Consumer Trust Meeting

TRANSCRIPTION

Tuesday 29 May 2012 at 19:00 UTC

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accurate, in some cases it is incomplete or inaccurate due to inaudible passages or transcription errors. It

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authoritative record.

Participants on the Call:
Cheryl Langdon-Orr - ALAC
Steve DelBianco - CBUC
Olivier Crepin Leblond - ALAC
Jonathan Zuck - IPC
Michael Graham - IPC
Rosemary Sinclair - NCSG / WG Chair
Tobias Mahler - Individual
John Berard- CBUC / GNSO Liaison

ICANN Staff:
Berry Cobb
Julie Hedlund
Nathalie Peregrine

Apology:
Carlos Aguirre - NCA
Jonathan Robinson -

Coordinator: Thank everyone for standing by. This conference call is being recorded. If

                     you have any objections, you may disconnect your line at this time. And you

                     may begin.

Nathalie Peregrine: Thank you very much (Laurie). Good morning. Good afternoon. Good

                     evening. This is the CCI call on the 29th of May 2012. On the call today we

                     have Cheryl Langdon-Orr, Tobias Mahler, Olivier Crepin-LeBlond, Michael

Graham, Jonathan Zuck and John Berard. We have Rosemary Sinclair joining us very shortly and Steve DelBianco will join for the second hour of the call.

We received apologies from Jonathan Robinson and (Carl Zagudith), and from staff we have Berry Cobb, Julie Hedlund and myself, Nathalie Peregrine. I would like to remind you-all to please state your names before speaking for transcription purposes. Thank you very much and over to you.

Cheryl Langdon-Orr: Hello.

Rosemary Sinclair: Hi, Rosemary.

Jonathan Zuck: Do you want to take the lead of walking through the - continuing through the document?

Cheryl Langdon-Orr: Rosemary has just joined by the sound of it.

Rosemary Sinclair: Good, thanks, Cheryl. Hi, all. Sorry about that.

Cheryl Langdon-Orr: Are you on the hands-free though, Rosemary? We're all dying to know if you've beaten the technology.

Rosemary Sinclair: No, no, because I think the hands-free is only activated when I actually put the handset back in the cradle of the phone. So I'll need another model.

Cheryl Langdon-Orr: (Unintelligible). Okay.

Rosemary Sinclair: Never mind.

Cheryl Langdon-Orr: If you know anyone in the Telco industry here in Australia, they might be able to help.

Rosemary Sinclair: They might be able to recommend something.

Cheryl Langdon-Orr: Sorry guys, couldn't help it.

Rosemary Sinclair: All right. We'll press on. Sorry about the delay everybody. So...

Berry Cobb: Rosemary, this is Berry. I went ahead and got the call started for us, and I was just getting ready to go through the action items.

Rosemary Sinclair: Okay, great. Well, let's do that, Berry.

Berry Cobb: Great. First action item was to update the next version of the comment survey form with the USD comments. That has been completed, and that's what you see before you and I'd sent out to the list last week. So now this pool has all comments and a big thank you to (Tobias) for sending me a version of the PDF that I can cut and paste directly in the comments. So we won't lose translation with my summarization.

The second action item is to create a draft for the PowerPoint that we'll use for Prague. I've started a template, but I haven't really put much substance into this yet until we get - until we nail down our final definitions and some of our metrics, which may affect a little bit of the content of that. But I'll try to have the version out to the list by the end of this week so that we can start to work on that in parallel with the draft advice letters.

The last thing I'll say is we've only got two more sessions until the 12th of June. We've got one session scheduled for 5 June, which I suspect given the quantity of comments that we have to review, we'll probably need most of that. And finally, in terms of trying to construct the next version of the advice letter, I suspect given our time crunch, we may have to finalize it over the list or if the working group makes the decision to postpone the final submission, given some GAC input and those kinds of things, that date may change. But we'll find out about that soon.

The only other action that I'd like to discuss before we get back into the public comments, and because we have John Berard on the call, not to put a spotlight on you, John, but just if you could, can you give us a quick update about the GNSO Council and the deliberation with respect to this working group's actions and our work products and interaction with the GAC?

John Berard: Sure, Berry. This is John Berard. I had requested the work of this group be added to the GNSO Council GAC agenda for Prague. I don't think that it has quite made it there yet, and in lieu of that, we had put forward a letter for GNSO Council Chair Stephane to send the GAC, which essentially would let them know that we're working on this and general framework of where we were and soliciting their participation.

And now today there's activity on the council list that suggests - at least suggested by Jeff Neuman, who is Vice Chair of the council that the subject needs to be considered by the council before a letter can be sent. I have responded with the point that, you know, we're not straying outside the scope of the work. We have a work group and soliciting input, and, in fact, we're doing some political spadework in terms of letting the GAC know that the GNSO and the council shares its concerns.

And I don't know - I haven't seen any fallout from that. That all occurred about an hour or so ago, and as it develops, I'll keep you posted. But at this point, I don't have confirmation that we're either on the agenda or that Stephane is sending that letter that we had all agreed and he agreed was well worth sending.

Berry Cobb: Great. Thank you, John. This is Berry. Just to add onto that, basically, what's going on is when Rosemary you sent the letter out to Stephane, of course, it hit the council list and it was distributed amongst the council list to provide any input or negative feedback with regards to the content of the list.

Stephane had suggested that discussion about the letter would be sent on the consent agenda, but that was rejected as it was felt that there needed to be bigger council discussion, not so much about the content of the letter, but more about what the working group itself has done - doing and the contents of the advice letter itself.

With that, there was already a pretty packed agenda set for this coming GNSO Council meeting, and there's debate as to whether there'll be enough time to adequately allow deliberations around this topic to fit in the agenda item. And so if it doesn't make this next council agenda, and just like what John had said, then there's probably a chance that the letter won't be able to get sent until the council has a chance to deliberate a little bit more.

But I just wanted to make sure and give the working group a heads up as to where we stand (unintelligible).

John Berard: All right. And again, this is John Berard speaking. In suggesting that a discussion needed to be held prior to a letter going, Jeff Neuman said that the letter seemed to suggest that there already had been some council solution, that there already had been some agreement reached at least on the framework of things, and my point to him was that he was misinterpreting the letter, that it was totally within the scope of the working group's activities to suggest and that there were some - as I said earlier - some political reasons why it was a smart thing to do. So we'll see where it - how it plays out.

Rosemary Sinclair: Okay. Well...

Cheryl Langdon-Orr: Rosemary, Cheryl here, if you've got a minute.

Rosemary Sinclair: Sure. Cheryl, that's fine.

Cheryl Langdon-Orr: My thought is in the record for the chat. I certainly understand the points - the perspectives of trying to put things into very packed agendas. I've had a

little bit of experience of packed agendas in my years. And I have no doubt that I would lose absolutely no sleep at all over whether or not the discussion point made it into a GNSO Council and GAC interaction at this Prague meeting. So that's just neither here nor there.

I am a little crestfallen, I suspect, is the kindest way I can put it about the perspective taken at least by the executive in the GNSO Council on the update note. But it is what it is. So there you are. I suggest it's just sort of tough shit.

However, I think it would be appropriate for - the GNSO should be made aware then - no (unintelligible) at the GNSO (unintelligible) that depending on the earlier awareness rising with the GAC was a tool we as a workgroup were planning on using to encourage and ensure a earlier product output.

In keeping with things like ATRT recommendations of earlier GAC involvement in such things, et cetera, et cetera, et cetera, blah, blah, blah - we can write all of that as you like - you know, we regret any unavoidable delay to our own work plan, because I don't want to be - have the workgroup being put between a rock and hard place. So I mean - there's nothing we can do about it, you know, tough.

Rosemary Sinclair: Yes.

Cheryl Langdon-Orr: We don't have to go quietly down the black hole.

Rosemary Sinclair: Yes.

Cheryl Langdon-Orr: You know.

Rosemary Sinclair: Yes. All right. Well, can we mull that over and just come back quickly to it at the end of the call? I recall another episode where GNSO Council - it was a couple of years ago - was very exercised by some communication that was

felt at the time to be out of scope, but I think subsequently settled down. And so I guess that's the back story on this reaction. But we've had...

Man: (Unintelligible)...

Rosemary Sinclair: ...you know, some individual members of GAC express interest in the work. So it may be that some more interest comes from that direction over the next little while, and perhaps now that there's been some focus on the letter by GNSO Council members, others will read the letter and perhaps not feel quite so exercised by its contents.

So if we could just come back at the end of this meeting, I'll make sure we've got time to just see whether we do want to take some follow-up in response to this timeframe that we face. And then we can follow that up or just come back to our next meeting. So...

All right. Well, why don't we, as usual, press on with this work?

Berry Cobb: Rosemary, this is Berry. Just...

Rosemary Sinclair: Yes.

