Vertical Integration PDP Charter Drafting Team
TRANSCRIPTION
Tuesday 09 February 2010 at 18:00 UTC

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http://audio.icann.org/gnso/gnso-vi-20100208.mp3

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http://gnso.icann.org/calendar/#feb

Present for the teleconference:
Stéphane van Gelder – Registrar Stakeholder Group – Drafting Team Chair
Jothan Frakes - Registrar Stakeholder Group
Jean-Christophe Vignes - Registrar Stakeholder Group
Jeff Eckhaus - Registrar Stakeholder Group
Brian Cute – Registries Stakeholder Group
Tony Harris - ISPCP
Victoria Carrington – IPC
Kristina Rosette – IPC
Berry Cobb – CBUC
Avri Doria – Non Commercial Stakeholder Group (NCSG)

ICANN Staff
Margie Milam
Liz Gasster
Marika Konings
Glen de Saint Gery

Absent apologies:
Olga Cavalli - NCA
Milton Mueller - NCSG

Coordinator: Thank you, everyone for standing by. We need to inform all participants that today's conference is being recorded. If you have any objections you may disconnect at this time. And I would now like to turn the conference over to Ms. Glen de Saint Géry. You may begin, ma'am.

Glen de Saint Géry: Would you like me to do a roll call for the transcription, Stéphane?

Stéphane Van Gelder: If you would, Glen, thank you very much.

Glen de Saint Géry: Yes, please. Good morning, good afternoon, good evening everyone. On the call today we have Tony Harris, Jeff Eckhaus, Berry Cobb, Stéphane Van Gelder, Avri Doria, and for staff we have Margie Milam, Liz Gasster, Marika Konings, and Glen de Saint Géry myself. Would I - could I remind you all to please say your name when you talk for the (unintelligible) transcription services? Thank you, Stéphane.

Stéphane Van Gelder: Thanks very much, Glen. Thanks to her and welcome to everybody. Thanks for joining the call. I would suggest that we start discussing the draft charter that Avri and Margie have been working on as soon as we can. I'm sure you've all seen it on the Wiki. I hope you have at any rate. And there's quite a lot up there that's already started some discussion on the list. So the last few days there's been quite a lot of emails going back and forth.

Margie is our staff support on this drafting team and on this effort of the (VIPDP) so she will be producing some short minutes for this call and she will update the charter according to the discussions on the call.

I will be acting as coordinator for the group. And if - I will be keeping or trying to keep a line for people who want to contribute and who want to talk. Please don't forget to state your name when you do so that the people on the recording can know who you are.

So has - let's move to the proposed charter then if everyone could turn to that. Could that - is that on the Adobe?

Woman: Yes, it's on it.

Stéphane Van Gelder: Okay, it is. Okay. So we have - I'm looking at the Wiki at the moment. And we have a set of objectives that have been included in the charter with alternatives offered.

The first objective doesn't seem to have sparked that much discussion. Is there anyone that would like to comment on it or should we proceed under the assumption that that objective is - everyone on the group is in full agreement with that objective? Is there anyone who would like to speak to that?

Brian Cute: This is (Brian Kuth).

Stéphane Van Gelder: (Brian), yes. Would anyone else?

Tony: Just put me on.

Stéphane Van Gelder: And Tony.

Margie Milam: And Margie.

Stéphane Van Gelder: And Margie. Anyone else? (Brian), please go ahead.

Brian Cute: Thanks very much, and thanks everybody. I think the only word that jumped out to me was the word "standard." When it says "deviate from standard forms of registry, registry separation and equal access."

And I take it - and this is offered from the point of view that the concept of vertical integration as we all know has been very much an antitrust competition law issue.

And it has its own meaning and its own forms in a very, very broad context, the context outside of the forms that have been implemented within ICANN.

And the second lens to look at it through is that hopefully if we clearly articulated our points over the course of time the track record shows that ICANN has employed a variety of forms of vertical integration or constraints on vertical integration.

So the use of the word standard I'm not sure is the best word because I think we have to refer to those that have been employed by ICANN. I don't know that that makes it necessarily standard because there's been different approaches over time even within the short 10 years of ICANN's history.

