
ICANN70 | Virtual Community Forum - Plenary Session: Registry Voluntary Commitments - Getting it Right
Thursday, March 25, 2021 - 10:30 to 12:00 EST

BRENDA BREWER: This session will now begin.

Please start the recording.

Recording in progress.

BRENDA BREWER: Hello, and welcome to ICANN70 plenary session, registry voluntary commitments, getting it right. My name is Brenda Brewer, and I am the remote participation manager for this session.

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And with that, I will hand the floor over to Jonathan Zuck.

JONATHAN ZUCK: Thanks very much, Brenda.

Jeff, can you stop your share for just a second.

That's great.

Hi. My name's Jonathan Zuck, and I am the vice-chair of the ALAC. And today we're going to be talking about registry voluntary commitments that were formerly referred to as voluntary PICs. And there's been a lot of discussion and controversy about PICs

that were introduced in the last round and whether they're useful, whether they go too far, whether they are enforceable. And so that's what we're trying to figure out prior to having another round, to make sure that we get it right this time.

So to start us off, the co-chair of the Subsequent Procedures Working Group, Jeff Neuman, will be taking us through a short introduction for the newcomers on sort of the history of public interest commitments and now registry voluntary commitments.

Jeff, take it away.

JEFF NEUMAN: Thank you, Jonathan. I'm just getting the slide deck up. Hopefully, everybody can see that.

My name is Jeff Neuman, and as Jonathan said, I was one of the two co-chairs of the Subsequent Procedures PDP. And that report now --

JONATHAN ZUCK: We don't see your slides. Okay. Now we do.

JEFF NEUMAN: You do. Sorry about that.

So that report now -- for those of you that may have been following along this week, that report, as well as a recommendations report, was approved by the GNSO Council and is now with the ICANN Board of Directors.

As Jonathan said, I'm going to go through a relatively quick introduction as to what is a public interest commitment, discuss how that was used in the 2012 round, as well as an introduction to the PICDRP. Then we'll talk a little bit about how it's been applied to some of the legacy top-level domains, and then also what subsequent procedures, the PDP, recommended, and distinguish between what are public interest commitments and what are registry voluntary commitments or RVCs.

And then, really, the heart of this discussion will center around some of the bylaw revisions in 2016 during the whole IANA transition.

And so we're going to have, as Jonathan said, a good panel discussion on those changes and the impact of those changes. And, frankly, that, I think, is going to be the most interesting part of this presentation.

So what is a public interest commitment? I'll take a definition from Russ Weinstein, who at the time was senior director, now is

a vice president. But he wrote a blog piece and defined public interest commitments as binding obligations generic top-level domain registry operators made to the Internet community and agreed to comply with in their contracts. And so they're subject to oversight and enforcement by ICANN Org through a dispute resolution mechanism called the PICDRP which in certain cases use an evaluation panel.

So how did we get PICs and where did they come from?

So in June 2012, the -- ICANN posted the applications of 1930 new gTLDs for community review. As the community was reviewing this, so were the governments and the Government Advisory Committee. And really raised in their communique in October 2012 some advice that basically advised the board to come up with a way to make sure that the registries were actually making binding commitments and that they were documented in the registry agreements.

And so in November of that same year, the ICANN staff sent a message to each of the applicants that received early warnings, which were an indication from individual governments that they may be subject to GAC advice, and asked those applicants to apply -- or to reply to the early warnings.

And then applicants sent those responses in in December.

But the real issue was that there was nothing in the 2012 applicant guidebook or in the then-existing draft agreement that committed or that allowed ICANN to turn the applicant responses into binding contractual commitments.

And so in response to all of that, the ICANN staff released a new version of the registry agreement in February 2013, where they created this specification 11, which I'm sure many of you have heard about in a number of different contexts, that contained a number of mandatory commitments and then also allowed applicants or, essentially, asked applicants whether they wanted to voluntary commit to anything to respond -- or in response to those early warnings.

That draft agreement was sent out for -- or draft specification was sent out for public comment, and in March 2013, ICANN finalized the new version of specification 11. And it contained two different types of public interest commitments. One that we called mandatory public interest commitments, and then the other were the additional voluntary public interest commitments or voluntary PICs that individual registries committed to.

So the mandatory PICs -- and we've discussed these in a number of different sessions this week, especially the ones on -- or dealing with DNS abuse -- but they also required the use of only registrars that signed onto the most recent version of the Registrar Accreditation Agreement, which was and frankly still is, the 2013 RAA. There were other provisions in there that related to required provisions in the registry/registrar agreements. There was also a mandatory PIC for not operating as a closed generic. And we'll hear a little bit more about that later.

And, finally, there were mandatory PICs that were added a number of months later through or in response to GAC advice on sensitive and regulated strings.

Some examples of voluntary PICs that were submitted include things like additional rights protection mechanisms, which many of you are familiar with or may be familiar with, block lists, so I think Donuts has a service called the Donuts Protected Marks List or DPML. There were also a number of voluntary PICs that were submitted where registries committed to child protections or geographic name protections.

So that was for the registries that applied in 2012.

But PICs in recent years have also been applied to a number of the legacy gTLDs or pre-2012 TLDs.

So .COM, for example, has two of the four mandatory PICs in its agreement. And .BIZ, info, and org, as well as coop and museum and Asia all adopted the full mandatory set of PICs. None of them have voluntary PICs in their agreements.

It should be noted that there are still several top-level domains that do not have PICs in them, primarily because they either have not yet signed a renewal agreement or they signed renewal agreements before PICs were actually incorporated into those agreements.

There was also the addition of new public interest commitments in response to some of the 2012 round applications. And that includes, most recently, some public interest commitments in the .AMAZON agreement.

Finally, there was a proposed use of voluntary PICs in PIR's request to assign .ORG to another company. Ultimately, the transaction didn't close, and as you'll hear later on in this discussion, some of those PICs or the concept of applying PICs in that situation was deemed as controversial by a number of parties.

So moving ahead a little bit, subsequent procedures, the PDP looking at the 2012 round, did formally adopt the mandatory PICs. It also added potential exemptions from those public interest commitments for really niche top-level domains like brand top-level domains or single registrant top-level domains. It also adopted the mandatory PICs for safeguards with respect to sensitive and regulated strings. But it also created or sort of expanded the notion of voluntary commitments or voluntary PICs.

So because of a lengthy discussion within the working group, the working group decided that instead of calling these voluntary public interest commitments or voluntary PICs, the group preferred a term called registry voluntary commitments. And so that is the term that has been used, really, to be analogous to the voluntary PICs.

And so when we use that term "RVCs," we are also meaning what was previously called the voluntary PICs.

The subsequent procedures group believed that applicants should have the ability to amend their agreements in response to public comments that were received, objections, early warnings, GAC advice, or, frankly, other comments from the GAC or governments. And changing the agreement would be in the form

of these registry voluntary commitments that could be enforced by ICANN.