Berry Cobb: ...real quick just to follow-up with that. I don't want to give the impression that any of the dialog going on in the council list will undermine this topic being a - an agenda item on the weekend session in Prague and with the GAC. I do fully believe that those will still continue. It's just more about the letter itself.

Rosemary Sinclair: Yes, yes. I mean and that was the situation the last time there was such discussion about the letter. The work actually continued. So...

All right. So Berry, could you remind us now where we're up to in the public comments?

Berry Cobb: Yes, Rosemary. I think - this is Berry. So as I had mentioned, all comments had been loaded into the review tool now, and at the conclusion of our last call, I believe we had stopped somewhere around consumer trust metrics. But we agreed that with the USG comments that we'd go ahead and start back up to the top, just quickly review through those that we've completed until we come to the next comment that we hadn't addressed yet.

So give me a couple of minutes. I'll run through these that are at the top that we completed until we get to a fresh one.

Okay. The first one, again, was the ALAC comment based on the consumer definition and the working group recommended that we add a specific note to that definition on Page 4 to include the concern with respect of the use of consumer.

The second was one of the comments from the Costa Rica session, which wanted a delineation between registrants versus professional registrant. The working group determined that there'd be no action, because our definition covered them all.

Moving into the consumer trust definition section, Number 3 and Number 4 are essentially the same comments but from 2 different documents from (INTA), and again, it was - the working group had agreed that we would refine the definition from what it states now is, "Fully fulfilling its proposed purpose," to "Fulfilling the registry's proposed purpose." So that covers both three and four.

The fifth comment was from (Bruce) in the Costa Rica session, and essentially after the working group deliberated, I think that the action is that we're going to include another note with respect to this definition denoting that some members of the community indicate that consumer expectation should be included, but that also applicants of new gTLDs were only responsible for what they state in their applications. So when we start to draft

that particular language, we'll then highlight that within the next advice letter and make sure that we're capturing that comment correctly.

Comment Number 6, which is the continuation from (Bruce's) comment with respect to consumer trust, and then general takeaway that the working group needed to modify the tone within the advice letter that we are just measuring this data and not recommending any actions by (AS) ICANN or any other party with respect to the data, and the better that we made that clear would help draw that delineation between the measurement versus action.

And - okay - moving onto Number 7. This was the comment from Ray Fassett out at Costa Rica, and he wanted to define a consumer trust with respect to Question 18 of the application in terms of defining trust. And there was several - much dialog across the working group as to how we should go about approaching this, and the takeaway that I got was that within our list of metrics, we don't have a single delineated metric that specifically calls out answers by gTLD applicants with - within their application for the new gTLD itself.

And so I think the overall action here would be to create a new metric within consumer trust that states to analyze answers by gTLD applicants for their particular strings. And just as I alluded to earlier, when we add that to the next version of the advice letter, we'll highlight that to make sure that we capture that appropriately, because we all did agree on the working group, that it wasn't just Question 18, but it's really a plethora of the answers within the application as to the promises and the services that they intend to deliver to meet that expectation.

Comment Number 8 was also from Costa Rica, and this was from (Evan). And this was with respect to the scope issue around ICANN and the use of the DNS. And the working group agreed that we needed to improve upon the few paragraphs that we already have in our advice letter and more explicitly

state that it's going to be very difficult to measure and to truly define when the DNS is in use and when it's not with respect to scope for ICANN.

Comment Number 9 was from (Rudy Vancenick) out of Costa Rica, and this created the dialog with the session that we had with the compliance team. But essentially the working group agreed that there needed to be two additional metrics added to consumer trust and specifically calling out complaints that are submitted to ICANN for registries or registrars. And those will be added as well.

Just as a quick follow-up on this based off of our last session, there was - I went back and listened to the MP3 to try to uncover what the exact action items were for compliance regarding these two metrics and all the metrics in general. At the end of the dialog, there really wasn't any particular action item for compliance to come back with.

But the long of the short was that there was a specific discussion that certain metrics based off the USG comments perhaps to be added to the InterNIC forum for ICANN. We've had some dialog between last session and this session, and understanding that dialog is - that request really immediately falls within implementation, but yet this - the advice itself hasn't been submitted to the ICANN Board even. So it's really difficult for ICANN to go and implement those things whether it be for tracking or for any other purpose.

But more importantly is even if we could wave the magic wand and add those to the complaint form, there is a considerable amount of work as to not only with the - what would occur with monitoring that data, but there actually has to be a resolution passed in creation of those. And some of those requests may fall outside of ICANN's scope. And so there needs to be accrual analysis done before those types of changes can be added.

So to tie a bow on this part and collaborating with compliance at the end of the week, we'll be submitting a response back to the working group. Basically it'll state that we take note of these particular requirements. It kind of falls within an implementation issue at the present time, but there is parallel work and budgeted work effort that will complement this overall metrics package. And in response to Cheryl's question, yes.

Sorry. I'm running through these, but I just want to get us to the new ones. All right. So that's the first nine. Any questions or comments before we move into a fresh one? That was a really fast recap of what we had covered in our previous sessions.

Rosemary Sinclair: Any comments from anybody? If not, then let's move ahead.

Berry Cobb: Great. Thank you. So Comment Number 10, this is from Ray Fassett back in Costa Rica as well. This was still within respect to the dialog of consumer trust, and Ray's summarized comment here was that given the effect of consumer trust, should any metrics be - measure if or about ICANN as being a contracted party here as well.

Jonathan Robinson had responded in the session and that - stating that that was a useful perspective because ICANN has to fulfill their promise as they are a party to the contract as well. It's - I don't have the exact transcript up in front of me, but it was a very short dialog in response to that. But - and the short is, you know, should there be metrics within our metrics package here that monitors ICANN activities as well?

Rosemary Sinclair: Rosemary here...

Jonathan Zuck: Do we have examples of - I'm sorry - this is Jonathan Zuck. Do we have examples of complaints on the ICANN side of things that it would be worth monitoring? Is there a way to make this more concrete?

Berry Cobb: This is Berry. I don't know of examples right off hand, but I would think that the kind of the world is your oyster - think about various ways ICANN is involved in the operations of the DNS and whether they contribute to consumer trust choice and competition. And I could imagine that there could be metrics that maybe even already are tracked today. I don't know for sure, but if not, I'm sure there are some metrics out there that may contribute to this.

Rosemary Sinclair: Rosemary here. In some senses, this could take us back to the whole discussion about compliance and the performance of the compliance function in terms of creating an environment in which there can be high levels of - over these consumer trusts. So I'm not sure though that beyond the metrics that we've been suggesting already that there's anything I can think of that would add to our view of ICANN as an organization providing a supportive framework for consumer trusts.

So I - perhaps our response at the moment is that we're understanding the comment but not sure what practical action can be taken. Jonathan.

Jonathan Zuck: Yes, I mean I guess the consumer trust piece would probably center around consumer facing aspects of ICANN, which would be the compliance and the tipsy ombudsman functions of the organization, because most of the organization isn't consumer or more broadly registrant facing except those two areas. So maybe there's something related to response times.

But I think there's actually some of this already built into the metrics that we have if we're talking about registries continuing to perform the function that they laid out for themselves, because that will be part of the enforcement function with them if they - you know, if they suddenly change their business model, then they'll be out of contract compliance, and that'll give ICANN the opportunity to make sure that's the case. And they'll need to do their job for that consistency to happen. So there's already some ICANN-related metrics, I guess.

Rosemary Sinclair: Okay. Well, perhaps if we just note...

Cheryl Langdon-Orr: (Unintelligible) - Cheryl here, Rosemary.

Rosemary Sinclair: Yes, Cheryl.

Cheryl Langdon-Orr: I just want to respond to Jonathan's point in his chat where he suggested that compliance ombudsman response job, I'm aware that certainly the previous ombudsman was concerned about those particular metrics and that he also had issues with a response time or in some cases, lack of response, with the ICANN Board reacting to specific recommendations he made to improve situations that he had identified.

It might be worthwhile for - rather than to sort of dive in and try and second guess, to ask what, if any, systems or measurements the new ombudsman is collecting, is interested in collecting. I mean he's got the ability to do a full rebuild, and I think he possibly may be exploring some things. So there might be something there that could be looked at without us getting into a cart and horse situation such as we did with (Complesson), in which case...

Rosemary Sinclair: So...

Cheryl Langdon-Orr: ...we could easily ask him to give us a quick briefing on that.

Rosemary Sinclair: Yes, that's good. Thanks, Cheryl. The other thing that I was thinking - Rosemary here - whether we could just actually make this point a little clearer, the point being ICANN's own performance as the other party to the contract. So if we make the comments a little clearer, and I think that's what we've intended by the comments, then what becomes clear from this, is that we're looking for those tools of the governance that ICANN uses to manage its own performance as a contracting party, which takes us then to perhaps

an annual report by the ombudsman, an oversight of the compliance activities.

