
SAN JUAN – ALAC & Regional Leaders: Work Session, Part 6
Sunday, March 11, 2018 – 10:30 to 12:00 AST
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UNIDENTIFIED MALE: This is the ICANN 61 ALAC & Regional Leaders Work Session, Part 6, on the 11th of March 2018 from 10:30 to 12:00 in Room 102 ABC.

ALAN GREENBERG: One-minute warning. Alright, I'd like to bring this meeting to order. I would like to bring this meeting to order. Do we have the bell?

The topic for this session, if you haven't refreshed your agenda relatively recently, has changed. We were planning to lead off with a discussion of GDPR and Theresa Swinehart could not make it at this slot, so we've flipped a few things around.

We will be talking about the RDS PDP to start with. Holly will be presenting a capsule of where we are and we'll have a bit of discussion on that. I will present the RDS Review Team, which is a parallel effort. You might ask why we're doing that and we'll discuss that a little bit.

We will probably finish that in well under an hour. I have one other topic that I'd like to bring up that has just come up that we'll do, assuming we have time. If we have a lot of extra time, we will decide what to do with it on the fly. We will then go into the prep for the At-Large review meeting that we'll be holding tomorrow. We'll start off with Holly.

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HOLLY RAICHE:

Thank you, Alan. The slide title up there, these are the two slides that I was going to use yesterday at the outreach, but for some reason they weren't found. That's [inaudible] to have them here. Could we go to the first slide? This gives a background to the RDS Working Group.

For those who have not lived and breathed RDS, it's the Registration Data Services. It refers to – and when I get to the slide, I'll tell you what it refers to. It's the proper way to refer to what's been called WHOIS.

A bit of background for those who haven't lived and breathed the WHOIS issue for years. And for those who really desperately want to know a lot more, at the APAC Hub, Chuck Gomes is going to be presenting a much fuller version of the whole history of this particular working group and where we're up to. So, this is going to be a bit of history, but a reminder how we got there.

Way back in the early '80s when in fact the Internet was for geeks, by geeks, and of geeks and that was all, what was developed was a protocol for [inaudible] directory services and it was basically the geeks wanting to know how to get in touch with each other because they weren't all living in the same place in California. Some of them were actually not in California. They wanted to know how to get a hold of each other. And it was names and really IP addresses of computers. It meant nobody was disturbed by that because everybody knew everybody. That was fine.

About the same time, what you have was the development of privacy principles in the OECD. The basic privacy principles upon which a lot of privacy legislation globally has been developed.

So, when I was going to present this, I was going to say two things. GDPR is not just about European Union. Privacy is actually global. And it's not just about WHOIS.

Really, two things that are to come in really complete conflict start off about the same time. With the establishment of ICANN in 1998, they simply took over the WHOIS protocol. The critical bit to read there is the RAA, the Registrar's Accreditation Agreement. This is the contract that ICANN has with every single registrar for the generic top-level domains and it requires free access for website and Port 43 to registrant data that includes the registrant's name, address, e-mail address, voice telephone number. I should've put fax down there, but I suspect a lot of you don't know what fax is. That's alright. In other words, a whole lot of personal information that must be publicly available under contract.

As the years went by, there was increasing awareness within ICANN as well as many other places. In fact, there was a real contradiction between the requirements for public access to that kind of data and privacy – I should say data protection rules. [inaudible] a couple of pivotal dates.

2012, for those who weren't living and breathing it at the time, there was a thing called the Final WHOIS Report. That's a shortened title. But, what they pointed out was there was real problems with, first of

all, accuracy of WHOIS data. Some of that was miscreants trying to hide who they were, but some of it was people fully aware of the fact that their personal information was made public. So, the names of a lot of registrant turned out to be Donald Duck, Mickey Mouse, or Snow White. An amazing amount of people lived on Sunset Boulevard.

Accuracy was a real problem. That was a way a lot of people hid who they were. That was public. They didn't want it to be public.

Access was the other issue that was raised by the 2012 report. So, at that stage, the ICANN board decided to do two things. First was to establish what was called the Expert Working Group (the EWG) to have a look fresh, to start from square one and say, "What are we doing? What information should we collect? Where should it be stored? Who gets access to it?"

The other thing they did was set up a working group, which I'm afraid is never going to die. It's called the RDS Working Group, the registration data. Somewhere along the line, SSAC said, "Could we please use correct terminology? Stop saying WHOIS and start referring to registrant data, registrant data services, use of technology." So, we're now not talking about WHOIS. We're talking about registrant data.

With the final EWG report, they said one very, very important thing. They said the WHOIS that requires free unfettered public access to registrant data must be rejected. At that stage, the working group that had been established in parallel with the EWG, which is the registrant

RDS working group, then had its terms of reference [inaudible] to include consideration of the EWG report.

What finally happened in 2015, which is how we got to where we are now, was the adoption by the working group of the framework for the PDP Working Group including the EWG recommendations. The EWG recommendations critically. They're called tiered access or gated access. It was a question about what data is gathered in the first place, although that wasn't critically looked at in the light of data protection law. More importantly, who should have access to it and under what circumstances. That became the framework for the working group that has been meeting ever since. May I have the next slide, please? That's a very interesting second slide.

The charter of this working group that's been going since 2015 – actually since 2012 – is to define the purpose. Let me pause at that purpose because purpose becomes very important. If you go back to the OECD privacy principles, you really only collect information that has the purpose of which is to, in some way, you need to carry out your functions. So, you don't collect data that you don't need. The collection principle. It is basically one that says the only data that you actually need is what you should collect and the purpose is the reason for which you collect something. So, that term purpose becomes extremely important if you're dealing in data protection law. Define the purpose of collection. Why are you keeping it? And the subsidiary question is how long are you keeping it? Finally, who should get access to it?