What's really important, without the voluntary PICs, which we are calling RVCs, are that they are considered applicant changes, which means that they will be subject to public comments and review; that they also must be included in the Registry Agreement. And taking a recommendation from the CCT Review Team that sub pro adopted which was that all registry voluntary commitments must be accessible in a organized, searchable online database.

So turning our attention to -- now that we have these commitments in the agreement, how are they enforced? And there's been a lot of confusion around exactly what is -- what's called a public interest commitment dispute resolution policy, or PICDRP.

At the end of the day whether they are enforced by ICANN itself or through the PICDRP, they are the responsibility of ICANN Compliance. Compliance is ultimately responsible for oversight and enforcement of all of the provisions in the Registry Agreement which, of course, includes everything that's in Specification 11.

Now, when we talk about the PICDRP, what we're really talking about is a mechanism for third parties, so not the registry or ICANN, but third parties to come in and report alleged noncompliance by a registry operator of the commitments in Specification 11.

So, again, remember, ICANN itself is responsible for enforcement. But we call it a PICDRP when a third party reports that noncompliance.

So who can actually bring a PICDRP? It's very specific in the policy that any person or entity that believes they have been harmed -- and I've underlined that because that is something we'll be talking about -- or the panel will be talking about later. But any person or entity that believes it has been harmed as a result of a registry's act or omission in connection with the operation of its gTLD that is noncompliant with its public interest commitments.

So what is the PICDRP process? Well, an aggrieved party -- which here is my daughter about 15 years ago getting her first haircut who believes she was certainly an aggrieved party -- would file a PICDRP report and submit that to ICANN. ICANN would then give an opportunity for the registry operator to respond to that PICDRP report. And if ICANN finds no merit to that complaint, then it fails and that's where the process ends.

ICANN can also decide that as a result of its preliminary review, it could take action. It does not need to go to the next step. It can take action on its own, according to the contract. If, however, it feels like it's not in a position to be able to assess whether there's been a violation, then it can impanel a PICDRP panel, which is a standing committee of persons that are listed on the ICANN website, which for purposes of this slide includes my dog Angel. And the PICDRP can either find that the -- that the complaint has no merit, in which case that's where it ends, or if it's got merit, it then sends the recommendation back to ICANN who takes the remedial action.

So at the end of the day, ICANN is always responsible for the compliance activities and is always responsible for its ultimate enforcement, though it can, at its option, choose to refer the substance of the complaint to a panel.

Now, 2016 was a time in which a number of revisions were made to the 2016 bylaws. These are some of the provisions that will be talked about later on in this discussion.

But essentially, ICANN's mission, among other things, is to coordinate the allocation and assignment of names in the root zone of DNS and coordinate the development and

implementation of policies concerning the registration of second-level domain names in gTLDs.

And then it goes on to say that the policies that are in scope are policies for which uniform or coordinated resolution is reasonably necessary to facilitate the openness, interoperability, resilience, security, and/or stability of the DNS.

But the bylaws also go on to state that ICANN shall not regulate -- and then there's a parenthetical which I'm sure will be discussed as well -- impose rules and regulations on services that use the Internet's unique identifiers or the content that such services carry or provide outside the express scope.

And then very important, which is unique in mission statements, ICANN explicitly states it shall not act outside its mission but also goes on to say that anything that was in the Registry and Registrar Agreements prior to 2016, which includes the mandatory PICs, are deemed to be within the mission. And any new agreements to the extent its terms do not vary materially from the form of the Registry Agreement are also within ICANN's mission and scope.

So that sets the stage. And I'm going to turn it over to Jonathan to go over all the questions raised post-2016 on public interest commitments.

So, Jonathan, over to you.

JONATHAN ZUCK: Go ahead and stop your share.

JEFF NEUMAN: I will do that. Thank you. There you go.

JONATHAN ZUCK: Thanks, Jeff. Thanks for giving folks an overview of what public interest commitments and registry voluntary commitments are.

There's a number of different questions that have come up, and it would be very easy to spend the entire session on any one of them. And, in fact, this session is an example where we spent four times as much time determining the questions as we will actually spend answering them. So by definition, this will be the beginning of a much longer conversation about registry voluntary commitments. But we in the At-Large proposed this panel just to get this conversation started.

So the first speakers that I want to go to, discussants, are Kathy Kleiman and Alan Greenberg from the NCSG and At-Large community respectively.

And the question that I have for those two discussants is that there are some either voluntary PICs or registry voluntary commitments that are more controversial than others. And I'm wondering if you can explore in a pithy way what the characteristics are of those more controversial commitments and whether or not you think that controversy is justified.

I'll start with you, Kathy. Go ahead.

KATHRYN KLEIMAN: Actually, Jonathan, I was second on the agenda. So I was hoping to hear Alan first, and I defer to ALAC.

Thanks.

JONATHAN ZUCK: Okay.

Alan, go ahead.

ALAN GREENBERG: I'm always delighted to be first as long as I get an opportunity for rebuttal, of course.

I think the PICs that have received the most discussion, certainly in the subsequent procedures discussions, were implied in a message that we got from the Board at one point, are whether PICs can be enforced if they violate -- if they're in violation of our mission.

The implication was that the violation of our mission that people seemed to be most concerned about was PICs that somehow relate to content. And there are also ones, perhaps ones related to competition might be in violation of our mission, too. But the ones certainly that were most interesting were the ones related to content.

And if we look at some of the PICs that we saw on the screen a few minutes ago, there were things like child abuse or we know there are PICs associated with saying if this is a site that is used to critique other businesses, you can't put on a mask and pretend you're that business. So you can't use your domain name to try to represent that company. And those are all content issues.

I personally don't think we have an issue at all in that because the bylaws were written pretty carefully. And, again, I'll read what was just written -- sorry, read out a minute ago: ICANN shall not regulate services on the Internet's unique identifiers or the content of such services that such services carry or provide. But

there's a parenthetical after "regulate." It says, "i.e., impose rules or restrictions on." So the bylaws are very clearly saying that ICANN cannot impose its standards of content on how the domains are used.

But we're not talking about that here. We're talking about a registry voluntarily saying that it wants to impose certain rules and ICANN simply has to -- as the enforcer of the contract, ICANN would be in a position of making sure that contract is being followed.

So I don't believe we have any content -- any mission violation issues in relation to content. One can argue that the grandfathering that Jeff referred to -- I think it was Jeff -- when it says they're grandfathered if there are no substantive changes. Now, does that mean they're still registry voluntary commitments or voluntary PICs? Or does that mean the content of each PIC? Certainly if a new registry comes in with a new rule that hasn't been seen before, would that be viewed as a substantive change or not? I'm not sure how we do that. But I don't believe the content issue is really an issue at all. And that's the one that has been discussed. And I think that's a really crucial issue.

I cannot see how we can have registries which want to play unique niche roles or take on a certain persona and not have

some situations where they may want to put content restrictions on how their domains are used.