And there's also a broader set of vertical integration forums that exist outside ICANN that have a similar relationship of competition principles. That's really the only commentary I have.

Stéphane Van Gelder: Thanks, (Brian). So are you suggesting we just remove the word "standard?" Is that correct?

Brian Cute: Yes. Well, replace it with something that is more precise to, you know, what ICANN has employed.

Stéphane Van Gelder: Do you have a suggestion?

Brian Cute: It could be - it could be as simple as "existing" or...

Stéphane Van Gelder: Would everyone be okay with replacing "standard" in that first objective with "existing?"

Brian Cute: I'm not sure that - that might not capture everything, you know, pre-existing forms perhaps or something in that direction.

Avri Doria: This is Avri. I'm not sure I would be but we...

Stéphane Van Gelder: Okay, Avri. Any - I mean would you like to take that point up?

Avri Doria: Well, existing - the problem with - I mean I have no problem with - and I guess I'm jumping the queue - but I have no problem with finding a word other than "standard" because it - yes there is not an established - there may be de facto standards but it gets really confusing.

Existing would mean that anything that is currently practiced is fine. And I don't know that we want to go quite that far, either, do we? I mean - perhaps that's a question. So it's...

Brian Cute: And let me clarify. Upon reflection, because we showed that over the course of time you had a set of 2001 contracts that had certain forms of separation and then from the 2005 contracts you had other forms of separation, "existing" is actually too narrow a term if we're going to go in that direction.

That's why I think pre-existing jumped - leapt to my mind as being the all-inclusive when talking about the universe of ICANN forms of separation and equal access. That's what I'm driving at.

Avri Doria: So in a sense - this is Avri again - you want to say sort of deviate from the, you know, the forms of registry, registrar separation, equal access that have been defined in current contracts.

Brian Cute: Current may be too limiting.

Avri Doria: That would be too limiting. Well, okay.

Brian Cute: Because there were different forms in the 2001 set of contracts which came out in our discussions. You know, I don't think this is a go to the mat type of discussion either or point that I'm making.

I just think that it's very important that we be precise and careful because these terms have distinct meanings in the broader set of competition anti-

trust and they also have specific forms as employed by ICANN and I believe that those are the ones we're going to be making reference to as we do our work.

Stéphane Van Gelder: And we are in full agreement with you there. We have two suggestions for the moment, "existing" or "current" and those have been made by both yourself, Avri and Berry Cobb on the Adobe.

I suggest that we - unless we're able to find other possibles during the five minutes that we're having on this conversation perhaps we can move on and go back to it on the list and try to refine that Objective 1 there just to make sure that everyone's happy with that.

Avri Doria: This is Avri. I would like to recommend put the word in ellipsis. Put the word "standard" in ellipsis and then we can come back to that word later.

Stéphane Van Gelder: Well, we have - if you look at the bottom of your screen you'll see the notes that are being taken by Margie - and by the way Liz, yes, I didn't mean minutes. I did mean highlights, so don't worry. I'm asking Margie to produce minutes for this.

But we'll - but then I will work with Margie off-list - off call on the - refining the suggestions that have been made so we can put those to the list. Can I go back to the queue? Tony?

Tony Harris: Yes, I found out right now - actually my comment will keep for a little later.

Stéphane Van Gelder: Okay. Margie, and I see Jeff on - raising his hand. Margie?

Margie Milam: Well, actually (Brian) made the comment that I wanted to make, so I think I'm fine.

Stéphane Van Gelder: Okay, Jeff?

Jeff Eckhaus: Okay, thanks. I just - maybe it's simplistic but I'm not sure even what that - how that - is that last sentence needed there? It's just something - we can think about it. I agree with you that I'd like to move on but that was just my point.

I'm not sure if it's needed and how it pertains and what that objective would look like if that were stricken. But we can move on from that and put it on email list for the wording.

Stéphane Van Gelder: I'm not clear when you say that last sentence, there's only one sentence in there.