They're different sorts of metrics, I think, than the other metrics that we've been talking about, but nonetheless you then get some ways of oversighting (sic) ICANN's performance even if the timeframe is variable. And I'm not sure what we'd do about three-year targets. So are there any other thoughts about that or perhaps we could ask Berry to try to capture that in our recommended actions column.

Berry Cobb: Rosemary, this is Berry. Basically I had just that is that within the next version of the advice letters, that while we may not point specific metrics at this time, that as a general statement, you know, that we do recognize that ICANN is a party to these contracts as well, and that there may be certain metrics or performance attributes as the organization as a whole that may be worthy of investigation.

Rosemary Sinclair: That captures it well, I think. All right. So when you're ready, Berry, we could go onto the next point.

Berry Cobb: I'm just taking notes. One more second, please.

Rosemary Sinclair: Yes, no problem.

Berry Cobb: Okay. The next comment is Number 11, which is our first one for the United States government, and this is with respect to the definition of consumer trust. And I'm going to read through the proposed modification, and I won't read through the revisions to the note, as they're quite lengthy. But then I - after we read it, we'll open it up for dialog, and then we can dive into the details.

Okay. The proposed modification, which is kind of a combination of our existing definition, and then the USG attended to it. Actually they - yes,

"Consumer trust is defined as the confidence registrants and users have in the consistency of name resolutions and the degree of confidence among registrants and users that the TLD registry operator is fulfilling its proposed purpose and is complying with ICANN policies and national laws." I believe that's our version.

Their version - or I'm sorry - their appended element to this is, "Consumer trust also includes the confidence registrants and users have in the overall Domain Name System, and in particular, registry operators and registered efforts to curtail abuse, including respects for intellectual property rights, avoidance of fraud, crime or other illegal conduct as well as confidence in ICANN's ability to enforce requirements imposed on registrars and registry operators."

"Consumer trust must be assessed together with consumer choice and competition to aid in determining the overall costs and benefits incurred by consumers and other market participants from the expansion of gTLDs." And I'll just point out that this last sentence of this proposed definition is consistent across all of our other definitions and the USG takes the position that all three of these must be considered together or assessed together to do a thorough analysis.

Rosemary Sinclair: And was there - there was a third dot point. That was it, was it, Berry. There's - in my recollection of the comments, so was it they wanted to add a third dot point?

Cheryl Langdon-Orr: Yes, you did. That's the note.

Berry Cobb: Right, correct, yes. That's the notes...

Rosemary Sinclair: Got it. Okay. Jonathan.

Jonathan Zuck: Sorry. I had to turn the microphone back on. I mean I guess I'm concerned about taking our need to grid and turning it into a mishmash of the request of the USG. I mean it's - we've got a good way for people to look at individual metrics and make it less abstract than the idea of these need to be taken in together. I mean the fact we're creating a document with all three, I think based them all together, and we have areas in here that look at - certainly (unintelligible) for property protections and I don't know.

I think we should try to find ways to look at individual metrics from this place as opposed to responding to a call to restructure what it is we're doing, which I feel pretty good about. That's my two cents.

Rosemary Sinclair: Okay.

Jonathan Zuck: So if there's some way to look at fraud and crime or really with conduct as a metric, which I think at some measure we're doing through our compliance metrics.

Man: (Unintelligible).

Jonathan Zuck: But a lot of this is already there the more I think about it.

Cheryl Langdon-Orr: Cheryl here. I agree with you, Jonathan, but I think it's - the USG wanting to see its (artiflow) - sorry. Let me start that sentence again. I agree with you on two levels. Let me go for the easy one first. The repetitive sentence of consumer trust must be assessed together with blah, blah, blah, all right, I understand where they're coming from , but I agree with you absolutely. I don't think it actually belongs in the definitions of trust, choice, confidence. All right.

Jonathan Zuck: Right.

Cheryl Langdon-Orr: I would be happier if a recognition of that was wordsmithed (sic) into an overarching statement pre-metrics and analysis and target work in our advice letter with the recognition that that particular assessment is, of course, the job of the review team.

Jonathan Zuck: That's right. And then I think...

Cheryl Langdon-Orr: Yes.

Jonathan Zuck: ...the idea will be to take a holistic view of this.

Cheryl Langdon-Orr: Yes.

Jonathan Zuck: We're trying to...

Cheryl Langdon-Orr: Because it's not our job to do that. It's the review team's job to do that.

Jonathan Zuck: Right. And our job is to come up with some data that they might use to build into their...

Cheryl Langdon-Orr: Exactly. So I think that's what we can sort of...

Jonathan Zuck: ...analysis.

Cheryl Langdon-Orr: ...deal with it and remove that (offagism). But deal with it in a slightly different way by putting it in a recognition space...

Jonathan Zuck: (Unintelligible).

Cheryl Langdon-Orr: And (tanting) it to where it belongs, which is in the formative work of the review team yet to come. However, I have no problem with the additional expansions in some cases that they have suggested for the other definition, because they are specific to metrics we already have. It's kind of gilding the

lily, in my view, but I don't have a problem with gilded lilies, especially when it is a clear indication that we have listened and heard to input.

I also am very aware that that second part of the first - no, sorry - second part of the second sentence - my screen is so small, I really can't tell if my is a comma or a full stop somewhere in there. But anyway the bit that goes on about ICANN's efforts et cetera served in perfectly to the issue we were talking in Point 10, and I just wanted to highlight that one of our responses to Point 10 raised by Ray in Costa Rica would be in the recommended action to note the modification to our definition of trust.

So it's kind of nice if - in my view, if the U.S. government to have written a perfectly reasonable response to answer not only their input but that of others. Thanks, Rosemary.

Rosemary Sinclair: Thanks, Cheryl. Okay. So in terms of what we do, are there any other comments? Jonathan, did you want to come back in?

Jonathan Zuck: I mean I think I agree with that assessment. I mean I'm just always worried about, you know - there's one thing is to gild a lily and then the other is to create a definition that we haven't created measures for.

Rosemary Sinclair: Yes.

Jonathan Zuck: We just need to be careful of that. I mean I think this whole thing is a - is my case of personal crusade against the kind of abstract evaluations that have plagued ICANN over the years. And so I just don't want to see an expansion of the actual definition that becomes too abstract. But I'd certainly agree within the introductory text conceding the need for a holistic view of this when it's ultimately evaluated by the review team and making - ensuring that the - that USG understands that we read and considered this - these suggestions. I think that's very important.

Cheryl Langdon-Orr: And Jonathan, Cheryl back again. I think we are, in fact, measuring enough with the metrics in the table we have for this definition.

Rosemary Sinclair: Yes. Rosemary here. Sorry.

(Michael Gran):   Oh, I'm sorry. This is (Michael). I was going to jump in.

Rosemary Sinclair: Go, (Michael).

(Michael Gran):   And I think I agree with both Jonathan and Cheryl. I think the last sentence in the proposed definition really is an admonition more attuned to the advice letter in requiring or suggesting that the need for a holistic review. Hence, it's not really appropriate in a definition.

And then also I think the same might be said of the first part of that that as Cheryl was just saying, there's an admonition from the GAC that these are considerations that should be made in determining consumer trust. Whether or not it's really part of the definition, I would question. Certainly part of the admonition to the review team that this is something for them to review. And I think whether or not the metrics as already proposed covers these - all of these subjects that the GAC is asking us to look at already is something that we should keep in mind in going through those now.

Cheryl Langdon-Orr: It's going to come back with - sorry, Cheryl here - I get very excited about this. My apologies. It's going to come back to us anyway. It will be the GAC advice. We can pretty well guarantee that, you know, (Suzanne) is going to be holding the pen very strongly on the GAC advice. So, you know, forewarned is forearmed, guys.

Rosemary Sinclair: Rosemary here. I'm - when I look at this, I actually see a number of different things all included in the paragraph. So perhaps if I can just dig through it. The first point, which is the encouragement for us to - for us and indeed everybody else who works with our advice, to make sure that people

are looking at the overall Domain Name System and not to get too lost in the long grass, so to speak. So that first couple of lines in the paragraph, I think we're saying they go in the kind of front of the advice letter in some way.

Then we get to a very particular point, which exercises the GAC on an ongoing basis, bearing in mind, of course, the point that Cheryl has just made, this comment is from the U.S. government not actually from the GAC. But the point is expressed in particular registry operators' and registrars' efforts to curtail abuse. That's the nub of the point that's being made, forgetting for a moment the examples, and so we have a number of metrics that go to registry operators' and registrars' efforts to curtail abuse.

Then they go to the next bit, which is to include a number of examples, individual property rights, fraud, crime or other illegal conduct, and we do deal with a number of those but not others of them. Although our particular approach is the inclusion of the phrase "applicable national laws" actually picks up a number of those.

Then we go to another separate point, which is about consumers confidence in ICANN's ability to enforce the requirements that have been imposed on registrars and registries. So again, we're back to compliance. So compliance is in this frame whether it's now or whether it's later.