So if we say that they cannot mention content at all in their commitments, then I think we are hobbling these new registries and not enabling them to do the things that they may want to do. And if we say they can put them in but we won't enforce them, then that just becomes a sham; and I don't think we can stand for that.

Now, the last thing -- and I want to make sure that we -- when we talk about a voluntary commitment and compliance, Jeff said that if a third party files a report, it's a PICDRP. If that's the case, I think we have a big problem here because a PICDRP, to be able to file a complaint and see it through, you have to be able to show measurable harm.

And I don't believe that -- now, a PICDRP is a mechanism that can be used to enforce PICs or presumably now registry voluntary commitments. But if it's the only mechanism, then we have a real problem because, for instance, a consumer protection organization could not file a complaint that PICs are to be followed because they haven't been shown harm.

So enforcement is a real critical issue associated with this, but I don't believe the content issue which has been the most controversial one is an issue at all. Thank you.

JONATHAN ZUCK: Thanks, Alan. Kathy, I think you have a different perspective on that. And I'll let you go next.

KATHRYN KLEIMAN: I do. I do, Jonathan. Thank you for the question, everyone, my co-panelists, everyone attending. I'm happy to be with you to discuss this important topic.

Jonathan, I see in the chat that we're down to a limited number of minutes. I do want to let you know that this is my longer comment. My one to the second question is shorter. I'll be about four minutes.

So I wanted -- I need to let everyone know that the vast majority of PICs are ones we agree on. And we agree on them because largely they tell us who can register in a new TLD and who can't. So I'm going to retell briefly the story that Jeff told you already. Think back to 2012. You'll remember we had Reveal Day in the spring, and then GAC filed its early warnings in the fall, about 280

of them. Most of them had to do with concerns about who could register in a TLD and who could not.

We got more details in the Beijing advice of 2013 where the GAC made it very clear in its extensive annexes that some TLDs, some proposed applicant TLDs, were too broad and that they were really sensitive or highly sensitive strings that needed to be narrower. You couldn't just let anyone register into a .BANK, a .FINANCIAL, or .CHARITABLE. All good.

And some TLDs were too narrow where you had a competitor saying, I want to own the generic word of the business or industry. And the GAC said, No, you can't have exclusive generics. You have to let in at least everyone in your business or industry or it's not fair.

So that would be like .BEAUTY or .BLOG or a .SEARCH.

So we needed a place to put those commitments. And that became the mandatory PICs. That became the PICs. That's what the PICs were created for, public interest commitments largely in response to GAC -- to GAC advice and warnings.

And that's what we expected the PICs to be.

But a funny thing happened on the way to the PICs.

Then-CEO Fadi Chehade and chief contracting officer Allen Grogan, allowed in a whole other set of things. Someone on this panel actually called it a kitchen sink -- not me. So anything a registry wanted to throw in they could throw in as a public interest commitment. Which makes it a misnomer. It wasn't a public interest commitment at all. It was a self-serving, single-sided, one-way commitment that they were making. But there was nothing public interest about many of these.

And, in particular, we find that -- and they're not isolated to a single gTLD. One portfolio applicant, Donuts, across hundreds of TLDs, said in its PIC that it has the sole discretion at any time without limitation to deny, suspend, cancel, or transfer any registration or transaction for a host of really vague reasons, none of which include notice to the registrant or an opportunity to respond.

So where did these come from? This is crazy.

And so -- so not a public interest commitment at all. And I'll note, it's not a voluntary commitment for half the parties involved. It is voluntary for the registry. It is not voluntary for the registrant.

So this created a problem. And this is really what we've been arguing about all along, is what are the guardrails? What are the limitations on registry voluntary commitments.

And to staff, I'll show my slide in response to the next question.

But we know that ICANN operates by consensus policy. We -- if we're going to limit stakeholder rights, we do it through a policy development process. We agreed on that in the white paper. We agreed on that in the bylaws. We create contractual terms that limit multistakeholder rights with multistakeholders. And we employ -- and here I quote the articles -- the bylaws -- we employ open, transparent, bottom-up multistakeholder policy development process.

I'll talk about this more in the next question.

And so that's where the question comes from, is so many of these PICs are the kitchen sink. They are a subset of registrants put in literally everything and the kitchen sink, and they violated the rights and they limit the rights artificially of registrants.

So how do we review PICs to make sure that they're within the scope of the bylaws and that we're not replacing or displacing the policy development process?

So when we're looking at intellectual property rules, especially across hundreds of top-level domains, that's the place for ICANN -- I know, I just co-chaired the review of all rights protection working group. And we worked really hard to create fair and balanced policies. Private PICs cannot be private policy enforced by ICANN. We can't just have private groups put something in and bypass the policy development process completely.

So we agree on a huge number of PICs and we disagree on the set of PICs that artificially impose content rules and artificially limit registrant rights and bypass the multistakeholder process and bypass the content restrictions to which ICANN has committed itself.

Thanks so much, Jonathan. Back to you.

JONATHAN ZUCK:

Thanks, Kathy. So let me ask you a quick question while we're on the questions.

If I were to apply for .PORTFOLIO, and -- as part of an association of portfolio photographers, and one of the aspects that I want to have as part of this is that it is family-friendly and therefore doesn't have any nudity, and I have a policy that says I'm going to

drop any domains where nudity appears, is that something you feel would be controversial as a Registry Voluntary Commitment going forward?

KATHY KLEIMAN:

You know, we haven't talked about terms of service, terms of use limitations. But you and I know that ICANN does not oversee content on websites. It's beyond the scope. We -- we work with Internet identifiers and create the policies.

So, yes, I would say that's completely out of scope for a specification 11, public interest commitment, because ICANN has no -- because we haven't gone through a policy development process on it. And also, ICANN has no business enforcing it. How -- We didn't even create the PICDRP together, Jonathan. You and I know. We created the UDRP dispute resolution policy. We created the URS dispute resolution policy. But by what standards in the world would ICANN -- would a group of technical policy people even judge that? It doesn't belong in the contract. Put it someplace else. But it's not part of the agreement between the registry and ICANN, because it's beyond the scope of ICANN to enforce.

JONATHAN ZUCK: Alan, do you want to come back in on that?

ALAN GREENBERG: Yeah, just briefly. Or I'll try to be brief.

Registries are private businesses, and we can't tell them how to run their business. And if they, indeed, want to make a restriction saying no nudity, they should be able to do that, and it should be something that is enforceable. If they, for instance, win a -- you know, if there's contention for a domain and they get it based on how they plan to use it, then I think it's really important that it be enforceable.

And the statement that ICANN doesn't -- can't be involved in content is not in our mission. It says we cannot regulate it, imposing our own rules on the content. But we are not talking here about imposing our own rules.

Thank you.

KATHY KLEIMAN: Jonathan, may I respond very briefly?

