Consumer Trust Meeting
TRANSCRIPTION
Tuesday 31 July 2012 at 19:00 UTC

Note: The following is the output of transcribing from an audio. Although the transcription is largely accurate, in some cases it is incomplete or inaccurate due to inaudible passages or transcription errors. It is posted as an aid to understanding the proceedings at the meeting, but should not be treated as an authoritative record.
Http://audio.icann.org/gnso-cci-20120731-en.mp3

Participants on the Call:
Cheryl Langdon-Orr - ALAC
Steve DelBianco - CBUC
Michael Graham - IPC
Jonathan Zuck – IPC
Olivier Crepin Leblond – ALAC
Carlos Aguirre – NomCom appointee to GNSO Council

ICANN Staff:
Berry Cobb
Julie Hedlund
Glen de Saint Géry

Apology:
Tobias Mahler - Individual
John Berard - CBUC

Coordinator: I'd like to remind all participants this conference is being recorded. If you have any objections you may disconnect at this time. You may begin.

Glen de Saint Géry: Thank you very much, (Kelly). Good morning, good afternoon, good evening everyone. This is the Consumer Metrics call on the 31st of July.

And on the call we have Cheryl Langdon-Orr, Carlos Aguirre, Olivier Crépin-LeBlond, Jonathan Zuck and Steve DelBianco. For staff we have Berry Cobb, Julie Hedlund and myself, Glen de Saint Géry.

And it is over to you Jonathan. May I just remind people to say their name before speaking please for transcription purposes. And may I also say that we have apologies from John Berard. We are not able to get through to Tobias Mahler. So I don't know if anybody has apologies from him.

Okay it's now over to you. Thanks, Jonathan.

Jonathan Zuck: Okay hi. It's Jonathan Zuck for the record. Welcome everyone. I guess we didn't have enough of a quorum last time. I don't know what just happened to Cheryl. I guess - a noise forced her to disconnect. We'll wait for her to get back on.

Berry Cobb: This is Berry. I think we can still move forward. She'll join - or get another call out shortly.

Glen de Saint Géry: Yes, she's getting a call out.

Jonathan Zuck: Okay. So on the first open action item I did reach out to Wendy to talk to her a little bit about the objections she raised. And at its very core she seems to object to the trust category of metrics for the DNS anyway. I think she's - doesn't think that it's possible to assign, you know, consumer trust to the DNS.

And so I pulled it out as part of the mandate all the way back to the Affirmation of Commitments even before Bruce's resolution. And - but I guess, you know, she didn't see a way forward on that. I - she did raise one issue that it's interesting, I guess, which is that she's concerned that by assigning metrics to the process - and these were all these ones related to - a

lot of them related to IP - that we might be creating de facto responsibility for the registries.

That even though it's not our mandates to assign responsibility for the success or failure of these metrics she's concerned that the creation of the metrics will lead to assignment of responsibility on the registries. So I don't know if that's something we should maybe make a note about or not or just let go because it isn't our mandate. But that's - that seems to be a part of the core of her concern is that we'd be de facto rewriting the registry agreement by suggesting that these metrics are something that registries should be responsible for.

Beyond that I tried to get a time that she could be on one of the remaining scheduled calls and she said she simply isn't but she would be open to trying to get on an ad hoc call if you guys were up for trying to schedule one that was at a different time. So I leave that open to the group about whether or not we want to try to schedule an ad hoc call with Wendy so that she can better represent her issues.

I think as it now stands she's probably going to recommend that the NCUC (pile), you know, comments that are in defense of these when they're published. Any reactions?

Steve DelBianco: This is Steve. Thanks for giving it a good try. And we can't say we haven't reached out. But if she has - if Wendy and the NCSG has a fundamental problem with the Affirmation and the resolution that we're actually responding to then her problem isn't really with our work.

((Crosstalk))

Steve DelBianco: One strategy might be to see if the NCSG could express - they might abstain and express that they believe the resolution should never have been adopted

by the Board. But that is different than a substantive concern about what we're recommending that be measured so it's possible.

And we don't have to do this today, right, it would happen during the Council meeting when they debate this. But we may have to have a strategy to try to ask them to separate how they feel about the Affirmation and the Board and strictly try to turn to the merits of our recommendation. We might have a better chance of getting them to either abstain or approve. Thanks.

Jonathan Zuck: That makes sense to me. And that's definitely the impression I came away with is that she is concerned about making the DNS responsible somehow for consumer trust which, you know, which is one of the things we were assigned to do and that was reflective of the Affirmation of Commitment. So I think - I suspect that the problem here is an endemic one and not one that will resolve with a call with Wendy.

Steve DelBianco: Jonathan, Steve. If I could?

Jonathan Zuck: Yeah.

Steve DelBianco: Maybe our letter ought to include a line in it that just heads this off and says that the recommendation for any given metric or target does not convey new legal accountability or responsibility on ICANN or contract parties. We're trying to stay true to the resolution and the Affirmation by recommending things that can be measured that will, in total, contribute to the required assessment of whether the new gTLD program promoted consumer trust, consumer choice and competition.

Jonathan Zuck: I mean, that's exactly - I mean, that's exactly what I was suggesting. I mean, a line like that I think would be a - I think is something we all agree with and would be a concession to her concerns. Berry, is that something that you can...

Berry Cobb: This is Berry. I mean, I think we already have language in that advice letter basically - I'm paraphrasing here - but that we're only offering up metrics. This is in no way meant to be utilized for future policy changes or anything from that. So I think we've got that covered. If not we can improve that language when we modify the final draft.

But I think really what's more important here and certainly the NCSG will deliberate this when the Council brings it up for discussion but it would benefit them to actually draft up a minority response that we can append to the draft letter because if and when this does get carried up to the ICANN Board the deliberation at the Council level will most likely not transition up that way.

So if they prefer their point to be heard across the community it would benefit them to do a minority response attached to this draft advice letter.

Jonathan Zuck: Okay well I'll pass that onto Wendy then. And let's just make a note to set aside that when we're doing the final version of the advice letter that we take a look at the line that you're referring to, Berry, and potentially clean it up to - similar to the sentence that Steve just outlined.

Berry Cobb: Okay. Got that captured.

Jonathan Zuck: All right thank you. So we should probably continue on through these comments then.

Berry Cobb: This is Berry. We have a few more action items before we get started. The second one which is recurring just to review the latest - or to send out the latest comment review tool and draft letter which I did earlier in the week. I did not send the latest version of the draft letter because it had not changed from our previous meeting.

Action Item Number 3 I would like to take a few minutes to discuss. I have started this. I don't have a definitive answer from ICANN internal about a review team with respect to the gTLD application process.

However I started really tuning into the language of 9.3 of the AOC and my takeaway from it is that the application and evaluation process would be included within our remits specifically the middle sentence out of the AOC 9.3.

"If and when new gTLDs have been in operation for one year ICANN will organize the review that will examine the extent to which the introduction or expansion of gTLDs has promoted competition, consumer trust and consumer choice as well as effectiveness of the application and evaluation process and, B, the safeguards put in place to mitigate issues involved in that introduction."

So my takeaway from that is that this future review team that's going to analyze the consumer metrics should also be including the app and evaluation process. And I'm kind of doubtful that there's a separate team. So comments on that? Steve.

Steve DelBianco: Yeah, Berry, you're right, it's in the Affirmation but it's expressly not in the resolution that the Board adopted. So we're clear that our group only was supposed to look at the second half of that which was the metrics, right? What would be the work that this group on the phone today - what would we do to address the fact that there is no resolution from the Board and there is no working group on the first half of the evaluation? What are you suggesting we do?

Berry Cobb: This is Berry. I'm not necessarily suggesting anything yet other than confusion. I just pasted a link for the AOC tracking site for ICANN and I'm calling out specifically Rows 55 and 56. The interesting thing about the Board

resolution is that it shaved off the "as well as" within the resolution. And I'm not sure what the intent there was.

But when I look at the AOC tracking there is - on Row 55 - and I do invite all members to click the link and scroll down - there is already a considerable amount of work that has been attributed to Row 55 but promoting competition, consumer trust and choice.

And you can see some of the actions taken by ICANN, for example, the STI, vertical integration, the rally in public order, different things. Whereas on Row 56, which is a continuation of 9.3, actually gets into the - what I believe is the placeholder for what the consumer metrics team is trying to accomplish for the future review team.

So it's kind of confusing. And like I said I'm still trying to ask internally and find out about some clarity about this. But right now my gut is telling me that there isn't necessarily a separate team that's going to be designated. And if that's the case...

((Crosstalk))

Steve DelBianco: ...move all of our stuff from Row 55 to 56. It was an error created by whoever developed the AOC tracking table.