Then we go to quite a separate point, and I think this is the point which raises a question of scope. And we actually have to be quite careful about this last sentence, which says, "Consumer trust must be assessed with consumer choice and competition." We don't have any problem with that, because that's our path.

We - to look at consumer trust, consumer choice and competition together from the board resolution, but the last is, "Our task is to look at whether the new gTLDs promote consumer trust, consumer choice and competition." The U.S. government's point goes to assess whether those things aid in a

determination around the costs and benefits. And I think that's a separate point. I think that's a separate point.

Our task is to look at the expansion of the gTLD space and see whether it promotes consumer trust, consumer choice and competition. This note is suggesting that we look at consumer trust, consumer choice and competition to determine whether or what the effects are on the costs and benefits incurred by consumers. So I think we're going to have to pull this paragraph apart and respond to various bits of it in differing ways.

Jonathan, did you want to come in and then I've got (Tobias) in the queue. Perhaps if we go...

Jonathan Zuck: Sorry. That's my hand - I left my hand up front the last one.

Rosemary Sinclair: Oh, okay. Fine. Thank you. (Tobias)?

(Tobias Marlis):   I just wanted to support - this is (Tobias) - the last point you mentioned, Rosemary, about this being out of scope. I looked at the information of commitment, and the text actually says that the review by ICANN should be broader than the part we're looking at right now in Section (9-3), it says, "If and when the new gTLDs have been in operation for one year, ICANN will organize a review and examine competition, consumer trust and consumer choice as well as the effectiveness of the application and evaluation process and safeguards put in place to mitigate issues."

So basically if we combine all of these, then perhaps we get closer to what the U.S. government wants us to do here. So I would say it's somehow in scope for the AoC review, but out of scope for this particular working group. Thank you.

Cheryl Langdon-Orr: Yes, absolutely. That was Cheryl in rampant agreement. Sorry.

Rosemary Sinclair: Thanks, Cheryl. So Berry, would you be able to just unpack this point in the way that I have suggest probably having to go back to the transcript, I guess, because it's quite a lot to deal with, I know?

And then perhaps in terms of Jonathan's point about the clarity of the tool that we're using, perhaps if we just drop out some revisions to Note 1 and focus on responding to the individual points (unintelligible) unpacked so that we get 4 or 5 points not 1 lumpy paragraph, because of the need to respond in different ways to the different parts of the paragraph.

Cheryl Langdon-Orr: Rosemary, Cheryl here. We do need, however, to still do what their proposed text for the notes.

Rosemary Sinclair: Yes.

Cheryl Langdon-Orr: Yes. I'm sorry I just - when you said - asked Berry to get that out, I just wanted to make sure it was still captured, that's all.

Rosemary Sinclair: Yes. Yes, good. I think - what I'm thinking is that once we unpack the paragraph, then - and we certainly do have to discuss this, but it seems to me that the notes - and, in fact, I thought we had agreed that the instance of the notes, which is overall confidence in the Domain Name System ought to go into the front of that document rather than (drag) their solutions and mix it.

(Tobias)?

(Tobias Marlis):   Yes. I'm not sure if I had followed all the - all that was said. One of the (unintelligible) at the AoC, but perhaps one way of unpacking this would be to take this part of the overall Domain Name System, so it - the trust in the overall Domain Name System, include that into our definition and basically not include the rest of the paragraph that is double underlined. But rather have that as part of an addition to the notes.

Cheryl Langdon-Orr: Yes.

(Tobias Marlis):   So that would be the third point under Note 1. So this way we basically take the point onboard but not have an extensively lengthy definition. Thank you.

Rosemary Sinclair: So Berry, are you clear on what we are asking you to do?

Berry Cobb: Possibly. This is Berry. I guess first and foremost is, you know, based on the review of public comments process, we don't owe a response back to any one author. What we do owe is the working group deliberating it and then coming to some form of consensus as to whether we agree with the comment or not.

Now in reference to how we move forward, if I have captured this appropriately, it sounds as though, and this is prior to (Tobias') comment is that we would capture the essence of what they're trying to say here in the summary or in the beginning aspects of our advice letter, but that it wouldn't change any of our actual definitions.

Or the second version is what (Tobias) has just mentioned, and that is to slightly modify our definition to include the overall Domain Name System or confidence of registrant and users have in the over Domain Name System and then the remainder of the suggested commented be added as an additional note for consumer trust. So whichever which way the working group wishes to go with.

Cheryl Langdon-Orr: Cheryl here. Just in response to Berry's understanding. I just want to be really clear what I was suggesting is to accept - is almost what (Tobias) is saying, I would suggest. But I was very particular about taking the whole of their suspensions of the USG's first sentence, that is including the bits that we're talking about fraud, crime, illegal contact, et cetera, et cetera and having that integrated in. If we can wordsmith it into less words, then that's fine too.

But why I was moving that way, is I felt that that also picked up and satisfied the concerns raised and discussed in Costa Rica with the full successive and Ray Fassett and Jonathan Robinson intervention.

Rosemary Sinclair: Sorry, Cheryl. Rosemary here. In terms of ICANN as a contracted party?

Cheryl Langdon-Orr: Yes, because ICANN is part of it.

Rosemary Sinclair: Yes.

Cheryl Langdon-Orr: I was killing two birds with one stone.

Rosemary Sinclair: Right. Okay.

Cheryl Langdon-Orr: Because it'd be an actual identifier, you know, ICANN's ability to enforce.

Rosemary Sinclair: Okay.

Cheryl Langdon-Orr: Yes, I just wanted that to you, because (Tobias') suggestion is a much more narrow version than what I was proposing, and I want to make sure that we all knew that there was a couple of options.

Rosemary Sinclair: Yes. So if we just follow Cheryl's suggestion for a moment, then our definition would read - going back to our definition, "Consumer trust is defined et cetera, et cetera, and registry operator fulfilling its proposed purpose and is complying with ICANN policies." And at that point we would put something in about ICANN enforcing its own policies. And then and applicable national laws including, and then we go to the list of fraud, crime or other illegal conduct.

Cheryl Langdon-Orr: Yes. Yes, (unintelligible).

Rosemary Sinclair: Have I got the right...

Cheryl Langdon-Orr: That would pass perfectly well.

Rosemary Sinclair: Okay. I've got the right sort of construction there.

Cheryl Langdon-Orr: Yes.

Rosemary Sinclair: So I was - might have a comment about that now that we're clear on Cheryl's suggestion. But (Tobias), I've got your hand up?

(Tobias Marlis):   I just wanted to emphasize that we're actually looking at two different aspects. One part is to keep the definition still readable and not to add too many details there, and the other thing is whether we, in fact, agree with the content of the suggestion. And perhaps there is a way to keep the definition readable without taking in all this - all these details. In fact, the U.S. government basically repeats itself in the two paragraphs that are double underlined.

And in the first version, which they wanted to have in the definition, there's also a mistake, because they speak about efforts to curtail views comma including respect for intellectual property rights. I would not count that as a - well, it's a bit strange formulation at least. It's much better in the next version where they say, "Curtail abuse and ensure respect for intellectual property rights." So that would basically give us one justification to take it in once rather than twice and select the formulation that is slightly better grasp of it. Thank you.

Rosemary Sinclair: Thanks, (Tobias). Okay. Now the other suggestion I think I'm getting is that we take the expansion and put that in a note in our advice letter, which would then allow us to be a bit broader. The construction of that one would leave our definition pretty much as is, but we would have a note that says - that expands complying with ICANN policies to include ICANN's own

enforcement and compliance activities. And the applicable national laws would include respect for intellectual property rights, avoidance of crime, fraud, et cetera.

So all that detail could be in a note so that as (Tobias) is suggesting, our definition remains relatively simple. In responding to this comment in our tool, we, I think, can be confident that a number of these individual points are actually picked up in metrics a little further down in our work.

At that point, our meeting registry operators and registrars if it's to curtail abuse, although I think we've got slightly different examples. We've not got a metric, for example, on people's efforts to curtail crime, although we do talk about - and now I'm mixing up two things that ought not be mixed up when I talk about fishing and spam and the like later on.

Cheryl Langdon-Orr: Yes, that - Rosemary, Cheryl here - the crime and the legal stuff, I just had that bucketed under the national laws is what the legal conduct in, you know, my space. Might be different to, you know, something on the...

Rosemary Sinclair: Sure.

Cheryl Langdon-Orr: ...other side of another hemisphere.

Rosemary Sinclair: Yes. So I think that's right, Cheryl. The best way for us to deal with it is to just link those instances to our point about applicable national laws, because of the variability that you do get amongst that language.

Now out of all of that, Berry, have you got anything you can work with?

Berry Cobb: This is Berry. I've got options. And for the - given the time crunch that we're in, might I recommend and if I'm correct, the two options are still somewhat the same, but they're somewhat different. Can we spread the load...

Rosemary Sinclair: (Unintelligible).