Another of the critical principles that I didn't put up, but if you have defined the purpose of collection, you can say we are collecting this data from you. So, if Tijani, I say, "I'm carrying on a business that does XYZ and I need these personal details from you to do the following," it means you've consented on the basis of what I have told you for what I'm doing.

So, the provision of access is dependent entirely on what I have told you I am collecting and why. It's all tied together. It's a collection principle. It's also an access principle. Who gets access? And it depends on that kind of information to provide it to the data subject in the first place. That's why the charter critically says define what you're collecting and why, why you're holding it, critically who has access to it and that depends very much on that collection principle.

Specifically, the charter included looking at the EWG report including the recommendation that we scrub free public access to registrant data. The RDS Working Group then was to work in three stages. The first is to simply establish the registration data requirement and then determine why or indeed if there needs to be a next generation registrant data service.

The next phase was to design policies that implement what the first group has found. The third is then an implement phase.

At this stage, and it being 2018, you will note that this says 2015 and we are not anywhere near finished phase one. This is going to be something that's going to kill us all.

A little progress report. Where we were, we will be meeting again this week but the big meeting – was it yesterday? What’s today? It was yesterday. Thank you. I was awake. Sort of.

The first of two meetings was held yesterday and we are trying to make progress, God help us. There are now drafting teams trying to grapple with – and they’re looking at purpose. Remember I said purpose is really critical? So, the drafting teams are working out what are the purposes of registrant data?

So, we actually talked about a few subjects. There have been drafting teams on those subjects. My light reading is the result of those drafting teams.

The first drafting team is what kind of data do you need for the purchase and sale of domain names? Clearly, you do need the name of the registrant if you’re either selling or buying and you need the data to establish that in fact that’s a bonafide buyer or bonafide seller. Right away, that raises questions about who has access to what data and if you’re not a bonafide seller or buyer, should you have access? We did get a bit bogged down on that, but that’s alright. That’s one of the issues that was raised.

Another actually more contentious one is should there be individual access and under what circumstances? I’m certainly not going to repeat that argument, but it was a much more contentious report.

Certification. What is the status of certifying the domain name? who gets access? There’s technical resolution. Clearly, technical resolution

is pretty uncontentious. There are a range of people who do have access and should have access. I think that's going to go through unscathed.

There are probably about three more working groups that have to report back and they're all going to be looking at purposes for which the data, the registrant data, will be used. Then, from there, the next step is going to be under what circumstances should that access be given?

The reason I have [inaudible] the GDPR, there's a bit of hiatus. We're not going to talk about the GDPR now. What has been put in place because of the impact of the GDPR is there has to be interim steps, such that ICANN Org is not held in breach of the GDPR.

Brush that to one side. Regardless of what steps are put in place as an interim model, ultimately the RAA is still in place. The requirements for public access to registrant data is still in place and it is only a PDP that can change that.

So, regardless of all of the stuff that has happened, this has to finish, God help us. I've finished. I was going to say it is finished, but I thought it would be a bit rude. Questions?

ALAN GREENBERG:

A couple of other aspects. This is a subject, as Holly said, has been going on for a long time. If there's any possible way to get confusion into it, it will be there. For instance, Holly said RDS stands for Registration Data Services. In fact, the original term that the SSAC

suggested is RDDS, Registration Data Directory Services and the RDS PDP is technically called the Registration Directory Services. They picked the other D. Treat them all as equivalent, even though the purists will tell us they're different things.

There is a lot of contention here. For instance, there are people who say when we started collecting a particular element for WHOIS, it was for a purpose. For instance, we wanted to contact the person who was responsible for that particular piece of equipment. The address wasn't contentious. It was always an address in a university or government research lab. There was no personal information, and if it was someone's name, they didn't care because they knew each other anyway.

One can now ask and the question gets asked daily. If we are now using specific WHOIS information for law enforcement to track miscreants and try to identify who they are, are we allowed to say that is a purpose for collecting it when I wasn't originally the purpose? Well, lots of things we change the purpose along the way.

The web was designed to make information available about high energy physics installations. We use it to buy stuff. Does that mean we're misusing it because it wasn't designed for that or does that mean we're simply good innovators? I'd like to think it's the latter, not the former.

So, it's a complex world. There are people with very strong interests. There are hundreds of people working on this. Many of them are there literally under contract to defend some purpose or another. I just

came from a GNSO meeting where they are having for the first time ever a discussion of the problems in the PDP process. And people who have been denying for years that there are problems are now openly discussing the problems.

What do you do with a PDP that has gone on for two years at this point? The formal PDP. We're not finished the first phase. We can't ask volunteers to commit to a six-year effort, and yet the people who will drop out are the ones who probably we need most instead of the people who are paid to be there and will be there for six years because they're making lots of money.

It's a really complex issue. We'll be talking about GDPR more as we go forward. GDPR is forcing something on ICANN. Now, it's not a policy. The policy we have right now says collect everything and make it publicly available. What GDPR is saying is telling compliance if someone isn't doing that in a certain way, don't take action against them.

Holly said only the GNSO can enact policy. That's not accurate, actually. The board can enact policy if they feel that the security and stability of the Internet is at stake. The catch is they are only allowed to enact policy for one year. When those contract provisions were written, there was a belief that you could tell the GNSO to fix the problem, they would come up with policy, and we would implement it in under a year. That can't happen.