JONATHAN ZUCK:

I don't believe you. I'm sorry. I think -- we sort of aired that out. Part of the structure for this is experimental. So what we're trying to do is identify that this controversy exists and we have both sides of this issue out.

So we're not going to resolve it, because we can obviously spend the entire session talking about this question.

So I wanted to lay out for some folks some of the controversies surrounding the registry voluntary commitments, but I want to move on to the next question and suggest instead that -- and ask a question that was raised by the board recently and was sent to the Subsequent Procedures Working Group, which is -- in which they said, basically, given the new bylaws changes from 2016, are there contracts in which ICANN cannot enter or that it cannot enforce if they fall outside of ICANN's mission?

And so that was an important question that was asked of the Subsequent Procedures Working Group. The Subsequent Procedures Working Group still recommended that RVCs be used in the way that Jeff described. So this question is for Kathy, Greg, and Becky, which is just -- and I know, Becky, you'll be giving a personal opinion and not a board opinion.

So if I could, Becky, I'd love to start with you. Do you think that ICANN can enforce commitments that don't violate its bylaws but at the same time don't fall squarely within it?

Becky, over to you.

BECKY BURR:

Thanks, Jonathan. And greetings, everyone. This is Becky Burr, for the record.

And thank you, Jonathan, for giving the standard FTC disclosure.

First of all, I just want to reiterate and emphasize that the board did not say that ICANN could not enforce PICs that were outside of ICANN's mission. The board asked a question and believes that there's a very important dialogue to be had here.

And second of all, there's an enforceability issue even with respect to PICs that are squarely within ICANN's mission.

So part of our question is, how do we make sure that when registry voluntary commitments are made, there is an objective way to determine whether somebody is in compliance with those? That's a critical piece of the board's questions with respect to registry voluntary commitments. We don't want to

raise expectations that something is going to be done and then not have the tools to enforce it.

So we were asking the subsequent procedures PDP and now we're asking the community to think about those two issues.

The post-transition bylaws, the 2016 bylaws, did create this enumerated set of bylaws that said, basically, ICANN cannot act outside of its mission. And it did have a prohibition on regulation.

I have to think about Alan's interpretation of that prohibition. I'm not sure I agree with it. But I'm also not sure that it's a necessary interpretation. Because the contract also says that nothing in the bylaws prohibit ICANN from entering into and enforcing contracts in furtherance of its mission. And one of its missions is allocating domains at the top level. And if somebody makes a commitment with respect to a gTLD application and as a feature of that application makes a commitment to do something, I think it's a discussion piece, is enforcing that contract in furtherance of ICANN's mission?

I'm not here to take a position on that. But I would not say -- I would not come down on it as clearly as Kathy seems to. And I'll just repeat something that Volker said in the chat early on, which is, you know, it's very hard to see how -- how it makes sense for

somebody to get all of the benefits of making a commitment, meaning they get the top-level domain, and none of the work. So I just want to put that out there.

The other thing is that I think one of the reasons I'm really happy we're having this dialogue and starting it off is, we just need to have a discussion about anticipating and addressing disputes. What we don't want to do is enter -- you know, add a new round of top-level domains and have endless disputes about whether something is -- whether ICANN can do it or not do it under its bylaws.

So some of the things that we are thinking about is, with respect to those kinds of registry voluntary commitments that come close to a content issue but are deemed necessary, for example, to respond to GAC early warnings or the like, is there a way of articulating the obligation in a manner that avoids the content regulation? So instead of saying thou shalt not do "X," saying you -- I agree that I will have an auditable process in place to do the -- to ensure that I'm not doing "X."

It's those kinds of things. I know that Sheri is familiar with those auditable process commitments. And I think it's a healthy thing for us to look at how the PICs are articulated.

I would personally advocate for a system that says if an applicant provides a registry voluntary PIC, it provides an explanation of how it is going -- its compliance with that PIC should be measured. And I think that will help us get much closer to the goal of avoiding disputes, having clear expectations about what registries are committing to and being able to enforce those.

So I'll stop here, because I know we have lots of other people.

JONATHAN ZUCK: Thanks, Becky.

Kathy, I'll go to you.

KATHY KLEIMAN: Sure.

And I'm hoping staff will share my slides. So you'll see the slide that I prepared.

So you asked a really good question -- about what Article 1 says about whether it restricts ICANN's ability to enter into these contracts.

And my question is really how do we prevent private PICs from becoming private policies that bypass the ICANN policy development? Private PICs -- it doesn't make any sense, given our history of consensus policy for private PICs to become back-room deals and kind of undercut or get a second bite at the policy apple. That's not what we're talking about. And that's not the best examples that you're using.

So I don't see my slide coming up, so let me --

JONATHAN ZUCK:

I think there's not time for the slides. So just --

KATHY KLEIMAN:

I'm going to go ahead and put the four guardrails into the chat.

So these were suggested by the Electronic Frontier Foundation and Domain Name Rights Coalition and others.

And they answer your question, Jonathan, because we've agreed that these proposed private PICs, unbounded in the first round, now should be bounded in the second round, because we do have these new bylaws, the 2016 bylaws.

This directly answers it. How do we review them? Just because we have public comment, how do we know it's in and how do we know it's out?

So the first one is PICs are RVCs. By the way, private PICs are RVCs, guys. Can only address issues with domain names themselves, not the content of websites or apps that use domain names. So that goes to 1.1(c) of the bylaws.

PICs, RVCs, should not give registries unbounded discretion to suspend domain names. That completely takes away the rights of registrants, part of which we've spent 20 years trying to balance as part of fair and balanced policies. We don't take away domain names without due process. That's what the UDRP and the URS are all about.

Three, PICs, RVCs, should not be used to create new domain name policies that didn't come through ICANN processes. The Donuts protected marks list, a blocklist, across over 200 top-level domains was rejected by the ICANN multistakeholder process. Why in the world should ICANN be enforcing it?

And the PICs -- and so that's consistent with 1.1(b) of our core value and commitment to the multistakeholder process.

And then Jorge Cancio, the Swiss GAC, very properly added PICs and RVCs need to be consistent with the human rights core value established in the ICANN bylaws which is 1.2(b)(8).

So if we create this prism, this mechanism of the four guardrails for looking at PICs and RVCs, we'll accept the ones that we agree on. What goes in and what goes out? Is it too wide or too narrow for who can register? And we will reject the ones that really need to go through the multistakeholder process or don't shouldn't be enforced by ICANN at all.

Thanks, Jonathan. Back to you.

JONATHAN ZUCK:

Thanks.

Greg, I'm going to bring you in. I guess the question I feel inclined to ask is: With 1500 domain names, doesn't somebody have the ability to simply choose to register a second-level domain with a registry whose policies with whom they agree?

Greg, go ahead and take the floor.

GREG SHATAN:

Thanks. It's Greg Shatan. I will address that question and also some of what's been discussed before.