Berry Cobb: ...so to speak and Cheryl, can you maybe propose what your version is to the list and (Tobias), propose your version to the list? And we'll try to meet halfway on that amongst the list, and then we can determine the recommended action?

Cheryl Langdon-Orr: Okay. Happy to do that. But when we move through, there's going to be a repetition as far as I'm concerned at least. I'm only interested in tweaking into any of our definitions some of the early parts of each of their amendments. The - when it gets into the assessing together, that gets bucketed out to general text in the advice letter, and when it gets to the specifics of some of the note revisions, a lot of that goes into, in my view, what is the review team's work not ours.

                      So I'll only play with the definitional text is what I'm saying. The rest should be ditto, ditto, ditto.

Rosemary Sinclair: Okay. And (Tobias) are you happy to take that piece of work on?

(Tobias):   Sure, no problem.

Rosemary Sinclair: Thank you. Okay, thanks Berry.

Berry Cobb: Taking a few notes here.

Rosemary Sinclair: Oh okay. Just leave it there when you're...

Cheryl Langdon-Orr: Berry...

Rosemary Sinclair: ...ready.

Cheryl Langdon-Orr: ...could you do - (Tobias) (unintelligible) or like (Tobias) sent you the PDF - I would love to just capture the text out of that column. And of course I'm not having any luck cutting it and pasting it at the moment from this. So do you want to just (try) me the text in an email from definition of consumer trusts down through?

Berry Cobb: Yes, I'll email it to you.

Cheryl Langdon-Orr: Thank you. Just being lazy.

Rosemary Sinclair: It's better that we all work with the same picture. I think that's a really good idea. Okay.

Berry Cobb: Almost there.

Rosemary Sinclair: That's okay.

Berry Cobb: Okay, great. All right. Moving on, we start to move into the consumer trust metrics, which is territory that we've already reviewed. So the comment number 12 which was from INTA and they were basically looking us - oh yes.

So it was a specific metric that we had and we were looking to adjust the language of that metric to include at least measure experiences with phishing, parking sites, malware and then there was also the modification about the registrant and Internet user versus trademark holders and those kinds of things. So the recommended action is just to update the metric itself.

Comment number 13 again was from INTA and this is where we had our deliberation about significantly lower than relative incidence for our three-year target. And I believe that applied to that one in general. And then comments 14, 15 and 16 were all relatively the same, and that was to remove the before and after language within the stated metrics.

Woman: (Unintelligible).

Berry Cobb: And that will be consolidating UDRP and URS complaints as they should be
                    evaluated together. And also the clarification of what the relative incidence
                    means whether it be registrants, registrars, registries or the number of
                    domains as well as ensuring that our three-year target (stake) declining over
                    time.

                    Moving on to 17 which was a new metric - and Michael I believe you had the
                    action that you were going to come back to us with a - I'm sorry. This is for
                    the litigation - that you were going to come back to us with a possible
                    consolidated metric with respect to litigations around these.

Michael: That's correct. It's actually in two parts, one consolidating it and then also
                    determining if there was a good means for obtaining the information upon
                    which to base the metric. This is Michael, I'm sorry.

                    And I did put that forward to the small group that I was working with with
                    INTA. We were not able to come together before the Memorial Day weekend.
                    I'm hoping to be able to get together Thursday or Friday of this week to put
                    that together. So could - and I think - I believe that's 17 through 20, is it not?

Berry Cobb: Yes sir, it is.

Michael: Okay, to come back on those for them with a consolidated proposal between
                    now and the next telephone conference.

Berry Cobb: Correct, yes. Okay, great. (Unintelligible) so that takes us 17 through 20. And
                    then we're moving on to comment 21 again by INTA, and the working group
                    action was to modify the target to include significantly lower than incidence of
                    and relative incidence and legacy gTLDs. (Unintelligible).

And then moving on to comment number 22, this was the registry stakeholder group comment, and more specifically we were - they were touching in on the range of breach notices issued to registry operators in the plus or minus 5% of legacy gTLDs. There was an action for me to come back with specific numbers to help produce the working group's response.

As we discussed - as we discussed last week, there was only one registry breach notice that I could find and that was sent on the 27th of February, 2011 with respect to (.jobs).

And then in terms of the denominator, I guess we need to understand what is most important to put here is that one complaint for every TLD or is it one complaint for every registry operator. If it's the TLD, then it's 1/21. If it's by registry operator, then it's 1/16, both of which could affect the percentage.

Cheryl Langdon-Orr: Did you want a knee-jerk reaction from people there, Berry?

Berry Cobb: Any reaction's good, for starters.

Cheryl Langdon-Orr: I think we (unintelligible). I'm on the school of thought that says that it's the registry operators, not the TLDs because that way we can look to - the effect on our trust that will occur if by some bizarre and peculiar reason we have a less than perfect (actor) in that sector. That's my knee-jerk reaction. I haven't done a deep analysis on it.

Rosemary Sinclair: Rosemary here. Yes, I think it's - I think you're right Cheryl that when we're thinking about these numbers and metrics, then we ought to go in the direction of where someone can be accountable rather than, you know, living out there in (esoterica). So I think I'd support that suggestion.

Are there any other thoughts on that?

Berry Cobb: So...

Rosemary Sinclair: Well why don't we go in that direction?

Berry Cobb: ...this is Berry.

Rosemary Sinclair: (Unintelligible).

Berry Cobb: So I think I see Steve coming online, so hopefully he'll be joining us soon, but...

Steve: I'm here, Berry. Thanks.

Berry Cobb: Oh, there he is.

Cheryl Langdon-Orr: Perfectly timed, mister -- perfectly timed.

Berry Cobb: So Steve, we're reviewing back through where we left off almost, although we have been discussing things for an hour and a half - or an hour and fifteen minutes. We're just back to kind of where we left off last week with respect to the registry stakeholder group comment, which is line number - or row number 22 on Page 10 of the Public Comment tool.

And if you're logged - you are logged in. So I went and fetched real numbers. I could only find one breach notice for registries, which again was to (.jobs) on February of 2011.

Then the question becomes in terms of the relative incidence and the denominator aspect, do we consider it by the number of TLDs or by the number of registry operators. And within this certain state case, there's multiple TLDs owned by one registry operator, thus it would be 1/16 versus 1/20.

So that's kind of to bring you up to speed with the real numbers. Then the question becomes about what specific percentage are - do we actually come up with if we - if we use the number of TLDs, that basically gives us the 5% number, and if we were to use the actual registry operators, the denominator being a little bit smaller, then that's 6.25% as the target.

Steve: May I respond?

Rosemary Sinclair: Yes, Steve.

Steve: Yes, the - I believe the only way to count it is TLDs, not operators, because when the breach notice comes out, the breach notice is in regard to the operation of a contract. That's what it is, and (.jobs) had a contract around that TLD and it really doesn't matter whether the same vendor ran other TLDs. I believe you can only go on the TLDs. Each is unique in terms of its contract provisions that are subject to breach notices.

And I do remember at the end of the last call Jonathan Zuck expressed a concern that if you make breach notices indicative of a problem, would it be a disincentive for compliance be aggressive in issuing breach notices. Was that also covered today?

Rosemary Sinclair: No.

Berry Cobb: No.

Rosemary Sinclair: No.

Steve: And so if you use this in denominator, the TLDs and not the operators, you're saying the number would be 1 out of 20. And that was a 2-year period or a 1-year period?

Berry Cobb: Well basically it could be either. I mean, there was only one breach notice over two - but essentially one year. So it was one breach notice in 2011, zero breach notices in 2010. If we do it on a yearly basis, you're right, it's, you know, 5% within 2011 and then obviously 0% for 2010. Then...

Steve: But for simplicity, if we stuck with 2011 and made it 5% - so one of the proposals I guess -- I'm looking at the screen right -- is that we might say that 5% of the total gTLDs in the new space would be the equivalent number in three years out. But that could be - what did we say it could be, as much as, what's 5% of...

Berry Cobb: One hundred, if we assume that there's 2000 TLDs.

Steve: Be one hundred breach notices and it would be hard to say that that meant everything was working well. It might be indicative that compliance was really sharpened to the task. It might be a good thing for compliance and a really bad thing for the gTLD program.

                I don't know how we split that, but I - all that the registries really wanted to say is that with a low number, you need to have a margin - plus or minus margin. And plus or minus 5% on the hundred would say 95 to 105. That's all that plus or minus 5% gets you.

                But I don't really think that that scratches the itch the registries raise. You see my point? If you apply the 20% to the - sorry, the 5 % to the 2000 and you get a hundred, a plus or minus 5% margin is 95 to 105.

Rosemary Sinclair: Yes.

Steve: So that's not of any real benefit.

Rosemary Sinclair: So...

Cheryl Langdon-Orr: Can we talk about Jonathan's point in the chat?

Rosemary Sinclair: Yes.