Jeff Eckhaus: Okay, sorry, after where it says, "can permit vertical integration," but here strike the part where "remove or otherwise deviate from standard forms of registry registrar."

The - we were talking about the standard forms or the current or the pre-existing - that sentence if that's needed that last - or those last few words - but I'll point that out - I'll put that out in email because that's - I agree, I don't think it's worth going through the wording right now.

Stéphane Van Gelder: Okay. So please if you could do that and we'll try and pick that up with Margie when we work on this. Let's move on to Objective 2 then if everyone's okay. Does anyone else want to comment on Objective 1, or is everyone okay to move on?

Hearing no comments, Objective 2 - we have - we've had some discussion there. We have the first alternative that Avri suggested about the - I'll just read that unless Avri - I'll read it.

The recommendation made in (Bag B3) - "meet the criteria as set in Objective 1, if not make recommendations on how those criteria can be met."

And (Milton) offered the following alternative. "Determine where the cross ownership and joint marketing arrangements contemplated by the (Bag B3) recommendations are allowable under current policy."

So we have two different possibilities. It would be nice to try and on this call resolve - go one way or the other or try and mix the two, but try and determine where we wanted to go there. Let's open that up for comments. Does anyone want to get in the queue at this stage?

Woman: Oh, hand, hand, hand - where do you place your hand?

Stéphane Van Gelder: Sorry, I missed that. Was that someone - Avri? Go ahead, Avri.

Avri Doria: Oh, no. Yes, I'm trying to turn on my mike. Oh, my mike is on. Sorry. I'm confused. Okay, yes. I think that somewhere between the two of them there may be something.

So I think what's wrong with the alternative that I've offered still is when it says does the recommendation made in (Bag B3) - well, what recommendation? (Bag B3) is full of recommendations.

Whereas some wordage like (Milton) has in his, "cross ownership and joint marketing arrangements," although I'm not sure that's the right thing to call the, you know, 100,000 exception floor, you know, selling that's in there.

So I'm not sure exactly what would be called the exception. But that's certainly what's missing from mine. What I find problematic with (Milton)'s still - and of course (Milton)'s not here - is the allowable under current policy.

Now Objective 1 is trying to define what are the set policy and procedures and so my thinking would be it's not under some current policy which at the

moment seems very, you know, amorphous. But it's under the policy that we're defining in Objective 1.

So I somehow think that the one I'm offering needs a little bit more clarification in the sentence - first sentence as to what recommendation we're talking about. But I think (Milton)'s needs to be looked at in terms of is it current policy or is it Objective 1?

Stéphane Van Gelder: Bearing in mind that you just mentioned the 100K limit which has of course disappeared from the third version of the (bag).

Avri Doria: That's right.

Stéphane Van Gelder: So we may need to be more specific, you know. If we mention existing (bag) - so far the latest version of the (bag) is the third version and that now has four alternatives. We've gone back to the previous...

Woman: Yes.

Stéphane Van Gelder: ...before (Bag 2) restates. So we may want to be more precise there and I'm not clear on what (Milton) means by "joint marketing arrangements" contemplated by the (Bag B3).

So I would personally have a bit of a problem going just with that wording because I don't really understand it and (Milton)'s not here to explain it.

But so that obviously we still need to work on that one. Margie, you - are you raising your hand?

Margie Milam: Yes, I wanted to agree that (Bag 3) doesn't have recommendations. I've actually clipped the excerpts from (Bag 3) on the topic. If you'd like to see it I could pull it up and maybe that would help to be more specific.

But what Avri was talking about - about the 100,000 thing was in a prior version. Would you like me to pull it up?

Stéphane Van Gelder: Yes. Is there...Really what we need to - I think to move forward on this I think we need to ensure we understand what this objective is really trying to do.

Are we just talking about cross ownership or not? And I don't think we are. So I would agree with Avri that we need to kind of sprinkle a little bit of both alternatives that have been offered.

But I would say that we also need to be more precise in determining that objective. And obviously it doesn't help that we haven't finalized Objective 1 if we make a reference to it.

So is that - is that up there? Check, go back - okay. So we have - thanks, Margie - we have the four possibilities there on the screen - going from no restrictions to complete restrictions.