Obviously we -- one of ICANN's roles is to encourage competition between registries or between top-level domains. And so having different policies and different domains is a competitive -- is part of having free and fair competition. And, obviously, not every rule can be changed but, by and large, many of them -- most of them can. We have certain basics. But what we've been talking about in terms of RVCs frankly, in this case, doesn't violate those basics, putting aside any hypotheticals that haven't yet been advanced.

So I think certainly the fact that one can find a top-level domain such as your .PORTFOLIO, which is going to be family-friendly, or they could go to .PHOTO -- and let's just assume .PHOTO is anything goes -- then, you know, that is a choice that a second-level domain owner can make as to where they want to be and under what rules they want to be -- what company they keep essentially. So that's really all a matter of freedom of choice.

I think it's important, too, to distinguish -- to be more careful about using the word "enforce." We are really talking about two different things and they are being conflated.

When ICANN enforces a contractual provision, it enforces the obligation of the registry to act consistently overall with that commitment. It does not enforce any particular case or matter. That's entirely between the registry and the registrant. So ICANN is not a content enforcer or any kind of enforcer in those cases.

What it is enforcing in the case of an RVC is that the RVC itself, the obligation, the work, as Becky put it, I believe, is being done by the registry; that they're doing what they promised to do.

But any particular instance or case is not something ICANN would enforce or not enforce on behalf of the registry. The registry is essentially on its own in that case.

And I will say also that with regard to the imposition of rules, that is the regulatory act with regard to content, I do agree very much with what Alan put forth as an interpretation.

And I was intimately involved -- I can even hear still ringing in my ears arguments that I made and others made that were unsuccessful in different directions where we ended up with a compromise that we did end up with, in fact, including making sure we had some clarity around the word "regulate" so we don't use the word "regulate" as sort of a kitchen-sink verb to mean

anything we don't like that somehow involves content. So I think that's important to think about.

Finally, I'll say that the guardrails that are mentioned, they're interesting. I think they're a whole set of new public policies that we need policy development process to develop. They certainly are not -- they go well beyond anything that is in the bylaws. And so if we want to talk about new and different rules, you know, they should be put into the policy development process and we can see what happens with them. Thanks.

JONATHAN ZUCK:

Thanks, Greg.

So what I want to do next, I know, Alan, you have been asking if you can respond to Kathy's question on Donuts. I don't want get a back-and-forth going on the specifics, though, which is why we were sort of loathed to use PIR or any other examples that were substantive. We are trying to get at the mechanism of RVCs as a means of building commitments into the contract and trying to talk about it more generally.

So I'd love to get through this discussion, and then I've left your question in the Q&A pod. I promise to come to you at the end, if that's all right. I did see it.

Okay. SO the next thing that I wanted to do -- and what we're trying to do here is air out what the different questions and controversies are, right? And so we just heard from Becky, Kathy, and Greg on whether or not the bylaws sort of stand in the way of the kinds of RVCs that we've seen or that we might see in the next round.

What I want to do is ask Anne and Alan and Jamie the next question, the practical question. If we don't have -- just assuming we don't, it's not resolved yet. But assuming we don't have a bylaws problem, are there practical concerns associated with it? So if we assume that ICANN is able to enter into these RVCs as registries, are there practical challenges with ICANN's compliance enforcing these?

I know, Becky, you touched on them briefly, but I wanted to give each of you a chance to address sort of the practical implications of RVCs that -- rather than saying against or not in furtherance of the mission are sort of parallel. Are there practical issues associated with enforcement?

Jamie, are you happy to go first?

JAMIE HEDLUND: If I can find my mute button, I would be happy to go.

So thanks for the question. And, Dean, thanks for the related question that you posted in the chat and on the Q&A.

At a very high level -- and this doesn't apply just to RVCs but to provisions that would be adopted as a result of any policy development, the biggest challenge is to have text or language in the provisions that is unambiguous, that is clear, and that is not susceptible to multiple potentially conflicting interpretations because when that happens, it puts Compliance in the impossible position of appearing to pick sides or avoiding it altogether.

So my plea to this group and to all people who toil away in the policy development work is that when you come up with provisions, make sure that everyone understands what they mean and that the language of the provision is clear. That applies equally to RVCs. As has been mentioned already, RVCs are voluntary until they become part of the contract, at which point they become binding.

I thought it would be helpful to provide a quick summary of our Compliance's experience in addressing PIC-related complaints since 2016 which is really when I have data -- we also have data posted for 2014 and 2015. Before that, we would have to go back and manually extract it, but I don't think there is much.

So, first, starting with voluntary PICs, those that were incorporated into agreements with specific registry operators, there have been zero complaints submitted to Compliance, alleging a violation of a voluntary PIC. So because of that, our experience is somewhat limited.

Since January of 2016, there have been 36 complaints total submitted on the PICs that are present in all Registry Agreements in Specification 11 public interest commitments. Thirty of those complaints were dismissed without further action because they were out of scope, they were invalid, they were not supported by evidence.

Three of those complaints dealt with Spec 11(1) which is a requirement for a registry operator to only use 2013 RAA-accredited registrars. Those three all remediated.

There was one PIC complaint that was submitted under Spec 11(3)(c) requiring transparency and posting policies. That was -- after an investigation by Compliance, that was dismissed because there was not found to be a violation.

And then, finally, there were the two proceedings that went to the panel, both of which found breaches of the same provision, Spec 11(3)(c) and required remediation on behalf of the registries to comply with that provision. One of them also alleged a violation

of 3(a), which is also a subject of a lot of back and forth with the business constituency on a letter about what that provision means. And the panel found that while there may have been bad actions by the registry operator, that they weren't actionable under -- or they weren't covered by Spec 11(3)(a). So that's where we are.

Again, as with any provision that we enforce, as long as the text is clear, the facts are clear, it's not a challenge for us to enforce. And that applies equally to anything that comes out of RVCs, PICs, voluntary PICs, or provisions in other parts of the contract. I hope that's helpful.

JONATHAN ZUCK:

Thanks, Jamie. Very helpful.

Anne, I want to go to you. Both Becky and Jamie have talked about increased clarity in the way that these RVCs are written. And Becky went on even a little further to say that maybe there should be a specific auditable process for determining the facts associated with that. Do you feel, like, given these kinds of recommendations that it's reasonable to expect contract compliance within ICANN Org to enforce these registry voluntary commitments?

ANNE AIKMAN-SCALESE: Thanks, Jonathan. I'm Anne Aikman-Scalese. I'm a member of IPC, was active in sub pro. I'm speaking personally, although I have to say that IPC did file a statement with sub pro in support of the RVC mechanism, which also I personally do support.

Specifically on your question, I think that the suggestion that we would have auditable processes and even certain of these guardrails brings ICANN more into the content field than is desirable within the community.

I think that the RVC mechanism is a mechanism that actually fits well within ICANN's mission. And Becky mentioned earlier that part of that mission is, you know, to promote competition and to get gTLDs launched and off the ground.