Cheryl Langdon-Orr: ...at this point? I think that's really interesting Jonathan, looking at the warnings rather than the actual final breaches.

Jonathan Zuck: Yes. I mean, I think what we want to do is turn it into a measure of compliance kind - rather than a measure of - I mean, it changes what we're measuring in a way.

It becomes a measure of compliance's willingness to take - you know, take things all the way if people continue to be out of compliance. In other words, I would like to see the number of breach notices go up in the context of people that aren't paying any attention to...

Cheryl Langdon-Orr: Yes.

Jonathan Zuck: ...the warnings, right? I think that arbitrarily saying that breach notices should go down is artificial and that intention is captured elsewhere.

Rosemary Sinclair: Okay, but how do we go from Jonathan's point to the comment that we got back from the registry?

Jonathan Zuck: It would render their comment moot.

Cheryl Langdon-Orr: Yes, because we wouldn't be looking at it.

Steve: And I think that if the registries knew that we were talking about a hundred breaches it wouldn't have been concerned about plus or minus 5% on a hundred - pretty confident of that.

Jonathan Zuck: I think you're right about that Steve. I just don't think it's a particularly useful measure in and of itself, especially...

Steve: May I comment on Jonathan's point on...

Jonathan Zuck: It's also something they don't need to track along the way. I mean, if they decide later they want to go track - go see how many breach notices there were, they can go do that pretty easily.

Rosemary Sinclair: Yes.

Jonathan Zuck: But the interesting statistic is, you know, the fluidity with which non-compliance leads to breach notices.

Rosemary Sinclair: And Steve?

Steve: Yes, thank you. I take on point Jonathan's concern that we don't want to penalize the compliance department for doing its job. And I don't want to throw the baby out with the bathwater though because the goal of the Affirmation of Commitments and the goal of the review team and even this entire working group is to assess not ICANN's compliance department, but to assess the new gTLD expansion.

                   And so breaches that have occurred would be indications that the trust elements of the expansion have come under question. It would cause one to look at the data and say, "Wow. There've been a hundred breach notices." And it would say, "Yes, we've got an issue with trust. We have to issue a hundred of these notices or warnings."

                   A separate question would be does that indicate that the compliance department's doing its job? That might be a positive. But I don't think we can let the compliance department motivations get in the way of the overall goal

of our working group. It's really about the expansion program and not any given one department.

Cheryl Langdon-Orr: Cheryl here. Steve, I do absolutely hear and understand and indeed agree with what you just said. But I also hear from the at-large community space that I operate in a lot that there is a lack of trust of ICANN and specifically its compliance department's ability -- notice I word this, it's all one sentence -- ability to do the job that it needs to do in a new gTLD world.

And I don't want that to muddy the waters either. It's not a big step for those saying - naysayers to suggest and I think win some consumer support that a measure that looks purely at breaches would possibly be finding a set of data that was skewed by behavior in the avoidance of issuing those breaches.

And I agree with you, a lack of - a number of breaches could be measured in a positive or negative way. You know, a lower - fewer breaches at a certain time in a three - one three-year run might show that the remedial work that compliance is doing is far more effective et cetera, et cetera. But just in this first blush, I'd like to maybe look at what Jonathan is suggesting with fresh eyes because it just strikes me as a possible workaround.

We do have a number of people who collect statistics in our community and their concept of what would define a lack of compliance is far more narrow and far more hyper-reactive than the average consumer would be using in a gap measurement to (see a) trust in the overall domain name system. And I'd be a little concerned about that type of measurement muddying the waters equally.

Rosemary Sinclair: Rosemary here. I think we need to try to bring this point to a conclusion. If we go back to basics on this, the comment from the registries wasn't that they disagree with the measurement, but rather about the actual metric that we put in, the problem being the very low base that we have.

So can we pick their comment up and provide a bit of flex around the number, the plus or minus 5%? And again, we have to express that I think as a relative number to capture that point. If we've got 20 now and we go to 200 then, you know, suddenly having 50 complaints compared to 1. We're still in the same space.

But I think it's also important to (capture) the discussion we've just had about an increase in compliance activity perhaps engendering more confidence in the system. That's a different issue I think than whether the numbers plus or minus some 5%.

So Steve's reminding me that we do have relative incidence in our breach notices. So - okay, and then bringing us back to what we're trying to deal with whether it's relative to total TLDs or registries. Gosh.

Jonathan, you've got your hand up?

Jonathan Zuck: Yes. I mean, I guess I was - I probably already put it in the text. I'm - I just - I'm not sure that breach notices being high or low are necessarily indicative of an increase or a decrease of consumer trust in the program.

Rosemary Sinclair: Yes.

Jonathan Zuck: I can...

Rosemary Sinclair: Yes.

Jonathan Zuck: ...just as see - easily see it - a scenario of individual consumer trust being built by a feeling that they were heard and that "I had a bad experience but at least the bastards got shut down."

Cheryl Langdon-Orr: That's right.

Jonathan Zuck: I don't know that an individual consumer is even aware of the number of breach notices there were. They're - they look at the world in a more microeconomic way and so that's why I guess I see the activities and the responsiveness and the aggressiveness of the compliance team as being a key feature in trust by individual registrants.

And so that's why I think that's statistic's interesting. And the actual number of breach notices - I mean, you know, to say it's a hundred feels like a lot, but with thousands of TLDs it might not be a lot. It may be that we're going to need to cut, you know, a hundred of them out. You know? And it could be that that'll only be two registries or something. Right? I don't know? Right? I don't know that that number is meaningful I guess is all I'm (saying).

Rosemary Sinclair: Well, can we live with the registry's preferred position, which is that we go with plus and - plus or minus 5 of the legacy gTLD? Steve?

Steve: Thanks Rosemary. I believe that we should clarify that we meant by relative, relative to total TLDS...

Rosemary Sinclair: Yes.

Steve: ...and that when you look at the 2011 number it comes up with a 5% as a comparable basis. And we understand from the affirmation that it is evaluate whether that ICANN new gTLD expansion improved consumer trust, not maintained but improved consumer trust.

So we would say that a bench mark for measuring improvement would be to compare the relative incidence of breaches in the new space to that of the legacies. And then we would add a text to say that given the 2011 experience, 1 out of 20 or 5% would be comparable.

Therefore, an improvement would be breach notices of less than 5% or less than 100 on 2000. I think it's a complete footnote whether you say that it's a

hundred plus or minus 5. I really don't believe that's what the registries were getting at, but I'm happy to allow that.

Rosemary Sinclair: Yes.

Steve: We're talking about 95, 96, 101 or 102. Let's put that in there. Let's acknowledge and just give the registries exactly what they asked for. And then in the second round of comments, maybe they'll come back and say, "Well now that you've put it that way..."

Rosemary Sinclair: Yes.

Steve: ..."that's not what we meant."

Rosemary Sinclair: Yes.

Steve: Now let me just conclude by saying I believe that right in the table and right our document we should point out that moral hazard of having the compliance department believe that they'll reflect badly on the new gTLD program if they do their job well. And I'm going to just acknowledge that in our document.

So it's putting a big asterisk on this particular metric to say that considerations about the achievement of the metric should be balanced by an assessment of whether the compliance department has been responsive to complaints and aggressive in pursuing warnings all the way up to breach notices. We don't want to penalize the organization for becoming more effective.

Rosemary Sinclair: Yes.

Steve: Okay? So, I mean, I think we can have it both and it's easy to give the registry's what they ask for...

Rosemary Sinclair: Yes.

Steve: ...because a hundred plus or minus 5 is fine.

Rosemary Sinclair: Yes. Okay. Berry, have you captured that? I think that was probably the clearest statement of this (unintelligible)...

Cheryl Langdon-Orr: This is why we need Steve on the job because - always (unintelligible) statement.

Rosemary Sinclair: So we're doing total TLDs. We're using 2011 as a bit of a baseline, so to speak. So we're taking the 5% performance in 2011, we're going out three years and we're looking at 5% of whatever the total TLD number is at that time, allowing the registries their plus or minus 5%. But the 5% is a benchmark and we're actually looking for some improvement on that 5%.

And then we're making a very broad comment about ICANN's management of compliance. And I'm just not sure what we really want to say here. We've got a number of comments coming from different directions which go to the issue of ICANN as a participant with a preferred outcome in this whole process. And that adds complexity to these deliberations.

It makes the job of objectively measuring whether the expansion of the new gTLD program has promoted consumer trust, competition and confidence, a tricky task. So I'm wondering whether rather than put that comment here, it is another comment which needs to go in the introductory section of our advice letter. Are there any thoughts about that?

Cheryl Langdon-Orr: Yes, I'm happy with that approach. Cheryl - sorry.

Rosemary Sinclair: Yes -- Rosemary here -- because it just strikes me that, you know, it's at the core of that comment about ICANN as a contracting party.

Cheryl Langdon-Orr: Yes.