Berry Cobb: Okay well again I'll still continue to hunt this down internally. And I'm not sure what the exact answer will be. If in fact it is intended to be one unified AOC team then perhaps our scope expands which I'm not sure we're all in favor of per se especially given our timeline that we have. If not - if there is definitely a different team then we're good to go. So I'll try to get this wrapped up by our next call.

Steve DelBianco: Berry, this is Steve. I mean, the little thing they have in the fourth column that says GNSO ALAC and possibly are in the process of that's just in the wrong

place. And by moving that to Row 56 we don't pretend to be addressing something that our working group was never chartered to do. So the blank line - the blank will be on Row 55 whereas 56 will show work is underway to get it done.

Berry Cobb: Right. And you will also see on Row 56 that the text that they pulled out of the AOC is turned off as well as effectiveness of...

Cheryl Langdon-Orr: Yes.

Berry Cobb: ...and doesn't complete the text. So I...

Steve DelBianco: And I think that's because they wanted that to be associated with Row 57. So they probably ought to move the "as well as" into Row 57. And of course the columns next to that would be blank as well.

Michael Graham: This is Michael. That's the way I was reading that either 57 was supposed to be within 56 but that is two different focuses it looks like. And ours is within 56 up until that last line.

Berry Cobb: Okay. Again I'll go retrieve clarity on this and have an answer by the next meeting. And lastly...

Steve DelBianco: Berry, this is Steve. We're not actually just asking them for clarification. I think we have a point of view on this so we would be requesting that they fix the table in the way that suits our charter and the resolution. And the reason I say that is I want to try to limit the perception that we've missed part of our charter, because we haven't. And I wanted to limit the possibility that our scope would somehow be expanded at the last minute, which I hope it doesn't.

Berry Cobb: Understood. So lastly the final action item, which was a result of our last meeting and discussion about how we pass the advice letter onto the GNSO

Council; John Berard had suggested that we give the Council a flight plan for lack of a better term to move the advice letter forward onto the ICANN Board.

And other than to say that I sent out the first draft I'd like to refer the - defer the review of that towards the end of the meeting so that we can jump into the comments.

Okay so with that - and, Jonathan, if you don't mind I'll take over in terms of the public comment review now?

Jonathan Zuck: Yes please. Thank you.

Steve DelBianco: Berry, are you seeking edits for the GNSO Council letter? The one you circulated today; the one that starts with, "Why are consumer metrics important?"

Berry Cobb: Oh absolutely. This is just the first draft for the team to provide input and feedback on to improve it. And, you know, again I think the concern from the last call is - at this point it's unclear how the Council and when the Council will deliberate the advice letter not to mention any possible friction that may be pending forward.

So the intent was just to try to provide a timeline that hopefully the Council can try to adhere to so that it can be formally deliberated on by the October Toronto meeting. And so we essentially have...

((Crosstalk))

Steve DelBianco: Did you want comments today on the call or, Jonathan, would you prefer we just do them by email? What's your preference?

Jonathan Zuck: I think probably just by email so we can jump into these comments.

Steve DelBianco: Will do it.

Berry Cobb: Anything else, Steve?

Steve DelBianco: I'm sorry, that's it.

Berry Cobb: Okay. All right so from two meetings ago we had left off on - or we had completed Row 59; now we're on 60. This comment is from Michael Flynn from the public comment forum.

And I'll read through this. "The proposed measures naively regard an increase in the number of supposed rivals for the business of a second level domain registrant as the equivalent of an increase in competition. A simplistic count of the number of gTLD rivals for a would-be registrant - registrant's business is not an economically meaningful measure of competition if any."

"Among the gTLDs the registrant faces it allows that an increase in the number of such rivals for a registrant's business does not amount to increased competition. The proposed measures assume that would-be registrants of second level domains regard all unsponsored gTLDs as well as some ccTLDs as actual or potential substitutes."

"Before undertaking to measure anything what is needed first is a complete professional delineation of the relevant product markets that are at issue including a determination of which gTLDs and ccTLDs, if any, are economic substitutes and which are complements as seen by would-be registrants."

Steve DelBianco: This is Steve, Jonathan. Can I weigh in on that?

Jonathan Zuck: Yeah, I mean, I'm thinking. I mean, it just seems like outside of - it sounds like a Herculean task to do this level of categorization when this is just one of many metrics.

Steve DelBianco: In choice - choice and competition are so closely related - back when we designed these we took the attitude that choice was from the perspective of the registrants and users and competition was more from the supply side. We know that choice and competition are related.

And when we designed our choice measures we said that a registrant choosing from among the available gTLDs is really only going to choose those that are appropriate. For instance they can only choose those that are open to the public, not private dotBrand single registrant; they can't choose those.

And the second is they can only choose really among those that are applicable to their industry. Bike Shop is not going to pick something in dotBank even if they could. So we acknowledged all that.

And we debated the use of words in the choice definition like as the range of relevant options available to registrants and users. We're talking about the definition of consumer choice. We had once entertained the idea of putting something in there like relevant options...

Cheryl Langdon-Orr: Yeah.

Steve DelBianco: Berry, you've got the best handle on what changes we've made since our original advice letter. Did we modify the definition of choice to imply relevance at some point?

Berry Cobb: This is Berry. The latest choice definition that we have is defined as the range of options available to consumers for the domain scripts and languages and for all TLDs that offer meaningful choices as to the proposed purpose and integrity of their domain name registrants.

Cheryl Langdon-Orr: Meaningful choices is the key word.

Steve DelBianco: So even if we were to change the definition to include the word "relevant" which gets to the notion of not all TLDs are even available as my choices it doesn't mean we've scratched the itch of Mr. Flynn because none of our metrics seek to categorize the world from the eyes of every registrant, as Jonathan said.

I don't suppose it even scratches any itch to change our definition if we don't want to add lots of metrics. And I don't think we do. I agree with you, Jonathan, we don't want to add a lot of metrics.

Jonathan Zuck: I don't think so; not at this point. This is a pretty rigorous document. This is just one of many metrics and, you know, the review team might come up with some scheme for contextualizing these metrics in - as available or something like that or they make, you know, it won't be the end of the world for them to do that.

Jonathan Zuck: But I don't think...

((Crosstalk))

Steve DelBianco: I could volunteer to draft another note with the definitions and the note would try to delineate that we recognize that not every TLD is available as a relevant choice for every registrant and that is a recognized challenge that we - and we did not feel it was justifiable to design metrics to categorize registrant-specific choices.

Cheryl Langdon-Orr: Cheryl here, Jonathan. We also need to perhaps, in that note, Steve, which I think is a great idea, remind them that of course one of our primary tasks is the definitional work and the metrics are to some extent, you know, linked to an analogous.

But I'd almost consider the definitional work is almost the primary task as well. So whilst we had to get on with that job what Mr. Flynn wants is

Herculean indeed. And would have meant a huge delay well past probably the 12-month point post-new gTLDs in this round in the root anyway so there would have been a huge number of issues if we hadn't gone with the necessarily lean nevertheless meaningful choices (unintelligible).

Jonathan Zuck: Yeah, I mean, I agree with that. I mean, I think that - I don't think that his comment his wrong. I just think that it's - and maybe Steve, you know, another sentence in the definition will help to clarify that we're not idiots but at the same time, I mean, I...

((Crosstalk))

Cheryl Langdon-Orr: We also had a job we had to do, yeah.

Jonathan Zuck: Right, that's right.

Steve DelBianco: And it would be a note, Jonathan, not a change to the definition since - if we change the definition to include this relevant idea or meaningful idea to a greater extent then we get dinged for not designing metrics that could have done that. So I think it's better for us to acknowledge yeah, we thought of that.

Cheryl Langdon-Orr: Yeah, footnote.

Steve DelBianco: We're not as dumb as you think. And here's why we didn't - expressly didn't design metrics for that.

Cheryl Langdon-Orr: Could not, would not, should not and did not, yeah.

Jonathan Zuck: That sounds right.

Berry Cobb: This is Berry. So I'm taking down the recommended action is just to create an additional note to supplement the consumer choice definition. And, Steve, you said you would take a first stab at that.

Steve DelBianco: Thanks, Berry.

Berry Cobb: Okay moving down to 61. This is also from Michael Flynn. "The total number of second level domains registered under that gTLD the total number of second level domains that are unique to that gTLD." And the second bullet, "The total Web traffic measured, say, by the number of unique visitors per time period that is generated by all second level domains registered under that gTLD."

                    His comment is, "The proposed measures of competition fail to recognize that ICANN's imminent introduction of new gTLDs likely will increase, not reduce, the market power of some gTLDs."

Steve DelBianco: But is it - are his bullets - are they recommending two new metrics? Because we didn't have that.

Jonathan Zuck: Yeah, that's what it sounds like.

((Crosstalk))

Steve DelBianco: When we wrote these we didn't have these.