I believe that there are many areas within ICANN, many mechanisms that exist already, that ultimately affect content but don't make ICANN a regulator of that content.

For example, you have the limited public interest objection. ICANN cannot -- for example, if that were to prevail on limited public interest, I see that as having an effect on content, but ICANN would still not be able to award a TLD that, you know,

ultimately was determined to be against that limited public interest. So that's content-related.

I think there are many other mechanisms within ICANN that affect content, URS, UDRP, TMCH. So it's not just -- I agree with Alan and Greg. It's not just by having an effect on content that we are in violation of the bylaws. But I think that what you can see is there is a clearly bifurcated system.

In other words, my own view -- and I'll just get straight to it -- is that mandatory PICs should be enforced by ICANN compliance, but that the new -- as a matter of implementation of the policy we developed in Sub Pro, that the new registry voluntary commitments should be enforceable via an independent panel, as we do with other mechanisms within ICANN. Because I think the more that we decide within ICANN that we're going to start evaluating the good and bad registry voluntary commitments and, you know, whether they, you know, meet certain criteria, the more we involve ICANN in content determinations in which it should not be involved.

So I think that as a practical matter, both from the standpoint of respecting the bylaws, also from the standpoint of respecting workload, that RVCs would be better enforced through an independent panel as an implementation matter and that ICANN

should not be involved in evaluating whether these are good or bad, and that mandatory PICs, on the other hand, should remain within ICANN compliance. That's my viewpoint.

Thank you.

JONATHAN ZUCK: Thanks, Anne.

So who else did we have on that question? I think it was Alan.

Do you have anything you want to add? It's okay if you don't. But if you do, please go ahead.

ALAN GREENBERG: No, I do have a couple of things. I'll try to be very brief.

I jumped the gun initially, in the first question, talking about PICDRP versus PIC complaints.

I think it's absolutely crucial that we maintain that distinction and make it really clear. And this has -- comes into Anne's comment about if voluntary commitments have to be handled by a panel, that's fine. I have no problem with that, and it's supportive of my last point. But you cannot impose fees, and perhaps substantial

fees, to both file a complaint and see it through, which is often associated with panels.

So if I want to point out and complain to ICANN and want it enforced that a registry is not following its own rules, the rules it put on, then that's not something I should have to pay to do.

PICDRPs are where you can be -- can show that you have -- sorry - - substantial harm are a different issue and have -- I think have to be treated quite differently.

I totally agree, however, with both -- with Becky and Jamie that we need clarity. The largest single problem that I've seen in regards to compliance enforcing certain rules is that judgment calls are involved. And it's not only associated with PICs. There are other issues, too.

Compliance, for relatively good reasons, is reluctant to have to make judgment calls, which if things go to a legal dispute, they're not in a strong position to enforce. ICANN doesn't like taking action where they're not in a strong position to follow through and get -- you know, get that approved if it goes to court. And that's not surprising.

So maybe we do need panels, and maybe the registry, in identifying its commitment, has to identify the mechanism by which that judgment call is made, and presumably, independently made.

So I support that. But, again, I like Becky's alternative of phrasing the commitment in such a way that implicit in that is, we know what the mechanism is for how to recognize problems and lessen the number of disputes. So maybe that is the way to solve the problem.

But the implementation, the practical problems are making sure that complaints can be lodged, and that if they're valid, they can be seen through, and hopefully, that done smoothly and fast.

And as Jamie said, there haven't been a lot of complaints, so it's not a volume issue. But it's making sure they it can be handled quickly.

Thank you.

JONATHAN ZUCK:

Thanks, Alan.

And Becky or Jamie, just briefly, that distinction that Alan is making, is that a sensible one, that you don't have to be an injured party in order to complain to contract compliance and point out that an RVC or a voluntary PIC is being violated?

JAMIE HEDLUND:

Thanks, Jonathan, I was afraid you were going to ask me whether his question about whether a judgment was -- was relevant.

The -- I mean, we -- I don't know how to answer that. We enforce the provisions as they are. And one of the interesting things about a PICDRP is that the way the panel operates is that the panel also uses the -- you know, looks to the same source of authority as ICANN compliance would. So up until now, they haven't, you know, gone to other bodies of law or regulation to make a determination. They look at compliance with the registry agreement and with the PICs in particular.

So I don't know -- you know, I'm fully supportive of provisions that are vetted and are seen to be enforceable. So however that arrives, you know, we -- we're all for it.

I don't know if that answers your question.

JONATHAN ZUCK: Yeah, I think so.

I think the issue is if a watchdog organization or something like that, who wasn't a specifically harmed party, would have the ability, since --

JAMIE HEDLUND: I'm sorry.

JONATHAN ZUCK: -- a PICDRP, could they still come to you and say, we have noticed, because we pay attention, that --

JAMIE HEDLUND: Right.

JONATHAN ZUCK: -- that nudity is now showing up on .PORTFOLIO.

JAMIE HEDLUND: Sorry. Yeah, so that's the standing issue. And the current rule is, you have to be a harmed party in order to have standing. Whether that should -- .

JONATHAN ZUCK: Or (indiscernible) a complaint as well. That's my question.

JAMIE HEDLUND: So violation of a PIC, whether we look at it or it goes to a panel, is -- goes to -- to the standing question. And right now, my understanding is that you have to show direct harm. Whether that should be expanded, I think, is a -- is a question that is appropriate for -- for Sub Pro, perhaps in the implementation, maybe in ODP, whether -- you know, what would the impact be on expanding standing, and what are the pros and cons.

But that -- I think it would be better to ask someone who is involved in those processes, rather than us at compliance that comes in at the end of the line.

JONATHAN ZUCK: Thanks, Jamie.

Obviously, we weren't going to resolve any of these issues on this -- during this plenary, but just sort of air out what some of the discussions are that are still taking place around registry voluntary commitments. Because increasingly, people are thinking of them in the case of .AMAZON, .PIR, et cetera, as a

mechanism, and we need to figure out whether they are the appropriate mechanism.

So I want to thank everybody for talking about that topic.

Before we go to questions, I wanted to allow Sheri Falcon to talk a little bit about what registry operators can do about updating and revising their PICs or RVCs if they're no longer fit for purpose. If a registry operator wants to enhance them or implement a new set of regulations or something like that, what does that process look like and is there a mechanism in place to allow changes to those RVCs, as they're now called?

SHERI FALCON:

Hi, Jonathan. Sheri Falcon here.

I am part of a working group inside the registry stakeholders who have been in communication with icann.org for about two years now, trying to create a process to do that very thing, Jonathan. So this is coming at this discussion from a slightly different angle. So we're not necessarily looking at are they valid, should they be valid, were they valid, what's the sort of -- the white picket fence issues around it.

We're really talking more about that they exist and how should we, as registry operators, the contracted party with ICANN, how can we make changes to those if we want to enhance them or they're, as you mentioned, no longer fit for purpose?