Rosemary Sinclair: It's at the core of a couple of other comments. So we should pull it out. It's going to be a bit difficult to wordsmith, but if you could make a note Berry that we need to - we need to make a comment about that in the advice letter.

Cheryl Langdon-Orr: Sorry, Cheryl here again. That, to some extent, recognizing that one of the options in response to the USG input would be highlight in the body of the advice letter those aspects by perhaps even depending on which way we might go and a recognition of that in our definition of consumer trust.

That also gives us an opportunity to react and respond and to in some ways take into account that set of comments, you know, that we do have a clear recognition that there is more than just one interested party...

Rosemary Sinclair: Yes.

Cheryl Langdon-Orr: ...in the outcomes of these measurements.

Rosemary Sinclair: So Berry, are you clear on where we're up to with this particular point?

Berry Cobb: Yes indeed.

Rosemary Sinclair: Okay. Well when you're ready, we can go to the next one.

Berry Cobb: Okay, comment number 23 is a redo of the same one in 22. This was just what Chuck brought up in Costa Rica, so we'll move past this one. Comment number 24 from the Registries Stakeholder Group in the Public Comment forum, "Finally in reviewing the overall approach we note that consumer trust will be based not only on industry participants and their activities within the market but also on the behavior and operation of ICANN.

Industry participants and consumers all need to be able to rely on the stable, secure and predictable governance of the critical Internet functions that ICANN is responsible for overseeing. Any additional metrics which can deal with these functions would be welcome."

Rosemary Sinclair: Rosemary here. In fact, this is the very point, isn't it? And we earlier for Steve's benefit discussed ICANN governance and metrics that might be available. I'm actually wondering whether this couple of sentences from the registries is - actually captures the issue and could be used in the early part of the advice letter.

Are there any other thoughts on that? Are people happy with my suggestion that we take the first two sentences of this and - at least in the first draft of our advice letter we use those words - those actual words?

Michael: This is Michael. I would agree with that. I think on - gets to the point pretty quickly.

Rosemary Sinclair: Okay, and we've got Cheryl and Jonathan supporting that. So are you...

((Crosstalk))

Cheryl Langdon- Orr: Yes, definitely.

Rosemary Sinclair: Yes, yes. So are you clear Berry on where to go with that one?

Berry Cobb: Yes, got it.

Rosemary Sinclair: Okay, good.

Berry Cobb: Okay, the next comment is number 25 which is from the United States government. And again, this is within the consumer trust metrics section. I'll

read the first sentence - or the first paragraph and then we'll move down into the types of metrics that they're proposing.

"USG believes without revision the proposed measures will be inadequate to make proper assessment under either the original proposed definitions the consumer trust choice and competition were under the definitions as we proposed they be modified.

The USG therefore recommends the expansion of the metrics in a number of ways explained below. Overall the metrics for each of these three definitions are interrelated and should be considered comprehensively to determine whether the benefits of the gTLD expansion outweigh the costs."

Perhaps I'll - I should just ahead and read these other paragraphs real quick.

Consumer trust measures, "The scope of the survey that is proposed in the table of measures on consumer trust should be significantly expanded. First, the survey should not be limited to consumers and should not be limited to information before the new gTLD expansion.

Rather, the survey should also include registry operators and registrars as well as other entities such as law enforcement entities which may incur costs as a result of the introduction of the new gTLDs.

Second, the survey should also request information about the experience of consumers and others included entities both before and after the introduction of new gTLDs. The survey should seek information about specific costs respondents have incurred because of the new gTLDs due to cybercrimes and other fraud, the reduced value of intellectual property and the expense of actions taken to safeguard intellectual property or protect against crimes.

Third, the survey should be expanded to seek information about rivalry among TLDs, registry operators or registrars that has produced better

service, higher quality or more secure products or lower prices both before
and after the introduction of new gTLDs."

So I think I'll just stop there with respect to the survey metrics.

Cheryl Langdon-Orr: Can I respond to this part of it?

Rosemary Sinclair: Cheryl.

Cheryl Langdon-Orr: This is Cheryl here. Look, I see what they're saying, although I would
criticize the fact that the author of this particular part of the document isn't
using data separate off of some other parts - is falling into the trap of actually
predicting what the outcomes of the survey would be by leading the potential
survey (E).

If you ask a question on a reduced value of intellectual property, that's vastly
different from asking a question on any effect on the value of intellectual
property.

So without becoming too difficult and pedantic which I certainly could do on
this text -- believe me I could do -- I would suggest that this is all very nice,
warm, fuzzy and good and yes indeed we would (punt) this material to where
it belongs, which is at the review team and its decision on how far it would
want to go in this scope.

I don't think that - I mean, we accepted more generically that yes there needs
to be comprehensiveness and we need to have the interactions between
these - all of these open - (raw) metrics to the three definitions. At least there
is an interrelationship there, so that's sort of fine.

We would almost annex this particular sage-like wisdom -- if indeed it is sage-
like wisdom -- to the design of the survey with some general points such as
consideration that a survey (unintelligible) when it is undertaken could be

significantly expanded and then just reference some of the high points if we even needed to from the comments.

I'm also making surveys get bang for their buck, but I'm also aware that if they're too general they fail and if they're too leading they're inaccurate. So anyway, I guess they're not (make any money) (unintelligible) about it.

Rosemary Sinclair: Thanks Cheryl. Steve?

Steve: Thanks. The very first paragraph that Berry read is the area where I find most fault with the US government's comments because they have shouldered the burden of cost versus benefits as part of this exercise. And, you know, I have calls into the department. I want to ask more about that because I believe that is a explicit expansion beyond what was in the Affirmation of Commitments.

So I would prefer not to acknowledge the rhetoric of cost versus benefits as we incorporate the USG comments, but instead incorporate them for their substantive value at what we were chartered with by the board in the Affirmation of Commitments that the US government signed.

So having said that, I believe if you look at Page 7 in our document - our original document, here's what we said about our survey of consumer trust. We said it was survey of perceived consumer trust in the DNS relative to experiences before the gTLD expansion. So we already were measure before and after, so we simply checked that box in what Berry just read.

It was a - it was a survey of before and after - check the box. We said we would survey the consumer population, and the word "consumer" for us is a defined term. It's actual potential Internet users and registrants, so I believe that the USG would have us expand that a little broader to include law enforcement and contract parties. That's the way I read that and I'm agreeable to that.

And then there's finally the actual scope of the survey questions, what kinds of things they ask about. And as you know, we only have a partial list in here -- malware, spam, confusion -- we have not fleshed out all of the things that would be here, but I - you know the reality here.

If we don't list everybody's pet peeve in this, we'll get comments that we're not being comprehensive even though we fully acknowledge that the survey vendor will design lots of questions.

So I believe we should put the cook's - the laundry list in here of all the things that we hope that the survey vendor will try to asses on a before versus after basis, but a survey population of consumers. We may have to spell out what we meant, actual potential users and registrants and contract parties and law enforcement.

And then finally I'll close by saying that the target results that we said is that for all survey measures we said they ought to show improvement, meaning the before versus after show improvement. And I think that still stands.

All we're expanding is clarifying the survey population, listing more stuff in the survey questions and reiterating before versus after as the basis of our target, that improvements be shown. So we can actually incorporate I think the USG without acknowledging this cost versus benefit burden that we were never chartered with.

Rosemary Sinclair: Rosemary here. In fact, we earlier discussed the costs versus benefits issue Steve in the earlier comments from the US government and decided that was really out of scope for our work.

So we took a clear position which said we're not going to go there, essentially. So taking forward that position, I agree with you that if we go to the practical suggestions rather than the policy commentary in this input, I think we can incorporate most of those practical suggestions.

Steve: And just as one final clarification, I didn't say that we want to affirmatively defy the cost versus benefit, but rather sort of set it aside and focus on the substantive improvements we make to the survey design.

Rosemary Sinclair: I guess in response to that, I'm saying that earlier we did want to call out quite clearly that that cost/benefit area was not something that was in scope. Our scope is to talk about whether the expansion of the new program promotes consumer trust, consumer choice and competition, not...

Steve: Oh I see. I...

Rosemary Sinclair: ...whether the expansion includes...

Steve: Okay.

Rosemary Sinclair: ...cost or benefits for people.

Steve: Is it possible to pin to that the notion that many of the metrics and targets that we lay out will be instructive to questions of cost versus benefits and we're happy to contribute to that effort?

Rosemary Sinclair: But it's not an effort that's anywhere near this task I don't think. If you go back to the...

Cheryl Langdon-Orr: The review team is...

((Crosstalk))

Rosemary Sinclair: ...(unintelligible). The piece that we're doing is looking at measurements and targets - metrics and targets around three definitions. What people do with all of that at the end of the day I think happens somewhere else at some

future time. So Berry, are you - can you take that discussion we've just had and turn it into our - a response of recommended actions?

