. I would strongly encourage, again, the study, looking at it, looking at it together, but dumping this on the GNSO and say, go and make policy on this particular topic as it is right now. We concluded that I wasn't ready for it.

EDUARDO DIAZ: Okay. Well, we've run out of time. I guess what I can say is that there will be plenty of networking time next week to continue this conversation. So I guess if there is nothing else, it's supposed to be the next steps, which I think [inaudible] didn't talk about that. So with this, I think this meeting is adjourned. Thank you so much.

JONATHAN ZUCK: Thanks guys. We really appreciate it.

JUSTINE CHEW: Thank you all.

[END OF TRANSCRIPTION]