We're in a real problem right now and watching what's happening is going to be a fascinating drama that's playing out.

In any case, things are changing and there are privacy issues, which are whether you care about privacy or not, as Göran likes to say, it's the law. But, the interpretation of exactly what we have to protect and how is not the law. It's very subjective. It's very confusing.

At the same time, we're here to protect users. Now, registrants are users, a very tiny percentage of them. We have 3 or 4 billion users now. There's some number of millions of registrants. The ALAC took a position a long time ago that we protect – we are here to defend registrants, except when there are competing interests for registrants and users. We flip over to the user side.

Our challenge is we cannot simply say privacy is the ultimate thing because we happen to care if the largest denial of service attack took place last week. And not only did it take place last week, it used completely different methods than anyone else. They're very innovative. WHOIS has proven very effective in trying to track down and stop these things. And it's not just law enforcement who does it.

So, we're stuck in an interesting place. When I say we, I mean ALAC and At-Large. We are stuck in an interesting place of how do we acknowledge that we have to obey the law and some of us are passionate privacy people, some of us aren't, but the law part we can't argue about a lot.

At the same time, we care that the computer is going to be usable on the Internet. And right now there are all sorts of things that are tightly coupled to the DNS which threaten that. How do we balance it?

Is it going to be possible for the ALAC to come up with a position? I think so. I think we're going to be able to do it because we're going to have to stick to some very high principles and not get into the weeds. I believe – and we have to do this, by the way. There was a comment on the GDPR recently we didn't submit a statement on because our views diverged. We have to come to closure on that and come to a place where ... We're not going to give very specific instructions, but we have to come to a place where we are doing our job. This may be one of the first time in ALAC's history in ICANN where our voice protecting users is a really important one. We're not going to settle the problem today, probably not this week. But, it's going to be an interesting one.

Now, I'll open to questions. You already have a queue.

HOLLY RAICHE:

Hadia?

HADIA ELMINIAWI:

[inaudible] for the record. My question is with regard to the purpose set by the interim models proposed by ICANN. In there, they did obviously set purposes for the WHOIS because without the purpose, you can not actually define the data that you are going to collect and prove it legitimate.

Holly, you were saying that you're still working on the purposes of the WHOIS. Here comes the contradiction. So, now we have purposes for the WHOIS, but [inaudible] we have interim models, for which we collect the data. How is this going to go forward?

HOLLY RAICHE:

You're mixing two things. Let me back up. The RDS is actually doing policy and it will be the RDS that actually determines purposes. What the interim models have done is they've actually gone out to the community and asked. Now, through a process that surprises some, she said gently, there are interim purposes because right now ICANN will face the fine of 4% of its annual turnover, not profit – turnover – if it does not obey the GDPR because it would be covered by it.

For that reason, they have to come up with a model that is not going to put them they believe in breach of the GDPR. That means, for their purposes, they have come up with interim purposes and interim model.

That process is the one that actually will determine the purpose or purposes for which the data is collected and that will be the policy that is final. Does that answer your question?

ALAN GREENBERG:

May I try another half to the answer? I think Hadia's question is very insightful because [inaudible] no longer on the multiple models. We have settled on a model, or at least that's up for discussion right now.

That is pre-judging. We have to come up with an answer now. And the question is how does that model that we will adopt either as a compliance model or as a board policy – we don't know how that's going to play out. How does that interact with the PDP?

There are two views. You can either say it's going to give the PDP a really strong structure that it can build and refine the details of and it's going to fast-path that process. Only take another four or five years instead of 37. Or, you can say this interim model has some real problems and it's not the one we should be using in the final and putting it in will perhaps cause the PDP to take a shortcut, and therefore implement on the long-term the wrong policy. Take your pick. It's either going to help us or hurt us and we don't know which.

HOLLY RAICHE:

I would add one of the comments that was made often when commenting on the interim model was the term interim is going to refer to a very long time because it's going to be a long time before there's a change of policy. We are 2015 or even you could really be [inaudible] and say 2012. Well, it's 2018 and we haven't even agreed on the purposes yet.

ALAN GREENBERG:

We have several people in the queue. We have 20 minutes until the end of the session. There's a whole other topic we haven't come to yet, so I'd like to end this in about ten minutes, so we're going to go to a strict timer of two minutes, going down to one minute if we need to. We have a queue at this point of Tijani and Daniel.

TIJANI BEN JEMAA:

Thank you, Alan. Data collection, data storage, data processing, data disclosure. Those are the [remis] that we have to take care of. For the

data collection, we need the purpose and we need also the consent. This doesn't appear anywhere in the model.

Second point. The model still speaks about thick WHOIS and the model still speaks about storing them in three places: registrar, registry, and escrow. This is absolutely against any kind of rule of privacy. And this will never comply with GDPR.

I am afraid that we are going towards something not to work and something that will – and now we have already a conflict between people who are doing the PDP and the others who make the model. Those who are doing the PDP said it is a top-down this model and they are not accepting it.

So, what a messy situation we are.

HOLLY RAICHE: I agree.

ALAN GREENBERG: I think what we are missing there is we are presuming what the data commissioners will accept and we don't know that at this point. There has been a major change over the last month or two with the European governments, the European Union, and the data commissioner starting to understand what they have wrought. And it is quite clear that if you enforce everything strictly we are going to have havoc.

So, the world is changing and the rules are changing. The subject of interpretation is changing. I'd be careful about saying they would never accept that.