Michael Graham: I'm just wondering - this is Michael - the extent to which that traffic echoes the one - the traffic measurement that we had placed I believe it was in the Choice section previously.

((Crosstalk))

Steve DelBianco: And I recall that we did add traffic. And you're right, we did talk about user traffic in new gTLD...

Cheryl Langdon-Orr: Yeah.

Steve DelBianco: ...versus legacy. But traffic is not - yeah, his first bullet is the total number of second domains...

Jonathan Zuck: Unique to the - I think that our redirect is a more interesting measure than this. I mean, I - the fact that it's not a unique name doesn't mean that it didn't have value.

Steve DelBianco: Right but our redirect stuff and dead links was mostly to discover whether lots of these new registrations were not really meaningful exercises of choice because they weren't used as a way of, you know, relabeling in a meaningful way; they were just...

((Crosstalk))

Steve DelBianco: ...for defensive purposes. That's what a dead link would be.

Jonathan Zuck: Isn't that what...

Steve DelBianco: But that wouldn't be an evidence of choice. I guess what he's getting at is if you took a look at the new versus the legacies we would get more nuances as to how much competition they're providing by looking at the registrations as well as traffic.

And it strikes me as we could move these - we could add these metrics to the Competition section which for us is a bit thin, right?

Cheryl Langdon-Orr: Yeah.

Steve DelBianco: Because we do have a quantity of gTLDs and TLDs - I guess we could put in here new registrations in the new gTLDs that are open to the public versus those in the legacies that are open to the public as an interesting comparison.

Cheryl Langdon-Orr: Cheryl here, Jonathan. I just wanted to come in, you know, in support - surprise, surprise - for what Steve was saying but also to say the recognition of his final sentence about new gTLDs likely to increase not reduce - I wouldn't necessarily say market power but change in a positive way the effect of even in a transitory sense existing or legacy gTLDs is probably reasonable to recognize.

Certainly I've been in a number of fora going up to the release of the - this round of the new gTLD program - where this - everyone benefitting by the effect of other people's marketing and other activities and outreach was put to the table as a positive benefit. So I think that recognition is also fair enough as well.

And if we haven't made it bleedingly obvious that we understand that perhaps we could make it bleedingly obvious that we do. That may not change the metrics it just means that you have to consider that when you're analyzing the metrics. Thanks.

Jonathan Zuck: Yeah, I mean, I'm not sure that it - I'm not sure that that's clear as a sort of chronological remark the way that he's put it. I mean, it's - I think we can go ahead and look at some of these other metrics that - I mean, again because it doesn't hurt to track metrics in a sense to the extent possible.

I mean, the Web traffic is one that - if we're measuring already to some extent it might just be another (slice) and the number of second level domains that are unique to that TLD, I mean, that's going to take a little bit of work. But we can put it out there, you know, to receive more comments on.

Steve DelBianco: Jonathan.

Jonathan Zuck: Yeah.

Steve DelBianco: I think you're right. Cheryl, we are not economists and it's not really within our purview to say things like quote, this will likely increase...

((Crosstalk))

Cheryl Langdon-Orr: Yeah.

Steve DelBianco: Yeah, no where else in this document have we gone out on a limb to do that. And neither the Affirmation nor the resolution asks us to.

Jonathan Zuck: Yeah...

((Crosstalk))

Steve DelBianco: ...a statement, a speculative statement like this may increase market power.

Cheryl Langdon-Orr: But what I was saying, if I may, Steve, just to respond, is I think it is recognized that that may be an effect but that's the role of the analysis not of the definition and metrics per se.

Steve DelBianco: Great. Great, clarification. But having said that nowhere else in our document...

Cheryl Langdon-Orr: Yeah.

Steve DelBianco: ...do we discuss the potential implications of the metrics. And if we single that one out...

Cheryl Langdon-Orr: Aren't we responding to each of these people in a report?

Steve DelBianco: Okay great point. So we could note...

((Crosstalk))

Cheryl Langdon-Orr: ...we do that to the response...

Steve DelBianco: ...to him.

Cheryl Langdon-Orr: Because there's a number of times in responses that we've reacted to people to say why we...

((Crosstalk))

Steve DelBianco: You're exactly right. And sometimes we'll react by noting...

Cheryl Langdon-Orr: Yeah.

Steve DelBianco: ...in our matrix but not necessarily changing our advice letter.

Cheryl Langdon-Orr: Yeah. No, I wouldn't change the advice letter.

Steve DelBianco: Awesome.

Cheryl Langdon-Orr: ..I would note it.

Steve DelBianco: Fantastic. But I did think there's merit...

((Crosstalk))

Cheryl Langdon-Orr: ...my need for coffee hasn't been met yet so I'm not making myself clear. I'll try better in a little while.

Steve DelBianco: Oh no I think I get it. I'm sorry. But I did want to suggest that the two bullets in 61 I would recommend that we add them to our competition metrics since they are, I believe, relatively easy to do especially because we've already started - we've already asked for metrics on Web traffic.

Berry Cobb: Right.

Steve DelBianco: And we believe that a zone lock can answer his first bullet. And those would be great pieces of data to throw into the Affirmation team when evaluating the open to public new gTLDs I guess versus the non open to public in the legacy space.

Jonathan Zuck: Olivier, do you have a comment?

Olivier Crépin-LeBlond: Thank you, Jonathan. It's Olivier for the record. I just wondered whether it was worth actually adding to our advice letter the fact that we are not looking at the consequences of the metrics but just of the metrics itself. Just as this will be mentioned in the reply to Mr. Flynn, I wondered whether it might be worth putting it in our main text as well since it doesn't seem to be obvious.

Jonathan Zuck: You mean it's not obvious that this is part of our remit you mean?

Olivier Crépin-LeBlond: Yeah, it's Olivier again. It's not obvious whether it's part of our remit or whether it's not part of our remit.

((Crosstalk))

Olivier Crépin-LeBlond: I think that it's not part of our remit but correct me if I'm wrong; I might be confused as well, I don't know.

Jonathan Zuck: I think we all agree that it's not so you think as part of the advice letter that we should just mention that that wasn't part of our remit so that limits...

Olivier Crépin-LeBlond: I just thought just one line because obviously we have questions and suggestions which are very valid indeed. But if we don't explicitly say it I wonder whether it might not lead people to thinking that we're missing something.

Jonathan Zuck: Okay.

Cheryl Langdon-Orr: Can we address Michael's points in the chat, Steve, probably from you? Cheryl for the record...

Jonathan Zuck: Yeah...

((Crosstalk))

Jonathan Zuck: ...I mean, my guess is we won't have targets for these. I haven't been identifying myself.

Steve DelBianco: Yeah, I would - to answer that I would add for instance under our competition metrics we have a handful on suppliers and we have two of them that are in measures related to prices for domain registrations.

Recently we modified the definition of competition, I believe, to pick up a little bit more about this market rivalry aspect that the USG was pushing for. And we don't really have competition metrics that measure market rivalry in terms of its outcomes of market rivalry.

Like evidence of market rivalry might be that, oh, there's a significant quantity of registrations that are unique to the new gTLDs; they don't appear anywhere else in the legacy or ccTLD space. So Jonathanzuck.org already appears so if he got jonathanzuck.photo that wouldn't be unique in the new gTLD dotPhoto.

Cheryl Langdon-Orr: Oh yes, yes, yes, yes.

Steve DelBianco: So I think the first bullet he's asking for is a relatively simple measure that could be done at the snapshot at the end of the year or perhaps every month, I don't know when, but a snapshot of registrations in the new gTLD space where that same string does not appear as a registration in any of the zones in the legacy space or the CCs. What's everyone think of adding a metric for that? It wouldn't have a target.

Jonathan Zuck: Yeah, I don't think so either.

Michael Graham: This is Michael. I'm looking back - I'm cheating - I'm looking at the advice letter. And one of the metrics that we added there under the measures of competition was quantity of total second level registrations per gTLD and ccTLD on weekly or other interval basis.

And I suppose that somehow this - I'll back up from there as well. And as well up front we have quantity of gTLDs before and after expansion and then registry operators. So somewhere within those three it seems that this unique SLDs fits after one of these; I'm not quite which one. I think perhaps after the last one which is the quantity of total second level registrations per gTLD.

And then under that would be number - quantity of second level registrations which are unique to gTLDs.

Steve DelBianco: To the new gTLD, right.

Michael Graham: Right.

Steve DelBianco: And we do agree we would not try to set a target for that?

Michael Graham: Yes. And in fact the one that we added here of the quantity of total second has no target.

Cheryl Langdon-Orr: Just observe.

Michael Graham: Right, it's just observe. I don't know if that's something on a weekly basis though, which was the measure that we had put down for that new one.