And currently, there is no way to do that. So a few registry operators have individually approached ICANN to suggest that they wanted to make those changes. And ICANN indicated that they were uncomfortable making any changes to the voluntary PICs because of the controversy around the GAC concerns historically.

So instead, what ICANN has proposed and what we've been working to do is to create a framework, much like the one that exists for spec 12 community changes, whereby a registry operator would go through this very established, objective criteria framework. And if it passed those threshold issues, then it would be allowed to negotiate individually with ICANN for those contractual changes.

Any of those changes would then go through a public comment period. And if, you know, no major issues or however that process typically works, are flagged, then they could make those contractual changes. So that's really the intent.

And since those two-year process -- you know, this whole conversation has really started to evolve within the ICANN community, and maybe the framework is a good solution for some of these issues as well. Maybe if -- to Kathy's earlier points, when we were in the planning session, if something's in there that isn't appropriate, maybe this is a way that a party could actually change that or not. Who knows? But we're still kind of waiting to get feedback on whether we can launch this framework idea in the first place.

I think -- We've presented this to the GAC, so they're sort of looped in. And I believe the current status is ICANN is looking at this issue and is supposed to deliver a paper to the GAC around this, and we'll go from there.

So I'll stop now, in the interest of time. But happy to answer any questions.

JONATHAN ZUCK:

Thanks, Sheri. Thanks for rounding out that conversation.

Obviously, one of the things that has changed in the new recommendations around RVCs is that they will be subject to public comment, which might change the character of these discussions.

So we've attempted to do what is the equivalent of a staff issue report during this plenary. We haven't resolved anything, but at least just sort of got out some of the questions that still need discussing prior to implementation of a new applicant guidebook or a new round. And so I want to thank everyone.

But before I go to questions, I wanted to give Alan a chance to respond to Kathy, very briefly, about the PICs that you implemented in order to get it on the record. But I don't want to get a full back and forth going, if that's possible.

So, Alan, if you're still with us, this is your opportunity to speak up.

ALAN GREENBERG: I assume you mean Alan Woods?

JONATHAN ZUCK: I do. Alan Woods. Sorry.

ALAN WOODS: Yes, the other Alan. You think there would be more than two of us.

JONATHAN ZUCK: If you have a camera, I'd love for you to have it on.

ALAN WOODS: I haven't been given an option for camera. So it might not happen.

JONATHAN ZUCK: I think staff can give you the option for camera.

Maybe not quickly enough.

Alan, go ahead with your response to Kathy. Thanks.

ALAN WOODS: Thanks. Now (indiscernible). Thank you very much.

And thank you so much, Jonathan. I did put a question in the box just in case we didn't have the time to do this. And I appreciate your giving me the time.

I suppose I just wanted to say that really, really much appreciate where Kathy is coming from on that. However, I think we have a tendency to always go for the worst-case scenario in these instances, and specifically when it comes to Donuts. I mean, it is

very important for us to ensure that if we have PICs, that the PICs that we do have, that we enforce them in a way that is both transparent and, indeed, not arbitrary. And thinking ahead to things like the Digital Services Act and things like that, very, very important for us to ensure that we are not taking the stance that Kathy would worry about.

And I suppose my questions to her on that one was, if there are any examples where she believes that Donuts specifically as were invoked did exceed or step over the line, that's something that we would be more than happy to have a discussion about and discuss with.

And then the second one was just relating to the specific wording of the contracts that allows us to change the PICs or the voluntary PICs. I just wanted to make sure and be clear to people that although since 2016 we've had those PICs or the voluntary PICs and the ability to change it, we have not done that, because we see the value in the PICs that we have and the way that we are applying them.

And, again, to echo what Jamie has said, it has been very, very rare that our PICs have actually come up in escalations to me. I personally see most of the escalations that have come up with Donuts.

So, again, if we are failing in any way, I would, again, welcome a conversation with Kathy to have those discussions to see where - - you know, perhaps we would be able to resolve any issues that were noted.

So thank you so much for that. And thank you so much for a very informative session as well.

JONATHAN ZUCK:

Thanks, Alan.

And, Kathy, feel free to follow up, obviously, with Alan. And these conversations are going to be happening in lots of fora.

So I wanted to open up for the remainder of the time to questions. I have not kept track of everything that's going on in the chat. So if you've said something there and you'd like to air it openly, then raise your hand.

Brenda, I'm going to let you give a little spiel on how people should participate. Thanks.

BRENDA BREWER:

Thank you, Jonathan.

This is Brenda Brewer speaking. If you wish to speak, please raise your hand in the Zoom room. And once the session facilitator calls upon your name, our technical support team will allow you to unmute your microphone.

Before speaking, ensure you have selected the language you will speak from the interpretation menu. Please state your name for the record and the language you will speak, if speaking a language other than English. When speaking, be sure to mute all other devices and notifications. Please speak clearly and at a reasonable pace to allow for accurate interpretation. Thank you.

JONATHAN ZUCK:

Thanks, Brenda.

So I've now switched my participants over to attendees which will hopefully let me see if people raised their hand. So please feel free to raise your hand if you've got a question for one of the panelists or a comment you want to throw into the mix.

Barring that, while people are forking that out -- Oh, Paul, please go ahead.

PAUL McGRADY:

Hi there. Paul McGrady for the record. I don't know how to turn on my video, but I think most people know what I look like.

I just wanted to sort of head something off at the pass that has caused a little confusion on this call. Kathy made reference to the Donuts protected mark list having been considered by the community and rejected. I think that was a slight blurring there.

I think what she meant to say -- and she can correct the record, if I'm wrong -- is that the IRT for RPMs for round one new gTLDs proposed a globally protected marks list or famous marks list that would be -- would have been a mandatory RPM that was applied to everybody. And ultimately through the policy development process or community process, that ultimately didn't make it into the final list of RPMs for phase one.

That is distinct from the Donuts protected marks list which is a voluntary thing that only applies to Donuts' registries and was adopted voluntarily.

So it's not quite accurate to say that the Donuts mechanism was considered by the community and rejected. A similar concept was considered by the community but that concept was an

involuntary commitment, not a voluntary commitment, and, therefore, is sort of a completely different animal.

But I think that may have caused some confusion. So hopefully this history lesson clears it up just a smidge. Thanks.

JONATHAN ZUCK: Thanks, Paul. Kathy, did you want to respond to that briefly?

KATHRYN KLEIMAN: Yeah. I've already done so in the chat. But this has to do with ICANN enforcing policies for trademark owners that it didn't create. And part of, again, the promise of the consensus policy process is that we create policies together and multistakeholder process through the bottom-up, grassroots represent- -- and multistakeholder representation, and then we enforce them.

So here we've got private PICs becoming a complete bypass in the Donuts protected mark list. I appreciate Alan coming online.

Alan, it's the scope, this huge, wide scope, of these private PICs that Donuts created and then made ICANN responsible for enforcing. That doesn't -- that's not the process we created, guys.