By the way, we do not need approval to collect information if we have a purpose which we can make a good case is required. Now, if you make the case that if someone wants a public entry in the DNS, we must be able to ultimately control illegal action and that that information is necessary. If you can make that case, then collecting it without approval and making it available to law enforcement is perfectly legal within GDPR and similar privacy laws.

HOLLY RAICHE:

Tijani, can I also add remember collection for quite legitimate purposes is not the same as providing access. One of the really critical things about starting from the EWG was the collection of data does not necessarily mean that everybody has access.

One of the big things that has always been [fought] is yes you may collect this data and most of it actually you can say is legitimately collected. The battle will be about who gets access and under what circumstances.

ALAN GREENBERG:

We have to go on. We have Daniel. Hadia I know put up her card and took it down.

TIJANI BEN JEMAA: You don't want me to make a follow-up?

ALAN GREENBERG: You have 10 seconds, 15 seconds.

TIJANI BEN JEMAA: I am sorry, but GDPR is about a purpose for data collection and the consent of the person who has the data. This is clear. Second, the problem of the model we have now, the model – the first model, in fact, they didn't speak about collection at all. They speak only about disclosure. The disclosure you are speaking about, I told you three places. They put the data in three places. What kind of privacy you have there? It is a disclosure for me.

ALAN GREENBERG: Let's let the commissioners decide.

HOLLY RAICHE: Offline we'll talk about it.

ALAN GREENBERG: We can be as determined as we want. We're not making the decisions. Daniel?

DANIEL NANGHAKA: There's been a lot of process that has been going on in the GNSO RDS. One of the biggest challenges that we're having is driving consensus

on the given user discussions. I'll pose the question to Alan. What timelines are we looking at to complete this process? Because already we are looking at compliance. After compliance, [inaudible] is going to come up. We already finished the first phase of the whole thing. Are there any projections of the timelines? Thank you.

ALAN GREENBERG:

Thank you. As I said – and we should be having a two-minute timer for me, too. As I said, there's discussions going on in the GNSO right now which are recognizing that we have a problem, that when you have a discussion with several hundred people, many of them with positions that they're paid to be defending, you have new people coming in and it's fine to say in writing that if you're going to become [inaudible], you have to go read all of the transcripts for the last two years' worth of meetings. It's not going to happen. We have a problem. It's not clear how we're going to solve and I'm not going to pretend I know the answer. I had to leave that very interesting meeting to come here. And I don't think they're going to come up with answers at this point immediately either.

We're in a situation where I don't know the way forward and we are going to have to do something to change what we're doing and I don't have that answer. I don't think anyone has it right now. But, there is starting to be active discussion recognizing that we have a problem.

Hadia, we have a minute or so if you want to ask that question, which you were going to ask. A very quick one.

HADIA ELMINIAWI: It was just a comment on what Tijani was saying, that what counts in the end is the interpretation of the legitimate rights, the balance between legitimate rights or the legitimate interests and the rights of the subject data.

Right now, we don't know the interpretation of this balance. It might be that what we have now will work and it might not.

ALAN GREENBERG: We are asking our registrars and registries to implement something according to a model. It is not reasonable to expect them to invest in implementing this unless we have some sort of acknowledgement from the data commissioners that we're going in the right direction. We do have feedback at this point that we are going in the right direction, but whether this particular model is going to be acceptable we are hoping to get a message back before our deadline is up. The discussions are going on, but you're right. It's a matter of interpretation and we can't prejudge what that is going to be. And I think their views are changing as we speak, because some of these issues I don't think were understood at all.

The parts of government that look at privacy and the parts that look at telecommunications and the Internet have not spoken to each other, period. And they are now speaking to each other. That's got to be considered positive.

We have ten minutes left in this session. I'd like to give you a little bit of a review of the RDS Review Team. Now, this sounds like – you might ask why, if we're in the middle of designing a new WHOIS/RDS and more recently we have GDPR which we have to do something on an interim basis, why are we having a review team look at the same subject in parallel? That's a really good question.

The short answer is when we wrote the bylaws for accountability, if you look at the bylaws for organizational reviews, it says they should be done every five years, but it's basically at the discretion of the board whether they change that based on whatever.

When you look at a number of other things in the bylaws, they have similar statements. In our wisdom – and I say our because I've participated in the accountability work – we wrote those bylaws saying there is no discretion of the board at all. A review must be convened five years after the last one.

By the time the bylaws were enacted in October 2015, or whatever year it was, we were already in violation of that five years.

A proposal was made that the Review Team which must be convened restrict its work to looking at the last Review Team's work and saying, "Did ICANN implement them or not?" That was largely rejected.

Now, rejection in ICANN is an interesting thing. There was a discussion with the AC/SO chairs and Göran the other day. Our methodology seems to be if one person speaks out and says no, we say we won't do it then. And there was basically one group that said, "No, we don't

want to reduce scope.” A few people sat on the wall and therefore we are not doing a reduce scope. We are doing everything the last Review Team has done. We are looking at a number of other issues requested by the bylaws and then we’re doing a bit more. It’s a very large domain, a very large scope. If I had known it was going to come out with that, I might not have volunteered to chair it. I might not have volunteered to be on it. But, we are where we are right now.

We are just in the process of starting to look at each of the areas and try to understand what we have to do to get through it. We are having very significant problems getting people to actually deliver the work. It’s really easy to volunteer. It’s a lot harder to put the time up. It’s a moderately small Review Team of ten people, plus a board liaison. I’m optimistic that we’ll get through it, but it’s not going to be easy and it’s going to take longer than we thought.