Steve DelBianco: Yeah, I think that's a lot of work to do because you have to literally check every second level string in the zone against every other zone to know if it's unique.

Cheryl Langdon-Orr: You have to have a snapshot.

Michael Graham: Correct, that's what I would shoot for, the year and through...

((Crosstalk))

Steve DelBianco: You guys want to propose monthly or annual for that - annual snapshot?

Berry Cobb: This is Berry. This is Berry. The latest language for that metric is quantity of total second level registrations per gTLD and ccTLD on a weekly or other interval basis.

Cheryl Langdon-Orr: Other interval is fine.

Steve DelBianco: I know but those are just raw quantities; they have nothing to do with the unique count that requires a row by row scan so a total count is not the same thing as a unique...

Cheryl Langdon-Orr: No but when we use the language for the unique we can use other intervals or appropriate intervals.

Steve DelBianco: Okay.

Michael Graham: This is Michael. I agree with that and leave it open to them to determine what...

Cheryl Langdon-Orr: Yes.

Michael Graham: ...what they want...

((Crosstalk))

Steve DelBianco: Great idea.

Jonathan Zuck: (Unintelligible).

Berry Cobb: This is Berry. So I've got two actions - recommended actions out of this. The first is to add the two bulleted metrics to the Competition section. And then we'll also add a line somewhere in the advice letter that these metrics do not consider potential consequences of the metrics themselves but we are only measuring, which I believe we already have one sentence close to that but can probably just be evolved.

Okay any other comments with respect to 61?

Steve DelBianco: Are we in agreement that the second bullet would also become a metric or do we think we've already covered that under choice? Can somebody refresh our - did we add one to choice about traffic that covers this second bullet?

Berry Cobb: Yes. It is the last metric, Website traffic is a potential indicator of trust, exercise choice and effective competition. User traffic in new gTLDs should be compared to user traffic in legacy gTLDs - a sampling.

Steve DelBianco: I think that's great. Then we can check the box and say we've agreed with both of his bullets and we have them covered.

Jonathan Zuck: I think that's right.

Berry Cobb: Okay moving onto Comment 62 also by Michael Flynn. "In fact all of the measures of competition including innovation that finally are adopted should be applied immediately without waiting for the accumulation of one year's experience under the latest gTLDs to ICANN's two earlier gTLD expansions."

"This would accomplish three things: First it would provide the snapshot of the gTLD system prior to the launch of the new gTLDs as proposed by the INTA - as proposed by INTA. Second it would allow the testing and refinement, if indicated, of the proposed measures of competition and innovation using actual currently available data on the past decade's new gTLDs that ICANN also claims would increase competition and innovation."

"And third it would provide immediate evidence bearing on the likelihood that ICANN's claims in support of this most recent gTLD expansion would be vindicated."

Steve DelBianco: This is Steve. Our advice letter already said, quote, the working group recommends that ICANN staff begin to collect appropriate measures and publish baseline data as soon as the Board has acted on advice from ACs and SOs. So I would just simply repeat that sentence and say we've already done that. He missed that.

You know, not to be rude to him but that is what we recommended in our letter. Not just for competition but for all metrics. That's Page 2 of our original letter near the bottom.

Berry Cobb: This is Berry. And I - I'm not looking at the language but that's existing metric where possible. I mean, there's some metrics that probably aren't going to be able to be baselined until other systems are in place.

Steve DelBianco: Right, we said appropriate.

Cheryl Langdon-Orr: Yeah.

Berry Cobb: Appropriate, right.

Steve DelBianco: Yeah, the working group recommends that ICANN staff begin to collect appropriate measures and publish baseline data as soon as the Board has acted on advice from the ACs and SOs. And I think that your timeline in the Council letter says the same thing. Staff begins recording metrics is even in the timeline. So I think let's move on. We got this one.

Jonathan Zuck: Yeah, I think this too.

Cheryl Langdon-Orr: Yeah.

Berry Cobb: Okay moving onto 63. This is in reference to our metrics that used to be on Page 11 which is the quantity of total TLDs before and after expansion assuming that gTLDs and ccTLDs generally compete for the same registrant. This is from INTA.

"In addition to the number of TLDs before and after expansion there should be an accounting of the number of second level domains in each new gTLD and of those second level registrations how they are used ergo redirected to registrations in legacy TLDs in active or dead or parked pages, anything that resolves to a page that says parked or that is simply advertising."

Michael Graham: Yeah, this is Michael. In reviewing this I think the two basic points have been addressed before we got to this point. Second - the number of second level domains in each new gTLD has been included in that new quantity of total. And also the parked, inactive I think was reviewed back in choice. Whether or not we need to point to that as - from the competition standpoint as well I leave that to be answered.

I think the issue of how they are used beyond what we've already identified which is trying to look and make sure that they are not merely defensive is beyond the scope of what we can do at this point. So I think both of these points are already covered unless someone reads more into this than I can see.

Jonathan Zuck: I mean, I think - this is Jonathan for the record. I agree, Michael, that I think they're covered in that we've done what we can along these lines. I don't think that we can, you know, apply the, you know, Google (unintelligible) algorithm to them to figure out whether or not they're full of links or something. I mean, that seems beyond the scope of something that we can study.

But other issues in terms of where they actually go whether they represent redirects I think that that stuff we've already built in.

Cheryl Langdon-Orr: I agree. Cheryl here. Let's just say that in our response in the matrix.

Michael Graham: Yeah. Michael again. I think that would be good and it also would clarify that those have been addressed simply that they were addressed before we got to the question .

Cheryl Langdon-Orr: Yeah.

Jonathan Zuck: All right, should we move on?

Cheryl Langdon-Orr: Yeah.

Berry Cobb: Oh I'm sorry, I was on mute. So moving on to 64. This is with respect - this is from INTA on an existing metric which was Metric Number 3 on our old Page 11, quantity of unique gTLD registry operators before and after expansion. "Two times seems low. We believe this metric would only measure the

expansion of the DN space not the extent to which actual competition increased."

"We suggest the following targets: ratio of unique gTLD registry operators, for example operators who own only one gTLD to a total number of gTLDs before expansion and after expansion should at least double at one year and three years from expansion."

Michael Graham: This is Michael. Now I'm cheating again and going - and looking at the three-year targets in the advice letter for this. And it has a number - unique operators, okay. Increase of two times over 2011 and then it has 16 - Footnote 3 - I'm not certain what that is referring to.

Berry Cobb: This is Berry...

Steve DelBianco: Sixteen is the quantity that were in place in 2011 and 3 is the footnote number.

Cheryl Langdon-Orr: Yes.

Steve DelBianco: So an increase of 2x over the 2011 when 16 is in parens would imply that the target was to double, the 16, 2x 16 which is 32 assuming that that's still the right number. We might have done a few tweaks to those baseline numbers based on some comments that came in, right, Berry?

Berry Cobb: Correct. That number is now 14.

Steve DelBianco: So 2x 14 is 28, Michael.

Berry Cobb: Which I believe from - at least the number of current applications will blow that number out of the water.

Michael Graham: Yeah, and I'm trying to look and develop the argument why - what - and I did not work on the competition portion of this other than generally. But here again it's looking not at this straight number that we have here which is unique gTLD registry operators but of the ratio of unique gTLD registry operators to the total number of gTLDs.

Steve DelBianco: That wasn't what - I'm sorry just to clarify what the competition thing did is we looked at supply-side, Michael. We tend to say that the registrant and users were measured on the choice stuff but when it comes to competition we looked at supplier competition.

Cheryl Langdon-Orr: Yes.

Steve DelBianco: So it's not relative except that we explained our rationale for our targets is that we that if you doubled the number of suppliers in a given market I think most people - and not too many of us on this call are economists and I'm certainly not - but most people would say that if you doubled the number of suppliers in the market - it sounds like you made things more - you promoted competition.

Michael Graham: Okay.

Steve DelBianco: That's where we came up with it. And we probably suspected it was going to be easy. The only way we would have missed it when we wrote this would have been that very few people came forth to propose new - it was all VeriSign and Afilias proposing the TLDs. It might have been hard to get to 2x.

But in fact Berry's right, we're going to blow this one out. But I still think 2x shows that you've promoted competition.

Michael Graham: Would that be a one-year or a three-year or an introduction target? That would be my question.

Steve DelBianco: We were asked only for three-year targets and so that is what we responded with.

Michael Graham: So would this then be - and I'm testing what the metric is looking at - if this increases competition and we're looking at people coming into the market place - should this not be a comparison three years out to what it was before but three years out compared to the initial run of new gTLDs?

That is to say if this is a world of competition is that number going to increase after the initial splurge of numbers?

((Crosstalk))

Steve DelBianco: Michael, here's a quick answer. We are measuring the expansion of the gTLD program. So if you took a snapshot three years after it started and there were 30 new operators still standing - 30 operators still alive - and 100 of them had gone away you would still compare 30 to the ICANN world in 2011 when there were 14.