We created a process where we make policies together and enforce them like the UDRP, like the URS. I really think all of this undercuts ICANN's integrity and credibility, and ultimately our very foundation.

Jonathan, I also wanted to respond to you. You've talked about PICs as solving the PIR, the .ORG problem. And I just wanted to reference quickly, if I might, the attorney general's letter from the State of California where he basically said a PIC can't solve an underlying problem if you don't have respect for the organization. And he pointed out how little was known about Ethos Capital and its subsidiaries and the conversion, what they were going to do with the finances with the conversion from nonprofit to for-profit. So a private PIC, as the attorney general of California was telling us, can't solve much deeper underlying problems. So I just wanted to insert that into our mix.

But really the question here is: What should ICANN be enforcing? It should be enforcing policies we created together. Thanks.

JONATHAN ZUCK: Thanks, Kathy.

In the Q&A pod, there's a question from J-P: For the future, do panelists see an opportunity for the new RVC structure to borrow

from the benefit company statutes where corporations take on environmental, social, labor standards above and beyond the typical expectations of shareholders? Create specific framework of intent and also establishes community rights in the event of breach/failure to live up to the framework?

Panelists, I can switch to your view if one of you would like to raise your hand and answer that. Greg, I see your hand is up.

GREG SHATAN:

Greg Shatan for the record.

I think I was actually responding a little bit to the earlier point, just to kind of reiterate when we are talking about enforcement of PICs, we are talking about enforcing overall by a registry. ICANN does not have a role in enforcing any particular action or inaction by a registry that that registry judges to be the right thing to do under their PIC.

So when Kathy talks about enforcement, she just kind of blends the two concepts together. I think it's important to separate those two concepts. We're not asking ICANN to enforce things. And in any case, I don't create that the RVC itself is, you know, outside the mission in that case.

But the voluntary -- the term "voluntary" means it's not a mandatory part of the contract. All of these things are rules, terms -- ultimately could be terms of service.

We have the ability in certain ways to deal with these issues if we want to have actual policies that would prohibit these things. But the policies don't prohibit what's in the PICs either.

JONATHAN ZUCK: Right.

GREG SHATAN: Thanks.

JONATHAN ZUCK: Thanks, Greg.

Anne, I see your hand is up.

ANNE AIKMAN-SCALESE: Thanks, Jonathan.

I think with the goal of promoting competition, it's important to allow registries to distinguish themselves in various manners. Now, they don't have to be by way of voluntary PICs. But people

are in a position to choose from, you know, hundreds of TLDs and should be in a position to choose based on whether, you know, there's public responsibility being exercised within the TLD. And so, I mean, I think it would be a favorable development to see the TLD adopt various -- what we used to always refer to as corporate responsibility-type policies that are accountable to the public. And whether they do that voluntarily on their own without a contractual commitment or whether they do it via contractual commitment, I think it's a positive development for competition. Thank you.

JONATHAN ZUCK: Thanks, Anne.

Alan?

ALAN GREENBERG: Yeah. Just very briefly, Kathy had mentioned once or twice that ICANN enforces consensus policy. ICANN enforces contracts. Consensus policy is part of those contracts. We used to use the term "within the picket fence" because these are the parts of the contracts that are eligible for consensus policy. But there's lots of other parts. Primarily, you know, the fees that people pay are not the result of consensus policy but are certainly enforceable. Thank you.

JONATHAN ZUCK: Thanks, Alan.

Jamie, quickly, if you can. I guess we have a couple more hands up among the attendees.

JAMIE HEDLUND: Sure. So two things -- or maybe just one thing, which is if a PIC is incorporated in the contract, it is enforceable, and we enforce it. It is a contractual provision. If you don't want something enforced through the contract, don't put it in.

JONATHAN ZUCK: That makes sense.

Susan Payne, you have your hand up.

SUSAN PAYNE: Thanks, Jonathan.

I wanted to respond to something that Kathy had been saying, and it's something I put in the chat but I think it bears repeating.

In objecting to the voluntary adopted PICs, Kathy has raised a number of concerns particularly with the adoption of enhanced rights protection mechanisms that go beyond the minimum.

And I think it's just worth reflecting that Kathy herself was actually one of the co-chairs of the RPM phase 1 PDP. And that PDP ran alongside the sub pro one. It ran for more than four years. And in conducting our thorough and meaningful review, as I think the report calls it, we considered a document called the TMCH RPM requirements.

That requirements document makes it clear, as did the applicant guidebook and the base Registry Agreement, that the mandatory RPMs are a minimum requirement. So they are a floor and not a ceiling.

And since that document and, you know, as part of the work of that RPMs working group, that document has been effectively reviewed and endorsed.

So having done so by a group of volunteers from across the community, it seems to me that that's now policy. And it's time to put this issue to bed as to whether a registry can go beyond the minimum if they're seeking to protect consumers.

JONATHAN ZUCK: Thanks, Susan.

Volker, please go ahead.

VOLKER GREIMANN: Thank you. Can you hear me? Yes.

It strikes me that the PICs are usually used as a vehicle for registries to get something that they would not otherwise be able to get either in their agreement or in the allocation of the TLD because ultimately the PIC is something that the registry could also include in their policy and thereby make it voluntary in the original sense of the way that they could change it later down the road. The PIC is basically something that forces them to comply with doing the entire allocation of the TLD.

Therefore, the question would be: Why would a registry that does not hope to gain anything that falls outside the standard rules agree to something as a PIC instead of just adopting a policy that basically would do the same thing?

JONATHAN ZUCK: That's a good comment, Volker. Thank you.

We're coming up on the end of our time here.

Jamie, did you want to say something? Your picture just appeared. Okay.

[Laughter]

Thanks. Thanks, everyone. I appreciate everyone participating. The chat was a shadow plenary that was taking place that some of us will have to go back and look at separately.

But, as I said, what we were trying to do was get out some of the top-level issues that are still to be resolved around registry voluntary commitments to make sure that they are the mechanism that we hope that they'll be in terms of allowing for these voluntary commitments for a variety of different reasons.

So please join me in thanking all the panelists that we had with us. We had Anne Aikman-Scalese, Jamie Hedlund, Alan Greenberg, Jeff Neuman, Sheri Falcon, Kathy Kleiman, Greg Shatan, and Becky Burr. A big panel, that's why we didn't go to everybody for everything. So I appreciate you all participating even though you didn't get to answer every question.

Experimental plenary. I enjoyed it thoroughly. And thanks, everyone, for participating.

Back to you, staff, to close down the meeting.

ALAN GREENBERG: And thanks to you, Jonathan.

Thank you, Jonathan.

Thanks, everyone.

BECKY BURR: Thanks, Jonathan.

BRENDA BREWER: Thank you, all, for your participation. I would like to remind you all that presentations, recordings, and transcripts from the ICANN meeting sessions will be posted in the schedule within the next few weeks. Enjoy your day. Thank you.

[END OF TRANSCRIPT]