You will have already seen an announcement a couple of days ago, a blog entry. I don’t know how many people read the blog entries that come out from ICANN. I always have a hard time finding out where they are, so I don’t read most of them. But, a blog entry was just out saying we have now agreed on the terms and conditions. We have agreed on the scope, although one of the items on the scope is an open-ended one. And we are meeting in Brussels in the middle of April and we have a commitment that we must go into that meeting with things to discuss on each of the items and now we have about three weeks in which to actually create those things, otherwise we have a trip to Brussels that would be very interesting and we hope the food will be good. But, we’re sort of hoping that we actually can do some

work there, also. It's a challenge. It is being done in parallel, and of course we are passing judgment on things.

One of the questions is how well does RDS or WHOIS – because we're looking at today's WHOIS, not next week's – meet the needs of law enforcement?

Well, we did have a discussion of which WHOIS are we looking at. Are we looking at the WHOIS when we convened in June? That would be really stupid because by the time we [inaudible], the world will be completely different and everything we say will be irrelevant.

On the other hand, things are going to be changing day by day for the next year, and we can't keep on rewriting our report every week. We are cognizant of the GDPR. We have put some things on hold waiting to see what model is accepted and then try to judge that. It's a messy situation. We're trying to make the best of it and make sure that we can actually do the work, and at the same time, deliver something that has meaning and the two are not the same. We can put lots and lots of work into it and deliver a paper that has no relevance. I sort of don't want to spend my time doing that. In no one else in the group does either.

It's a thing in flux. You can read the terms of reference now. In a couple of weeks, you'll be able to read where we are and we'll be coming to the community by June in the June meeting of telling people where we are looking for some input.

The meetings are all open. If any of you are real masochists, you can participate in them. There's an observer's room that you can join. You can get all the mailing lists. You'll find among other things there's not as much on the mailing list as you hope, because just like with the At-Large mailing list, it's really hard to get people to contribute on a regular basis, except when something really hot and interesting starts.

Anyway, that's where we are. I'll take any questions. Seun?

SEUN OJEDEJI: Thank you. Just to be clear on what we're talking about, we are on item two. You're talking about At-Large review?

ALAN GREENBERG: No.

SEUN OJEDEJI: Okay, thank you.

ALAN GREENBERG: RDS WHOIS 2 review. We had a problem. ICANN renamed it in the bylaws the RDS review, but of course all we have to review right now is WHOIS. So, it's the RDS-WHOIS 2 review. Anything else? Either I answered all of your questions or I put you all to sleep. Either way it works out. Alright, we'll go on to the next item.

You've all seen copies – an earlier copy and a more recent copy about two days ago – of the new At-Large review, what we're now calling it

as a proposal I think. The history is, as you know, we had significant problems with the recommendations in the review. Of the 16 recommendations, we rejected 8 of them, in some cases saying yes we understand why the recommendation was done. We're going to do something, but we're not going to do anything at all like what it was said.

For instance, when the recommendation said we should start being careful on what we answer on public comments, we said we already did. We provided statistics to demonstrate we were doing that. But, we did acknowledge that our web misled people because it didn't represent clearly what we were doing and we said we would fix that.

So, there are some cases where we rejected something but it resulted in some work anyway.

We accepted eight of the recommendations with conditions or changes. So, none of the 16 were accepted simply saying yes. That put the Organizational Effectiveness Committee in a very awkward position because their job was to ... We said what we're going to do and it was in, I don't know, a 46-page document which was really difficult to read because we had been given a template that we had to use which didn't quite fit. It very well if we were saying yes or no, but it didn't fit very well in the way we were reacting.

They had a problem. How do they approve something and pass it on to the board where it wasn't a clear direction of what we were doing?

They came up with what I thought was a rather inspired proposal and that is they asked MSSI, the part of ICANN staff that are responsible for reviews, to create a mapping of the issues raised to what we said we were going to do about them.

In that last sentence, you'll notice the word recommendation never came up. So, effectively, we were saying let's not worry about the recommendation. Let's worry about the problem, the issue, and how we're going to address it.

MSSI did create such a mapping, but also they were told to identify any gaps. That is, are there issues raised where we did not answer what we're going to do about them or explain why we weren't going to do anything about it.

MSSI, in my mind, didn't do that. They asked a lot of questions of us to fill the gaps, but they weren't questions directly related to the implementation of the review, which caused a lot of problems because it would've generated a huge amount of work to answer diligently all of those questions and would not have advanced the whole project very much. It would've created a much larger document, which then the OEC would have to do something with and pass onto the board.

We have proposed that instead we go back to the clean mapping issues, what we're going to do about it, and a little bit in the middle of rationale for why we are doing it or why we're not doing something about that issue.

For instance, one of the issues was At-Large volunteers are stagnant. We never have anyone new coming into it. It's always the same old people. We have statistics demonstrating that's not the case. It just isn't. The statistics demonstrate we have a problem. The problem we have is people come in, do things for about two years, and disappear. So, retention is a problem that we really have, but that wasn't the problem they identified.

So, what we have done now is created the simple mapping and we will be discussing it on Monday, our first discussion with a few board members who have a history with At-Large and particularly [Halad] and Leon. If they believe that this is something they can sell to the OEC, that is we are proposing what we're going to do about the problems, and they approve it with perhaps some modification, and pass it on to the board and the board approves it, we now have a target of what to implement over the next couple of years and it's going to be a big challenge because we're committing to some pretty impressive things there.

We've had problems in At-Large that we've known about for a decade and we have to start thinking about how to fix them. But, it's a way through. This review has been going on now for three years and, according to the original bylaws, we had to redo reviews every three years. It would be time to start again and we haven't even gotten to the implementation phase of this one.