And I realize that the creative destruction of the market could cause a lot of these guys to disappear. But the Affirmation review simply looks at did the gTLD expansion...

((Crosstalk))

Steve DelBianco: ...promote competition. And if we doubled the number of suppliers that are still standing three years out you can unequivocally say we've promoted competition. It might have been better if more of them survived but that's neither here nor there.

Cheryl Langdon-Orr: Yeah.

Jonathan Zuck: Agreed.

Michael Graham: This is Michael. And I guess I'll ask this and perhaps it's already built in here. I understand that and it makes sense to me. It creates competition but if that competition only exists at the three-year, I mean, it's going to be easy to reach that unless every, you know, there's a huge number of legacies which can't exist.

But if that number actually decreases dramatically between one year after introduction, which is basically when the first gTLDs are going to go live, to three years out if that decreases then doesn't that reflect something on whether or not we actually - the extent of competition I guess since we're just answering did we encourage competition through this process? Yes. And I suppose that's enough of an answer if that's all we're going to get at.

What I was saying was maybe we need - this needs to be compared at a couple different places and if not that's fine.

Steve DelBianco: As with any metric we hope they'll do interim assessments of its. This one turns out to be, Michael, one of the easiest things to assess. You could do it annually, you can do it monthly, any of us can do it. But in terms of a three-year target we've doubled, I still think that's the appropriate thing to measure.

Do you want to put something in our advice letter recommending that this metric be assessed at regular intervals?

Michael Graham: I'm thinking about that, Steve. But I guess my question to that is whether or not that is appropriate to the metrics that we're going to put forward. My definition of competition like - and I'm not an economist - but as I look at economy and such is it's too early to say it's a success or a failure until you are able to measure over time and compared to other portions. I think yes...

Steve DelBianco: You're right about that, there could be a declining - this is only one metric of many for competition, first of all, so there's no success or failure with respect

to missing one metric of a dozen. We never meant to imply that. The whole system - the whole expansion has failed because you missed X metrics; that wouldn't even be our position.

Michael Graham: Right.

Steve DelBianco: What we have said though is three years out if you doubled the number of - you doubled the number of suppliers as you had before the expansion, Michael, I got to believe you can unequivocally say that that means they promoted competition according to that metric. That metric at least is evidence of promoted competition.

It may be sub optimal in that dozens and dozens of new entrants died in the three years in between so competition is not as good as it could have been. What we're simply saying what would be a metric three years out - a target three years out that would be evidence of promoting competition.

Michael Graham: Right. Now...

((Crosstalk))

Steve DelBianco: ...all we are left with no is whether you want to argue for a higher number than 2x but I don't think we can ask - I think we could straight faced - can say that you should have measured what it could have been, should have been and would have been if more had survived.

Michael Graham: Right. Let me think - I don't think I would want to add a line if that's going to go beyond other than an acknowledgement. And I don't know it's appropriate in the advice so I'll leave that to you all.

If it's appropriate to make a reference to the fact that although this is intended to measure competition in a snapshot it does not look at long-term trends either economically or competition for space in the DNS. We're just

answering the simple question as I understand it, correct me if I'm wrong, did introducing the new gTLDs increase competition.

That's answering it one place at one time and if someone wants to do a further analysis overtime that's beyond the scope of this particular metric. Trying to get out of writing a sentence.

Jonathan Zuck: (Unintelligible).

Berry Cobb: Okay so this is Berry. I'm definitely going to have to go through the MP3 to capture all the comments made here. But in terms of recommended action I'm seeing none at this point and that our current metric satisfied what was trying to be accomplished.

Steve DelBianco: Right. That would be my feeling.

Cheryl Langdon-Orr: Yeah.

Jonathan Zuck: Believe so.

Berry Cobb: Okay moving right along to 65 is a shade of a different color except it's for registry service providers instead of operators.

Steve DelBianco: Same rationale, Michael. We said 2x, the number in the previous set. And we said that the previous set was six, that the old world has six registry operators in the G-space and that doubling that would take you to 12 - double the number of suppliers.

Michael Graham: Could I get a quick definition distinguishing registry service providers from registry operators?

((Crosstalk))

Steve DelBianco: ...takes you down that way a little bit. It defines it more by example than by definition but it says - because registry service provider is a defined term in the new gTLD program. It's the vendor who's running the zone file as distinct from the operator who's the person who signed the contract with ICANN.

((Crosstalk))

Michael Graham: Okay so that would be, for example, the back end service providers.

Steve DelBianco: That's right. And for politically correct reasons I think we stopped calling it back end a while ago. But VeriSign, Afilias, Neustar, Core, PIR and Mid Counties Cooperative Domains were the six unique gTLD registry service providers in place in 2011.

Now, Berry, did we also get a comment that we should have counted some others or does that six-number still hold?

Berry Cobb: If I recall I believe the six-number still holds. Yes, the only change was just removing the text in the title but no comments with respect to the number or quantity of service providers. Even and - I guess take the example to real world is even with the latest delegation, XXX, which is also the Olympic Games, but Afilias is the back end provider - I'm sorry, the registry service provider for them.

Michael Graham: This is Michael. I will note that reading through the gTLD applications I think they overwhelmingly refer to themselves in the old terms.

Cheryl Langdon-Orr: That's not our problem, it's theirs.

Michael Graham: So 65 I can go with that without there being any necessary change in that - that clarification.

Berry Cobb: Okay great. All right moving on to Comment 66. This is from INTA as well and regarding our current metric of relative share of new gTLD registrations held by new entrants for purposes of this measure new entrants are gTLDs run by registry operators that did not operate a legacy gTLD.

The comment is, "We believe this metric might not adequately measure the expansion of the DN space nor the extent to which actual competition has increased. It also appears to be quite a low target. We suggest the following target: Number of gTLDs owned by new entrants should represent more than 85% of total new gTLD registrations."

Cheryl Langdon-Orr: Cheryl here, Jonathan.

Jonathan Zuck: Yes.

Cheryl Langdon-Orr: I think this is one of those respond in the matrix issues. And I - my view is we should point out that yes we are encouraged to set three-year targets but we're not attempting to make a set of aspirational models nor set what would be a success or failure for a new gTLD round. That's the role of the review team.

What we're doing is setting definitions and metrics associated with those definitions that may be meaningful for the use in that analysis. I mean, why argue 85%? Why not 63% or 27%, you know, I mean...

Jonathan Zuck: That argument might take place but I don't know that - given the fact that...

Cheryl Langdon-Orr: It's not our job to do it, yeah.

((Crosstalk))

Jonathan Zuck: Right. The review team can override anything that we...

Cheryl Langdon-Orr: Exactly, yeah.

Michael Graham: Well this is Michael. And the reason for that - unless I'm reading the wrong line - is that new entrants should have at least 20% of total new gTLD registrations is what we were reacting to. So there was an aspirational 20% at least which we felt was woefully low.

Jonathan Zuck: That who thought was woefully low?

Michael Graham: ICANN - INTA.

Jonathan Zuck: INTA.

Michael Graham: In looking at that as - and it appeared to us to be there as an aspirational figure in which case we were suggesting 85% rather than 20%. So your 60% was not far off the mark, Cheryl.

And I guess I would say then an approach to this might be to set up not - to remove an aspirational figure and introduce a trend although as with the number of unique operators I think it's sort of a one-time thing and even looking at it three years out that figure may change. But we're not looking at that change we're just looking at the increase.

Jonathan Zuck: Yeah, I mean, I'm just concerned us spreading too much over this because this is going to be - this very number is going to be a subject for probably public debate and also the...

Cheryl Langdon-Orr: Yeah, the review team.

((Crosstalk))

Michael Graham: Well on a three-year target - this is Michael again - rather than have a figure there for this should we have a proposal to that team that they establish a

reasonable figure that - I don't know how you would apply what sort of scrutiny you would apply to determine that it's realistic.

And also the fact that if we wait for that team that team then can set up a figure that they can easily meet rather than having, from this point of view today, a figure we think might be appropriate and putting that down. And then when they change that for the actual thing someone may ask why did you change that and, you know, test it in that way. That would be the one reason I would think to keep a figure in there so that if it's a change then that change is explained and we are signaling that.

Jonathan Zuck: Right. Well and the review team (unintelligible) choose a figure soon enough to be - to not represent the change, right? I mean, it's...

Michael Graham: Right. The change is already going to be - have occurred and they can consider. So it's sort of like, you know, the Olympics, who do you want to win them we'd give them that score. Hate to suggest that's happening but. So this way we at least make a proposal looking forward. It may be totally wrong but if they change it that's fine but it's simply something that they would then, you know, explain the change.