Berry Cobb: Yes, essentially add the shopping list of items. They're to be inclusive with what we already have. Take note of an expanded population to the survey. Reiterate before versus after, and that pretty much covers the survey actions.

Rosemary Sinclair: Okay. Is everyone happy with that?

Cheryl Langdon-Orr: (Unintelligible) here...

Rosemary Sinclair: Okay.

Cheryl Langdon-Orr: ...but I really would be critical of us trying to tell the specifics of the survey questions. And I - as I say, I can find plenty of fault with the specifics as they're outlined by the USG.

Michael: This is Michael. I'd agree with a laundry list approach in what Berry was going over.

Rosemary Sinclair: Olivier?

Olivier: Yes, thanks Rosemary. It's Olivier for the transcript. I just wanted to register that I also do agree that this list here of survey questions really appears to be going into more than micromanagement. It's starting to restrict the actual scope of the whole exercise. You know?

It's basically letting - not even saying, "Well these are the metrics." It's saying, "These are the metrics. These are what we want. These are how we should ask the metrics. These are the answers that we want as well. Oh, sorry - not the answers yet."

Cheryl Langdon-Orr: And I -- sorry, Cheryl here -- I just think that it's all very nice preemptive work for the debates that need to happen around the review team table later, but it's not our job to do that groundwork for them. I'm happy with the laundry list, but...

Rosemary Sinclair: Okay. Well let's press on, given we've got about ten minutes on this call. Berry will you take us through this next - Page 12?

Berry Cobb: Yes. So continuing on, the USG submitted their comment, "Lastly, the working groups draft advice document includes some useful metrics on the incidence of domain takedowns, the quantity and relative incidence of fraudulent transactions caused by phishing sites and new gTLDs and the quantity of relative incidence of complaints regarding inaccurate, invalid or suspect who has records in the new gTLDs among others.

We recommend inclusion of several specific additional measures that will facilitate the evaluation of whether the expansion the gTLD program has improved customer trust.

These are relative incidence of complaints received by ICANN involving the new gTLDs as well as existing quantity and relative incidence, malware sites, quantity and relative incidence of domain names and new gTLDs used for botnet, quantity and relative incidence of domain names in the new gTLDs associated with identity theft, associated with spam, the quantity and relative incidence of breach notices, suspensions and terminations related to legal misconduct of officers of registry operators, incidence of security breaches in new gTLDs and conducting multiple surveys of consumer confusion rather than conducting a one-time survey as initially proposed.

With respect to the three-year targets, in most of the measures of consumer trust on Pages 6 and 7, USG questions whether the target levels relating to problems or performance issues associated with new gTLDs should be set at

rates that are lower than the comparable rates that existed before the gTLD expansion regardless of the amounts of reductions.

A number of problems or issues that must be addressed could grow with the increase new gTLDs which could overload the systems that are designed to deal with the issues. USG believes that the targets and tolerance for the problems or performance issues should decline substantially with a significant expansion of new gTLDs."

Rosemary Sinclair: Olivier?

Olivier: Thank you Rosemary. It's Olivier for the transcript. The first thought that I had when reading through this list was, "My goodness. Can all of these actually be collected?" Because questions like terminations related to legal misconduct officers of new gTLD registry operators - I mean, some of these are I would say pretty hard to collect, aren't they?

Michael: This is Michael. That would be my reaction to this as well, although it would be interesting and could be very useful to have some of these very specific types of bits of information, especially on the illegality side. I don't believe that it could be collected in a way that we would be confident that it really shows the relative incidence of these things.

Rosemary Sinclair: Rosemary here, and I think a number of these we've actually gone to -- the spam and phishing -- with our expansions, responses to earlier comments. So we may have picked them up. Olivier?

Olivier: Thanks Rosemary. Yes, I was going to add, we have picked several of these but some of these such as the one I've just mentioned, the legal misconduct, might be possible in a purely US context. But we have to remember we're dealing with a worldwide thing and there are some countries where it's just totally impossible to get any information about that. It's going to be really faced with some serious questions here. Thank you.

Rosemary Sinclair: Michael?

Michael: Yes, and in part answering Olivier, as I read this and listening to Steve's earlier comments, this seems to me to be the laundry list. And some of them are already included in what we have directed as possible subjects for the survey. There are a couple of new things in here that might also be added, but again it would be more in the context of a survey I would think than of, you know, a relative incidence of security breaches and the like.

Rosemary Sinclair: Rosemary - and I think thought that there's a difference -- in my mind at any rate -- between the survey questions and this list which is a data collection list.

                       I think what we need to do is go through the list and where we've suggested that issues get picked up -- say malware and so on -- in the work, then we've covered that off.

                       And then in response to things like termination related to legal misconduct, we need I think to make a comment whether it's that we're not sure how that information would be collected or whether it's that we're trying to come up with a document that could be used across the stakeholder community and for ICANN, not just particular parts of it.

                       I'm not sure what our comment is, but the laundry list approach -- for me at any rate -- doesn't work with all these items because the request is that we add these as measures.

                       So I think our response has got to be quite specific about whether we are prepared to add them or we don't think they can be added, or whether we have already covered them.

Having said all that at two minutes to go with our call, I'm not sure that we can deal with the details of this. Perhaps for the next call we could start at this point...

Woman: (Unintelligible).

Rosemary Sinclair: ...by all of us just having reminded ourselves of what our measures are with a discussion about whether they're included or not include at all or what steps we take.

Cheryl Langdon-Orr: Just from that point of view - I mean, I'm not uncomfortable about the way some of these issues are written in terms of quality and relative incidence. I don't mind that language...

Rosemary Sinclair: No.

Cheryl Langdon-Orr: ...and where we already have such measures. And if that language is not specific in our own measures, that's sort of a no-brainer as far I'm concerned. But things like the incidence of security breaches in new gTLDs as well as the pre-existing TLDs - I mean, Olivier and I know very well form our work in DSSA how much fun that would be if we were going to try and suggest it.

Rosemary Sinclair: Steve?

Steve: Hey, thank you. Just a quick one, the very point that Cheryl just made, Cheryl, you'll be surprised how nicely that fits into one of the metrics we already have on Page 8 which was the quantity of compliance concerns with respect to applicable national laws. And we simply say, "Including."

And again, it comes from law enforcement in the GAC. Put it right back on them and say "Including security - data security breaches that occur in contravention of - or that can be observed and reported." Because each

nation covers its own security breach notification and security breach definition laws.

In fact, in the United States we have 46 different laws who all define it a tiny bit differently as to whether a security breach means that you had to know that personal information made its way out of the enterprise, information that was capable of creating risk of identity theft or financial harm.

Cheryl Langdon-Orr: There's a big difference between...

Steve: But I think I could expand a couple of our items to pick this one up.

Rosemary Sinclair: Pardon me. Okay, well let's all of us have a look at - just remind ourselves of all our metrics and targets and then we can come back to this list and agree how we're going to handle it at the beginning of the next call. Olivier? Sorry.

Olivier: Thanks Rosemary. It's Olivier for the transcript. Mentioning security breaches, I couldn't help not mentioning, does the one with a task count as one or many? Sorry, you don't need to answer that of course. But...

Cheryl Langdon-Orr: You're a devil.

Olivier: ...it's a tough one, you know? Anyway, it hasn't started too well so it might be very good to actually track those. Yes, definitely. Thanks.

Rosemary Sinclair: Okay. So we'll come back to this when we're fresh. I just want to finish the call by going back to the letter from GNSO to GAC. Do we now have any thoughts on what we want to do or whether we're content to just let the process go forward the way it is, which is that the matter would be considered by GNSO council at its 7th of June meeting.

Cheryl Langdon-Orr: There's no choice, is there?

Rosemary Sinclair: I don't think so, Cheryl, and I think it's best not to exercise ourselves with process that's going to be handled elsewhere. I think the work that we're doing in reviewing the public comments is frankly...

Cheryl Langdon-Orr: More important.

Rosemary Sinclair: ...more important. Yes.

Cheryl Langdon-Orr: Okay.

Rosemary Sinclair: And the other matter that I wanted to bring up was Berry -- and thank you for this Berry -- reminded me that we did have a comment from Wendy Seltzer from some months ago in our working group discussions.

It's difficult for Wendy to join our calls given the timing of the calls, but I would like to ask Berry to just bring that comment forward for consideration at the next call so that we can - even if Wendy's not able to join us, actually discuss the matter and form a consensus position on it.

Is there any other (business)...

Berry Cobb: Yes...

Rosemary Sinclair: Sorry Berry.

Berry Cobb: I'll just make sure to add it as a specific agenda item.

Rosemary Sinclair: Okay, thank you. Any other business from anyone else?

Seeing no hands, then we will say goodbye for today, and we're reconvening on the 5th of June next week. Thanks everybody.

Berry Cobb: Thank you everybody.

Woman: Thanks everybody.

Rosemary Sinclair: Bye-bye.

Man: Thanks. Bye.

                        END