So, that's where we are right now. I hope you've all looked at the document because we, the ALAC and the Review Working Party, are

going to have to decide that this is the document with whatever modifications that we are going to submit to the OEC and assuming they approve it, the board approves it, it will then bounce back to us and say now we have to implement it.

So, make no mistake about it. If we push all that through, we then have a lot of work to do and we better make sure that we can do it. But, this looks like a way to go forward and get to a point where we'll come out the other end. That's all. We have a queue I think, with Hadia I saw. So far, I think we have Hadia, Eduardo, and Seun. Maureen will keep the queue. Hadia, please go ahead. Two-minute timers, please.

HADIA ELMINIAWI:

Maybe my question is a little bit off topic, but it has to do with the review paper. The first recommendation of the EMM, it says that the time criteria for At-Large membership through which end users have to be part of At-Large Structures, what are we going to do about this or what was the decision made with regard to this recommendation?

ALAN GREENBERG:

Number one, all the recommendations are off the table. The issue of not enough involvement from individual people or not enough involvement from active people is an issue. The specifics of the recommendation, at this point, unless the OEC changes their mind, are off the table.

Now, the question, however, of should we have individual members in each region – and at this point we now have them in four regions and

one of them saying when they enact their new bylaws, they will be there. So, we'll meet the condition of having them. The terms of reference for each of them are different and the reviewers were adamant they had to be the same.

What we said to the reviewers is we can get them all the same. It'll take an extra two or three years of negotiation, because in NARALO, individual users have through an indirect form a vote. In AFRALO, they decided right now they do not have a vote. LACRALO would likely decide the same thing.

So, is it more important to have active workers with different rules or have the same rules and take a lot longer to get there? What we said in our response to the report were it was more important to get the users active and get policy work being done. Yes, we probably want to move towards a direction where we have a common set of rules, but that's a lower priority.

HADIA ELMINIAMI: Okay, thank you.

ALAN GREENBERG: Who is next? Eduardo?

EDUARDO DIAZ: I just have a question. That meeting that you had with Leon and the other board members, is that an open meeting or a table meeting?

ALAN GREENBERG: It is an open meeting. It's on your agenda. You're expected to be there.

EDUARDO DIAZ: Thank you.

ALAN GREENBERG: And we provide lunch.

EDUARDO DIAZ: Better.

ALAN GREENBERG: We're not sure of the quality of the lunch, but we will provide lunch. I think Seun is next and I think we had Ricardo also. Seun?

SEUN OJEDEJI: I'd first like to commend the team that's put out the document, the draft document. I just wanted to comment on a couple of the items on it. Item four, I really am not sure where we put three months on that because I don't know what – the website already talks a lot about ALT. I don't know what else we need to talk about ALT. That's [inaudible] on that. I think it should just be not applicable in that sense. Let me finish, so [inaudible].

ALAN GREENBERG: May I interrupt you? Can we try to get that document up on the screen? And can someone remind me what item three was.

SEUN OJEDEJI: Item four.

ALAN GREENBERG: Four. Seun, interrupted you. Please continue. Please finish.

SEUN OJEDEJI: Thank you. Five and six as well. We put ongoing on that, especially six. It seems to me that not applicable should be the response for six because the way [inaudible] to make the election process less complex or less rigorous than what we have right now because I think what we have right now is much more inclusive and much more ... There's a reason why it's complex. It is because it's bottom-up and it is the intention for us to make it less complex. Is that why we put ongoing on it or what? Thoughts? Comments? Sorry for taking my time over.

So, [inaudible] one is mainly about the implementation. We are expecting to have feedback from the discussion we will have with the board later this week for us to have a clear timeline on when we'll get a response from the OEC once we submit these documents. Is that one of the things we want to discuss with them?

ALAN GREENBERG:

It's certainly one of the questions we'll ask. To try to answer your question, why three months for number four? What the issue was is the ALT is making decisions that should go back to the ALAC. Our answer was, no, it isn't. It isn't in our rules. It isn't in practice. Therefore, our implementation, the proposal was we'll work with staff to better communicate the role. We'll try to make sure that the rules of procedure and the website makes it clear that the ALT doesn't make decisions and we will try to communicate. That's the best we can do and we don't expect it to take more than three months. But, the answer is we're not changing the ALT. We'll try to make sure it's understood what it does.

Similarly, what was one of your other ones that you mentioned? The election. They said make all sorts of changes. What we said is it will continue to evolve in a bottom-up process. In other words, almost every director election we've then made a few little changes because we've found something was unclear. We still have to do that as a result of the last election. That's ongoing. We are not planning at this point to revisit the whole thing and redesign it. The ALAC may decide to do that in three months, but that's not something we are committing to do. We'll be driven by the community on that. Ricardo?

RICARDO HOLMQUIST:

I will speak in Spanish if you don't mind. Alan, you mentioned that the MSSR Working Group did a mapping of the issues that we had against our goal. Can we have that information, that document, available? Is that mapping available? Can we have it?

ALAN GREENBERG: It was distributed quite a while ago. I think it was. I believe it went out to the whole working party and ALAC. If not, it will, but I'm very sure it did go out.

RICARDO HOLMQUIST: I didn't have it.

ALAN GREENBERG: Action item for staff to make sure that if I have not sent it out to send it out. Regardless, I'll send it out again. But, if we really didn't send it out, I will admit to it and apologize. But, I think it was sent out I THINK.

RICARDO HOLMQUIST: Thank you very much.