And I think in the letter itself I think it is clear that the targets that we are establishing are just suggested targets that should be reviewed at the time that the review team is put together.

Jonathan Zuck: That's right. I mean, I think again they're going to probably go back through these and pick and choose the metrics they like and choose targets for them to be the framework for their review. I mean, that's probably what's going to take place. There is no way to get a commitment from them in advance as to what the relevant target is going to be.

Cheryl Langdon-Orr: They don't even exist yet.

Jonathan Zuck: So - exactly. So, I mean, I guess, you know, part of this is just the optics, Michael, of whether we appear to be trying to front load this as a successful program or as an unsuccessful program. And we need to find some neutral middle ground where we seem realistic in these objectives so that if it is true that the program is leading to choice and competition that they're attainable.

Eighty-five percent seems neutrally high in terms of the community not treating that as a bias - a failure bias.

Michael Graham: Well I'm wondering - someone can supply the words - perhaps we replace a number there with something - some term like a meaningful or significant percentage of new gTLD registrations should be owned by new entrants. Someone can put a better gloss on.

((Crosstalk))

Steve DelBianco: ...hand up there, Jonathan.

Jonathan Zuck: Oh sorry go ahead. I'm only looking at that half the time. Go ahead Steve.

Steve DelBianco: Hey Michael it's Steve. I see where you're going in terms of softening the language but if we took a number out and went with the words "meaningful and significant" that is the same as saying nothing at all. And if that's where we needed to go and happy to say no target offered.

But I think we look crazy and contradictory if we were to state a very high target. And let me explain why. So much of what your constituency and your clients and my constituency did was to raise the bar for applicants to have proven experience registry service operators so that if you had a new applicant who just had a really good idea we encourage them through the scoring system to have a operator who is experienced running a secure back end, having financial strength and scale.

And in many ways we biased this toward picking experienced operators. On top of that the costs favor experienced operators whose economies of scale would allow them to add new zones to their database servers with a lower incremental cost than building a new registry service provider from the ground up.

Nonetheless we've had a number of brand-new entrants who came in, people like Antony Van Couvering, Minds + Machines, for instance. And they're using open source software and think they can do it cheaply so that's great.

But this number - if we end up trying to go with your suggestion and put a very, very high number in we would actually be penalizing for the fact that many people chose experienced operators for reasons that you and I insisted be in that Guidebook. I'll stop there.

Michael Graham: Steve, it's Michael. Just respond to that I think what we pressed for were experienced service providers so that new entrants could be registry operators relying on the expertise of those service providers; that's my understanding.

And to the extent that that occurred - and I believe it has - then the operators - a larger percentage of those are new entrants or able to be new entrants. What you're referring to as operators I think both ways are actually the service providers.

Steve DelBianco: Yeah, I'm only talking about service providers; that's all this is, right?

Michael Graham: No. This is new gTLD registrations held by new entrants.

Berry Cobb: This is Berry.

Steve DelBianco: That's a good point.

Berry Cobb: Just to help complicate this even more what exactly is a new entrant? You know, let's look at Donuts, Inc. Is...

Steve DelBianco: Yeah, it's hard to call them new.

Cheryl Langdon-Orr: But they are a new entity in inverted commas.

Michael Graham: Three hundred and seven new entities. I think you have a point there though; what is a new entity, a new entrant? I suppose my understanding was new at the operational level of a registry. And to the extent that that is true it's - as with the 2 times from 14 to however many applications there are for gTLDs it's an easy figure to get to 20% maybe even 85%.

From what you've said, Steve, I agree meaningful and significant may mean very little but I think it means more than nothing at all. And again it's do we want to impose what we believe is our expertise or encourage the review team down the line to utilize what expertise they have? The danger being that and expertise is - even if it is totally objective begs the question of whether or not it was established in order to answer the question.

So, Berry, this is Michael again. I guess there are two things then within this - unless we have them defined clearly someplace else - what is meant by new entrants. Entities defined within this as gTLDs run by registry operators that did not operate a legacy gTLD so I think that is fine.

But then the figure of 20% perhaps it simply seems as low as the 2 times and both of those will be criticized going forward and perhaps...

Steve DelBianco: Michael, as long as we don't go with something really, really high like 85%, if you want to go with significant or meaningful I would use either of those words. I wouldn't object to that because I was never that comfortable doing targets to begin with. That's just speaking for myself.

Michael Graham: Michael again. We did use - and I forget the language I think we used significant as an adjective or an adverb in some of our earlier metrics. If we might use a term similar to that unless there's an objection to that I think that would address the issue that INTA had with this particular figure.

Cheryl Langdon-Orr: Great.

Berry Cobb: Olivier.

Jonathan Zuck: Yes, Olivier.

Olivier Crépin-LeBlond: It's Olivier - thank you, it's Olivier for the transcript. Sorry, it takes me a little while to end mute. Just one thing which has come out of discussions I've had last week at the European Summer School on Internet Governance which was that it appears some new gTLD applicants have actually created shell companies for each one of the new gTLDs which would effectively mean each one would be a new registry operator.

And we haven't quite defined of how we see a registry operator that did not operate a legacy gTLD. Are we looking at the actual entity, the company itself? Or are we looking at the people running that company? Are we looking at the holding company?

I'm not sure whether we have a definition for this. And as a result I have a feeling that the metrics for this one, if we don't define what we define as a registry operator that did not operate a legacy gTLD I think that this metric would probably be quite worthless due to the number of applicants that have created single-purpose companies or single-purpose vehicles for each gTLD application.

And I understand the reason why is to mitigate the risks so that if one company gets used for whatever reason that it is the liability would be limited solely to that entity. Thank you.

Jonathan Zuck: Yeah, I think it's going to be confusing to identify who the new entrants are really. Anyone have a suggestion to break the impasse here? Should we table this and move on perhaps?

Steve DelBianco: Do we have a simple poll up and down? Leave it at 20% versus the word significant. Is that really...

((Crosstalk))

Steve DelBianco: ...just what we're polling right now because we could get this done.

Michael Graham: This is Michael. Let me type something out and send it in real quick.

Cheryl Langdon-Orr: Okay.

Jonathan Zuck: Michael, what did you say you were going to do? I'm sorry.

Cheryl Langdon-Orr: Going to type something out and send in.

Jonathan Zuck: Okay. All right can we just (unintelligible) a placeholder and move on? I'm worried we're going to run out of time again. We're on the home stretch.

Berry Cobb: Okay moving on to Row 67 from INTA with respect to our existing metric wholesale price of new gTL domains offered to the general public do not evaluate gTLDs with registrant restrictions.

                  And respect to the three-year target we originally had said no target compare and then it was changed - or the suggestion - the comparison to 2011 and two unrestricted legacy gTLDs prices after expansion should decrease.

                  The comment is, "Essential that comparative information be obtained before expansion as well as at one and three years after expansion. If possible a

survey of prices from before the announcement of the expansion, i.e. prior to June 2011, should also be obtained and compared. While lack of target is understandable we believe the sign of completion would be a steady decrease in price. And this is generally what should be targeted to determine success."

Michael Graham: And I believe the word "completion" in that should have read competition.

((Crosstalk))

Cheryl Langdon-Orr: Yes.

Jonathan Zuck: We've gone around on this pricing quite a bit I guess. I mean, the problem is is that the nature of competition might not be price; it might be specific service offering, security, I mean, I guess you're excluding registrant restrictions here. But the means that a particular registry is using to compete might be different than price. I mean, this may lead to higher price alternatives that still represent competition.

Cheryl Langdon-Orr: That's true.

Michael Graham: This is Michael. Real quick I think that if that could be expressed in the response that that would be appropriate because I think that is accurate in that applying that - even the minor change here that was being suggested suggests a particular way of looking at changes in prices indicating competition which may not be accurate. So, I mean, if the response could be made in that way I think that would be appropriate.

Jonathan Zuck: Berry, were you able to capture that?

Berry Cobb: No, I've given up. I'm just going to have to go back to the MP3.

Jonathan Zuck: Okay.

((Crosstalk))

Berry Cobb: ...some notes as I can but it's getting too out of hand.

Jonathan Zuck: So, I mean, basically I think just in the response we are going to say that competition can take - I guess this is probably for the MP3, right, that competition can take many forms only one of which is price and we should not start out with the expectation that the principle competition in a new gTLD space will be based on price but could instead be based on security, abuse protection and other differentiators that registries choose to offer.

Berry Cobb: Very good.

Michael Graham: This is Michael. And I would only add to that in addition to changes in price since that is being looked at in this metrics.

Jonathan Zuck: Sure. All right so it's buried in the MP3 for you, Berry.

Berry Cobb: All right thank you. All right moving on to Row 28. This is from Dr. Paul Toomey. It was also I think our first public comment that we received. "I think the definition of competition offered by the working group is adequate measures that are then offered failed to reflect fully the benefits of competition."