ALAN GREENBERG: Is the action item clear?

TIJANI BEN JEMAA: I think it was sent only to the working party because he didn't receive it.

UNIDENTIFIED FEMALE: This includes the ALAC.

ALAN GREENBERG:

The list that I had been using is At-Large Review 2017 which is the total of the working party and the ALAC. It is quite possible that when we had new ALAC members come on, they were not added. If so, I would request that staff verify that they were indeed added as they were supposed to have been. So, since the two people who say they didn't get it are new to the ALAC, we may have identified a little problem. My apologies if so. We'll find out. Hadia? That was a "me too" from her. Sebastien?

SEBASTIEN BACHOLLET:

I'll be speaking French. Alan, I heard the ALT doesn't make its own decision, that they communicate that they're wonderful and they do everything wonderfully, but the number of sessions that [inaudible] which we have no reports has now risen. And I think ALT now is big as ALAC, so I think there's something that's not working out here. It's good when you make breakthroughs within your small group, but when I saw you yesterday you weren't a small group. You filled half the restaurant amongst yourselves and I'm wondering why us members who have been elected by the RALOs, elected ALAC members, are not included there.

I don't care what you were discussing yesterday. That's not the point. What I'm asking is about the way it's done and why you're acting as such. I think you should reconsider how you're proceeding.

At any rate, I would like to get a report on what you do and not that you tell me it's written here, a report that's here, because the number of documents we have to read is already too much. It's unbearable.

We have a burden that's too heavy on all of us. I know there's wonder men and wonder women around this table. I'm not part of that crowd and I don't wish to. Thank you.

ALAN GREENBERG:

Thank you very much. Most of the meeting of the ALT are public and everyone is welcome to attend. We have never stopped someone from speaking and contributing to the discussion because they were not formally part of the ALT or the advisors and the advisors are [inaudible] of the liaisons and I have invited the past two chairs to include that and I just recently said I will include Julie to the extent she is interested in participating.

The ALT, like the ALAC, occasionally meets in camera sessions. It is virtually always to talk about a personnel issue. We did have one recently on the ALAC, one of the issues. On those, the practice of the ALAC is to not make those public.

The ALT does meet in one formal session at the end of each ICANN meeting where we do meet separately. It is literally a strategy meeting to try to figure out how we're going to progress the work. You are correct. We have not been good at writing brief reports and summaries of those and I believe we should. I ask staff to take an action item that we'll try to figure out how to do that.

Other than that, the only other places we meet are often for breakfast before the first meeting just to try to get our ducks in order and make sure we haven't forgotten something. If someone really wants to join

us and we can fit them in at the table, they're welcome. There are no secrets. We typically do it in a public restaurant. We had dinner last night, and that was, to a large extent, a social event. I must admit we did drift into a little bit of work at the end, but it's largely a social event. To the extent that we do do work, we'll do our best to make sure there are brief, readable reports on it.

That being said, the ALT still does not make decisions. They will occasionally make a recommendation to the chair and that's why they're there and will often make recommendations to the ALAC and those are stated clearly when we talk to the ALAC.

I'll stand by what I said, but we will try to make sure that any sessions that are held that are not in public are documented appropriately. Thank you.

If you're next, then you should be speaking. You can call upon yourself.

MAUREEN HILYARD:

Thank you. I just thought I'd [inaudible] here because this is an area of interest for me. I do acknowledge the huge amount of work that's gone into putting this proposal together. I'm still a little bit concerned when we're talking about issues. I think the issues presented within this document still reflect the recommendations that were made. I thought we were going to try and get away from the recommendations.

I guess I would've liked to have seen issues grouped together and looking at those issues more holistically and sort of gathering information about those issues as they impacted on the various recommendations that might've been made, but being a little bit more evolved around the issue rather than reflecting on what had actually been raised in the original items report.

It's things like the structure of ALAC and that whole looking at the RALOs and the membership issue. We're continually ... The whole membership thing is evolving across all the RALOs and that really needs to be stressed that individual members are becoming and have been becoming more important, that we be looking at ALSes naturally. But, at the same time, not just concentrating on primary and secondary contacts. We're looking at those within each of the ALSes who are more active. It's that sort of thing, and communication and how important it is to the ALAC.

Just raising the ALT thing, if we had more reporting. I think reporting back is important. But, we need staff. This is not something that actually happens at the moment where we get accurate reports on our meetings on things, so that everyone is more informed about what is actually happening at our meetings.

These are the sorts of things which I would actually like to see included. I just think that rather than 16 issues, we could've actually grouped them a little bit more.

ALAN GREENBERG:

Thank you. A couple of points. I strongly would not advise to in this document at this time say we want more staff and say it clearly and explicitly. Will our implementation plan indicate that we may need more staff? Yes. Am I talking to senior ICANN people and giving them a head's up? Yes. If you want to go public with a document right now that the board is going to approve right now that they're going to promise to give us more staff, I wouldn't do that.

In terms of the format of the document, the OEC asked MSSSI to create a mapping between the issues and the implementation. The issues were clearly identified with a bold word issue in the report and they took those issues, and there was one per recommendation, and put the mapping.

That was being done by MSSSI because the OEC did not want to make it look like we were writing our own recommendations, which would bypass the whole concept of an independent review. Therefore, when I proposed this solution, I did not feel comfortable at all moving away from the overall structure that MSSSI had established and I changed some of the words in what we're doing and the rationale to make it really clean and remove the stuff which didn't apply and certainly remove the recommendations which I believe do not apply.