                  "The measures outlined in Page 11 of the draft report focus on market share and price impacts but the economic literature on the benefits of competition also stress its role in driving innovation and the emergence of improved or new products and services."

                  "The US Federal Communications Commission has outlined his economic analysis prolifically. Free and open competition benefits individual consumers and the global community by ensuring lower prices, new and better products

and services and greater consumer choice than occurs under monopoly conditions."

"In an open market producers compete to win customers by lowering prices, developing new services that best meet the needs of customers. A competitive market promotes innovation by rewarding producers that invent, develop and introduce new and innovative products and production processes. By doing so the wealth of the society as a whole is increased connecting the globe versus competition."

He strongly recommends that the working group develop some measures which focus on innovation and on new products or services. "In my mind one example of the innovation benefits of the previous rounds of introducing new gTLDs is the new use of DNS by dotTel although I recognize this is not initially welcomed by all members of the technical community."

"While the TLD is controversial for other reasons the representation and warranty provisions of registration under dotXXX may also be another example limiting registration to ensure authoritative expression of identity as in the case of dotCat is another."

"These are benefits which may benefit various and smaller segments of the user base. This is a valid outcome of competition indeed one of the positive outcomes of open competitive markets is the focus of producers on the needs of more specific segments of the broader consumer base."

"Monopoly markets tend to talk of users; competitive markets tend to talk of market segments. The measurement of competition should also seek to capture that development."

Steve DelBianco: This is Steve. If I could get in on that?

Jonathan Zuck: Yeah.

Steve DelBianco: One way we could go is a note to definitions. But in this case I think we could add a row to the competition metrics at the bottom saying that qualitative assessments of innovations serving all or segments of the registrant and user markets, which was defined as consumer. The source of it would probably be a rather expensive study - not a survey but a study. And there would not be a target.

I think this would serve the interests of our working group because it would be a more explicit recognition that non price factors such as innovation to serve a segment or all potential registrants. And it would be nice to put that at the very bottom below the price metrics. I'll stop there.

Jonathan Zuck: I mean, that - I think that - this is Jonathan for the record. I think that that makes sense. I mean, the - obviously measuring innovation is going to be a difficult thing to do in a metrics-oriented way. And so it is going to have to be some kind of a study that looks at different segments and whether they were addressed (unintelligible) innovation I guess.

Yeah, I think - I don't know what - I have no idea what a target would look like that for either so I think it's just going to be a recommendation that they take a look at it. I think we can largely agree with his comment and suggest that a study be made.

Michael Graham: This is Michael. Just to say that I would agree with that. I mean, what is being looked at I think - what he suggests looking at I think is very important. But how to do that is not something that's amenable to survey - even survey questions; certainly not...

((Crosstalk))

Steve DelBianco: Yeah, not a survey but a study, right?

Michael Graham: Right.

Steve DelBianco: Where we'd have to pay somebody to go out and look for these non price. And I did propose a measure of competition in the chat.

Cheryl Langdon-Orr: Yeah.

Jonathan Zuck: Right. I mean, I think your other point is valid too, Steve, which is that it's a more overt attempt to at least try to capture the notion of non price competition which we keep talking about and that we know will be a factor in trying to get people to use one TLD over another.

So, I mean, we know those kinds of offers and deals and things are going to be out there. Different cataloguing structures for dotShop and underlying search, you know, functionality, etcetera. I mean, there's going to be advertising, there's going to be a lot of potential innovation that we don't even know right now. So taking a look at that I think it's probably worthwhile.

So how do we immortalize that procedurally?

Steve DelBianco: So, Jonathan, it's Steve. I did propose memorializing it by adding a new row to the competition table.

Jonathan Zuck: Right.

Steve DelBianco: What would we do to determine if there's support from the working group on adding the row?

Jonathan Zuck: Does everybody want to put their hand up if they agree and we'll have a little vote?

((Crosstalk))

Jonathan Zuck: A subset of the working group but...

Cheryl Langdon-Orr: I'll put a tick instead. Well that looks clear enough for a subgroup.

Jonathan Zuck: I think so. Looks clear enough for a quorum. And as we put this back - the report back out then others on the list serve...

Cheryl Langdon-Orr: On the list can respond, yeah.

Jonathan Zuck: Can respond if they like.

Cheryl Langdon-Orr: Works for me.

Jonathan Zuck: Okay.

Steve DelBianco: So, Berry, in the response - working group response to Paul Toomey we can indicate we've added a competition metric for qualitative assessment of innovation, etcetera.

Berry Cobb: Okay got it. Moving on to 69. This is from Chuck Gomes back in the Costa Rica section - session. I believe we've probably covered this but just in case.

                  "The quantity of unique gTLD service providers before and after expansion is ccTLD operator becoming a gTLD provider counted? If you include ccTLD operators just be clear on it it affects the reality of the goal." And Bruce Tonkin had made a sub comment to that as a macro view of organization and talking about the market place the whole market place is one review, section review is the gTLD market place.

((Crosstalk))

Steve DelBianco: I thought we already handled this.

Jonathan Zuck: I think so too, yeah.

Steve DelBianco: Help me out, Berry. I thought we conceded and agreed on this a long time
                  ago.

Cheryl Langdon-Orr: Yeah. Yeah.

Steve DelBianco: That they're not new if they were already running a ccTLD. That would be my
                  sentiment. And I don't know how to express it to this. But if you already ran a
                  ccTLD you wouldn't be counted as new. So that's the new entrants but Chuck
                  is raising this with respect to our different metric? Yeah, I don't get how his
                  comment works.

                  He would mess us all up because if he put into the 2011 all of the unique
                  ccTLD operators there's probably 270 of them. So what would our metric be?
                  It can't be 2x of 270. That's crazy because the 270 is a constant. We had 270
                  ccTLD operators before and we'll have 270 after; there's no change.

                  So I would try to fashion a reply that says that ccTLD operators are not
                  counted in the before or the after. However in measuring of new entrants on
                  the supply side a previous ccTLD operator would not be considered a new
                  entrant if they also operated a new gTLD.

Jonathan Zuck: Cheryl.

((Crosstalk))

Cheryl Langdon-Orr: My hand shouldn't be up. Sorry, I don't know why that's still up. I'm getting
                     rid of it.

Jonathan Zuck: I mean, I feel like we addressed the question of counting...

Cheryl Langdon-Orr: Yes.

Jonathan Zuck: ...ccTLDs. I mean, and that's the best way to dispose of this comment. I mean, I think you're obviously right, Steve, that we can't, you know, double the number that exists now, etcetera, as a target for it. But we did discuss the role that ccTLDs play in (unintelligible) competition.

Berry Cobb: This is Berry. And I do recall that we discussed this on prior comments.

Cheryl Langdon-Orr: Yes.

Berry Cobb: And I want to say that it was probably the written statement or written public comment from the Registries Stakeholder Group that brought this up as well as his verbal comment here in Costa Rica. But I'm in the weeds right now; I can't find - or I can't remember where we discussed this but I believe we did address this. I'll take the action to find out where we reviewed it before.

Shall we move onto 70? This is the last comment for the competition metrics section from the United States government which is a rather lengthy comment.

"Competition measures. We have proposed that the definition of "Competition" focus on the actual effect of market rivalry between TLDs, TLD Registry operators, and Registrars resulting from the introduction of new gTLDs."

"We do not believe that any of the proposed criteria included in the table containing measures of competition will be very useful in meaning such rivalry. The three-year quantity targets are not based on any assessment or prediction of the effect of market rivalry and seem to relate more to the goal of increasing the nominal amount of consumer choice."

"However, quantity data alone-without information about price and quality, as well as information about how changes in each of these three factors have

been motivated by rivalry among market participants-provide little information about the degree of rivalry and competition among market participants."

"Without further study and more information, it will be impossible to determine if success in meeting the quantities proposed in the table will produce benefits in excess of costs, which, as we discuss in the introduction, should be the pre-eminent issue in any assessment of the effects of new gTLDs."

"Evidence of market rivalry would tend to show that a competitive act by one or a group of competitors had an adverse effect on the demand for another competitor's product. For example, if a Registry operator were to lower its (product) or introduce a new service, an examination of whether that action resulted in a lower demand for the domains sold by another Registry operator should be conducted."

"It would also be relevant to learn if other Registry operators lowered their prices or introduced new services in response to the actions of the first Registry operator."

"To obtain evidence that would permit an evaluation of market rivalry, we would like to see a time series of price and quantity sold data for each TLD. Ideally, the data would cover sales and prices at the Registry and Registrar levels, although we recognize that compiling such information at the registrar level would be more difficult."

"In addition, data should be collected showing the dates on which new products or services were introduced and sales data for such products and services. These data could be supplemented by survey data in which Registries and Registrars can be asked about the effect on their sales of the conduct of their competitors and the actions they took in response to competitor conduct."

"A review of the data and survey information could reveal the extent to which competitive conduct serves to constrain the exercise of market power by other firms."

"Finally, the measures of "unique" operators should exclude closely related operators, such as subsidiaries, affiliates, and others related through service contracts."

And they had also included an Appendix B to this. "Although we share the concerns that the exchange of price or output information among competitors can facilitate collusion, we disagree with any suggestion that the competitive effects of the expansion of TLDs can be adequately assessed without collecting and studying price data."

"A properly designed study that includes safeguards on the collection, processing, and publication of the data should allow ICANN to conduct such a study without increasing the likelihood of successful coordination among competitors."

"Among the safeguards that may be appropriate to prevent misuse of such data by competitors are, one, having a third party manage and collect the data; two, publishing only data that is not competitively sensitive because it is sufficiently historical as to be of no use in facilitating collusion; and lastly aggregating the results of any study so that pricing by individual competitors cannot be determined."

"Other safeguards, such as limiting access to the data collected to non-competitors may also be appropriate and help to prevent anticompetitive effects."

Steve DelBianco: This is Steve to get in the queue.

Jonathan Zuck: Go ahead.

Steve DelBianco: On the first item we had already agreed during definitions to add the words, "and/or actual" in front of the words, "market rivalry" because our original definition had potential. And Berry, your markup had said, "potential for or actual" but I would propose "potential and actual" market rivalry. Because it isn't an or it's an and. They're going to look at the potential and actual.

So I'm talking about the definition of competition. Because the first part of dealing with this comment is to recognize that potential alone, as in the quantity of suppliers who show up, is not adequate. And we've already discussed adding measures of weekly price and quantity although I don't see that in the marked up letter, Berry. I'm a little confused by that.

So the first response here is that the working group agreed to modify the definition of competition so that in just the potential for market rivalry - and it says the potential and actual market rivalry.

And then we have to say that with respect to metrics on actual market rivalry the working group added measures for weekly data on the quantity - and what did we say with respect to price? We do have a wholesale and retail price already so weekly - Berry, what did we say on pricing? Because I can't find it in the markup document.

Anyone else on the call remember that we agreed to add some weekly statistics without targets so we could measure the quantity of registrations, new registrations in every zone and we debated whether we would also ask for the pricing because what the government - US government is asking for is both quantity and prices thinking that they'll observe some data.

I had long discussions with them and they quite agreed that non price factors matter. They quite agreed that switching costs are such that people will not willy-nilly dump their dotCom to pick up a dotBike. They get all that. But they'd still like us to recommend that the data be captured.

And that gives them 99% of this. We changed the definition and we asked for the data necessary to support the analysis later on. We don't have to do the study but the analysis on the study could be done on the data that we're recommending be gathered.

Jonathan Zuck: I mean, how does that translate into a recommendation? That we're gathering enough - is that they could do the analysis and we just - to mirror on recommending it?

Steve DelBianco: I wanted to add a row to the measure of competition which gives them exactly what they ask for, weekly data on the quantity of new registrations in every zone - new and total so you could measure the number that were dropped.

Jonathan Zuck: Just collect the - I mean, collect the data and then...

Steve DelBianco: Right. In every row in our metrics table of the four columns for every row the first three are what's the measure, what's the source, what are the difficulties in obtaining it. And the three-year target happens to be a row - a column that's thrown onto the right and we ignore it in some cases and this would be one where I would ignore it.

Jonathan Zuck: Right.

((Crosstalk))

Steve DelBianco: If our advice includes the significant collection of quantity data...

((Crosstalk))

Michael Graham: This is Michael.

Steve DelBianco: But I'm still at a loss - I think we did this work a month ago and I did not capture it adequately but we talked about whether the pricing data could be obtained...

((Crosstalk))

Berry Cobb: This is Berry.

((Crosstalk))

Steve DelBianco: ...to ICANN. Because if they learn the total amount of revenue - you divide the revenue by the registrations and maybe that gives you some average. Go ahead.

Berry Cobb: What version of the Word document are you looking at?

Steve DelBianco: V1.7. Is there a later one than that?

Berry Cobb: No. So on Page - what is - Page 17 towards the bottom there's the quantity and total of second level registrations on weekly or interval basis. And then what we - we've already mentioned that we capture wholesale pricing and retail pricing as the last two metrics which gives us what the USG was looking for.

Steve DelBianco: Great. The pricing data down below though doesn't correspond to the weekly captures. So the question for you, Berry, thank you for that - thank you for finding it - would be that on the quantity row is it at the week snapshot - is it possible to capture there average prices on a weekly basis?

Because the US government is claiming they ought to be able to observe in a classic economist ivory tower way that they ought to be able to observe price and quantity impact due to the competition showing up.

So one way that say dotCom would keep its quantity of registrations up is they may cut their price from $7 which is the wholesale price - they may cut their wholesale price. But Com has to report their prices because they're controlled by ICANN in the contract. But all the other TLDs don't have to report their prices and therein lies our problem.

The US government is claiming we could cover our antitrust problem by modifying the footnote we have in our document because in our footnote that's where the ICANN legal team acted as if it's...

Cheryl Langdon-Orr: Yeah.

Steve DelBianco: ...it's impossible for them to gather price data. So I do think we should embrace the government's recommendation that price data could be gathered by a third party that would be responsible for aggregating and reporting the data so that ICANN does not have access to proprietary information and that it would not be leaked in an inappropriate way.

The ICANN legal within Appendix B and they really sent us down a rat hole by pretending that the very measurement of prices...

((Crosstalk))

Steve DelBianco: ...was akin to forcing ICANN into the role of regulating prices. And that's just BS. We never implied that. And I think we even put a little footnote to their footnote saying while the legal concern was appreciated the working group notes that none of the measures suggested would require ICANN to issue any recommendations for how registrars and registries price their domain names.

So I like that but it really doesn't get to blowing up the privacy element either. Because ICANN said that requiring submission of non public pricing from its contracted parties would change ICANN's relationship with its contracted

parties. Okay we'll acknowledge that and say that the source of the pricing data would be an independent - or put the word "third party" statistical - third party vendor that could be relied upon to retain confidential pricing data.

Jonathan Zuck: Makes sense.

Steve DelBianco: Sorry, Jonathan, I didn't hear that.

Jonathan Zuck: I mean, I think that makes sense. I'm sorry; I'm going back through and reading this. But are there other comments?

Cheryl Langdon-Orr: Other than agree.

Jonathan Zuck: This is quickly becoming a war of attrition. The - I looked at the row to try and track the weekly data. I mean, the worst that can happen is that there'll be pushback on the impossibility or cost or something associated with retrieving that information. I think we...

Cheryl Langdon-Orr: Yeah.

((Crosstalk))

Jonathan Zuck: ...spirit of the data collection if it can be collected by a third party and, you know, ICANN can be protected.

Steve DelBianco: And, Berry, since we already had a row in our initial draft that said retail price of new domains we simply noted that it was difficult to automate the collection and there was a legal note that we referred to in Appendix B. But under the source column let's change it - currently in the source column we wrote the word Registries and Registrars but we would change it to say Registry and Registrar data gathered by a third party.

And I think if we put that into gathered by a third party into both of those rows we'll have addressed some of legal's concerns in Appendix B and be seen as being responsive to the USG's comment.

Berry Cobb: Okay noted.

Cheryl Langdon-Orr: Yeah.

Berry Cobb: This is Berry. We have five minutes remaining. Again this was the last comment for consumer - or competition metrics. It sounds like the takeaway minus a couple small changes is that, you know, we've accommodated most of this. And like I said I'll be going through the MP3 to capture the response and make sure we get it adequately documented.

Should we call this a stopping point for review of the comments which will take us just into the general comments.

((Crosstalk))

Cheryl Langdon-Orr: How many - we got four of them are there? How many is there?

Berry Cobb: Yes, four. I'm sorry, three.

Cheryl Langdon-Orr: Oh okay. Do we want to deal with it now and extend or not?

Steve DelBianco: This is Steve. I have a hard stop at 5:00 for an interview so I'll have to leave you go on that.

Cheryl Langdon-Orr: No I'd rather have you in it, Steve. Let's deal with it next week.

Jonathan Zuck: I would to.

Cheryl Langdon-Orr: Yeah, fair enough.

Jonathan Zuck: At least the end is in sight.

Cheryl Langdon-Orr: Yeah, right.

((Crosstalk))

Cheryl Langdon-Orr: Until next week then.

Jonathan Zuck: All right. Thanks everyone.

Cheryl Langdon-Orr: Okay. Bye.

((Crosstalk))

END