But, I certainly didn't feel comfortable going away from a structure that the OEC had asked MSSSI to do. We could rearrange the order I suppose. I wouldn't do much more than that and I'm not sure rearranging the order is effective.

This is going to have to meet the credibility. It's going to be judged by the community. And if it is perceived as people have already said that we are simply bypassing the report and writing our own report, that's not going to be perceived really well. So, I think we have to be very careful not to be too inventive going along the way.

That being said, when we do our implementation plan, it doesn't have to follow this model at all and we can try to make that more cohesive and put a lot more details in.

Remember, this is something that the board is going to approve. It's not a detailed implementation plan which will focus a lot on how do we motivate the users and how do we contact them and treat them differently from ALSes, if we treat them differently from ALSes and all of that.

I think we need to keep this at a really high level for two reasons. Number one, board should not be delving into the details. Number two, do we want to commit to details at this point before we've done a full study? That's why it is what it is. But, this is the group that has to decide we submit this or not. If this is trash and we have to do something else, then people better say something quickly because we don't want to ask the OEC, "Is this good?" if indeed it's something that should be radically different.

Can we go to a one-minute timer please? We're running out of time.

SATISH BABU:

I would definitely subscribe to the point raised by Alan towards the end, which is that for technical and strategic reasons, we do not want to get too much into detail. As it is, I can foresee some amount of turbulence that the current course of action at the ALS level which is saying that we have to go beyond the formal representatives, the primary secondary contacts, and engage with the members directly. That needs to be handled sensitively and it might have repercussions.

So, on the whole, I would subscribe to the point that we have to be high level rather than detailed, otherwise it would be over-committing. Thank you.

MAUREEN HILYARD:

Thank you. I'd just like to respond to that. I don't expect it to actually include any other information than what is in there at the moment. It's just I thought the formatting of it could've been a little bit more cohesive between some of the issues that have been raised.

ALAN GREENBERG:

Five whole minutes. Cheryl, Holly, as co-chairs?

CHERYL LANGDON-ORR:

I think the feedback I've heard you've got on the document has put a number of issues on the table that may indeed be brought up again in our meeting with some of the board. But, I think, from my perspective, the important thing is to see this as an enabling exercise for us to move to the next stage in our review process, which is our desire to get

on with effective implementation. So, see this as a pathway and means to an ends, not an ends in itself. Thank you.

ALAN GREENBERG: Holly?

HOLLY RAICHE: I agree with both Maureen and Alan, and actually Cheryl. I still read that document and probably quiver a bit. I really don't particularly like any remnants of the review outcome at all. I think they got caught in the weeds and I resent getting caught in the weeds. But, [inaudible], we do have to pretend that in fact we're implementing what they did and so we'll pretend very well. But at the end of the day, I think that out of it there are a few issues that are important that we should address and I think those are the things that we should stress, but I think we're probably captive of an outcome of a review that I don't think none of us were particularly happy with. We have to follow a format, however reluctantly, so that we can move on. It doesn't make me smile.

ALAN GREENBERG: I thought that was one of the more restrained comments I've heard in a long time.

CHERYL LANGDON-ORR: An exercise in magnificent restraint.

ALAN GREENBERG: I think I've shared with this group, but I'm not 100% sure. I told the senior management of ICANN the other day what my fallback was if this plan was not accepted. Have I shared it with you?

My fallback is to stall until I'm no longer chair. Because I'm tired of this. Implementation is going to be hard enough because we do have some work to do. At-Large is not working perfectly, but let's get on with that and stop debating on the steps we have to take to get there. Narine? We do have two more minutes, so please go ahead.

NARINE KHACHATRYAN: Short and technical question. Is the empowered community model just rejected totally, for long term it could be...

ALAN GREENBERG: Is the which model?

NARINE KHACHATRYAN: Empowered community.

ALAN GREENBERG: The empowered community is a term in the ICANN bylaws to reflect the ACs and SOs being able to reject directors and things like that. That's an empowered community.

The empowered membership, which was a construct invented by reviewers, has been buried in a deep, dark hole and we are not putting a stone on it so we don't know where to find it. Is that as clear as I can make it?

HOLLY RAICHE: There's a lot of concrete [inaudible].

ALAN GREENBERG: When I'm no longer chair, someone can dig it up if they want to, but not under my watch if I have anything to say over it. It was pointed out to them that if they had just changed the name it might have gotten better received. And a few other details. But, they chose not to. Lots of people were laughing except us where we had to do something about it. I would've been laughing a lot to if it wasn't my report.

TIJANI BEN JEMAA: But, you're laughing now.

ALAN GREENBERG: I try to laugh. I learned a long time ago, if you don't laugh at the worst of times, you don't survive. At least I don't survive. So, I laugh anyway. Thank you very much. We will stop this meeting and we are ... I believe there is a regional leaders meeting going on in this same room very shortly. When do we next meet and for what?

We reconvene at 1:30 PM, 13:30, for SSAC. Those are always fun meetings. We get to welcome Julie Hammer as vice chair of SSAC. I know one of the things they're going to be talking about is collisions. If you know what collisions are, you can ask some insightful questions. If you don't know what collisions are, you better pay attention because it's a really important subject.

And following SSAC, is Theresa Swinehart with GDPR. Enjoy yourself in the next meeting or wherever you're going for lunch.

GISELLA GRUBER:

This meeting is adjourned. As a reminder, this is now the At-Large Regional Leaders. So, the RALO chairs and secretariat meeting that will run from 12:00 to 1:30. Thank you. The official start will be around 12:15 just to allow everyone to settle in. Thank you.

[END OF TRANSCRIPTION]