Now would, you know, does the group want to recommend going with one of these objectives? I would - I'm not sure that we do. I don't know what others think. Anyone have any thoughts on this?

Man: Yes, can you repeat your last sentence, please?

Stéphane Van Gelder: Can I do what?

Man: Repeat that last sentence. I didn't catch what you just said.

Stéphane Van Gelder: I can't remember it word for word but I was asking if people feel that we should reference one of these in our work or not. One of the four - can you see - are you using the Adobe? Can you see?

Man: Yes, yes. I'm looking at the Adobe right now. I think this work is pretty much linked through the deck so it wouldn't make sense, would it?

Stéphane Van Gelder: I'm sorry, you're kind of cutting out. Are you saying that it...

Man: It would make some (unintelligible) to link it one way or another in my mind.

Stéphane Van Gelder: I'm not hearing you properly, I'm sorry. Does anyone else have any...

Man: A link would make sense...

Stéphane Van Gelder: Okay.

Man: ...between - with the proposal that.

Stéphane Van Gelder: Okay. So a link would make sense. Avri, you have your hand raised?

Avri Doria: Yes, and I think that following on the link would make sense. One recommendation I could make to changing the one I wrote which should be more correct perhaps is how do the options offered in (Bag B3) meet the criteria set in B1 - in Objective 1? I mean I don't know -

Brian Cute: This is (Brian).

Stéphane Van Gelder: Who was that? Was that someone else?

Brian Cute: Sorry, Avri. Didn't mean to cut you off there.

Avri Doria: No, I was just muttering on. Please cut me off.

Stéphane Van Gelder: Who's that cutting you off?

Avri Doria: (Brian).

Brian Cute: It's (Brian).

Stéphane Van Gelder: (Brian)?

Brian Cute: You can look at it through a different lens too. Is the work of this group to establish some guidelines for ICANN staff with regard to the questions that we agree to address and that work could be done in establishing guidelines and staff reacted to without a direct tie of our work to the four options that currently exist in (Bag 3).

One good reason to take that approach is that as we've seen from (Bag 1), (Bag 2), (Bag 3) and a credit report, these things have shifted and evolved over the course of the discussion. These are moving targets if you will. That's just one way to approach it.

The other overlaunching question I have is - I need to understand the objective of Objective 1 as written. Is the objective of the work intended to directly impact the next (bag) iteration? Is that one of the goals here? If so, it's not explicitly stated.

Stéphane Van Gelder: So I would say no to both counts, to be honest. We've had a discussion on the list. I did ask. Someone suggested the work that was going to be done on this PDP would have to be done before (Bag B4) could come out, which was actually the opposite of what staff suggested in the issues report that led to this PDP being initiated.

I think we have to be clear that what we're doing in this drafting team is drafting a charter so the working group that's going to look at how to set policy on this topic has a set of guidelines to guide its work. That we are not here to suggest changes to the (bag).

We should not - to be honest - even be looking at the (bag) in terms of completing our work before the rest of the (bag) because these are two independent tracks. Or at least that's the way staff have suggested we should do it. Am I correct there, Margie?

Margie Milam: Yes, that's correct.

Stéphane Van Gelder: So (Brian), to both of your points. I don't think we can link this to the (bag) in that way.

Brian Cute: Okay, that's helpful clarification. I guess then I'd go back and look at the proposed objectives through that lens and ask again what is the objective of Objective 1? Is it to provide these guideposts for the work of the working group or something different?

Stéphane Van Gelder: All these objectives are there for the working group. What we're doing here is determining how - by what are the goals that the working group is going to have to meet? And these are suggestions for them for the goals that they will have to meet and the deadline that the council has set for this work. Is that clear for you?

Brian Cute: Yes.

Stéphane Van Gelder: Okay. But I do take your point which is a point I was making earlier on that we need to be clear on Objective 1 before we work on Objective 2 if we are going to reference Objective 1 in Objective 2.

I think Objective 1 is pretty clear. You know, I don't think the changes that you suggested would actually change the actual meaning of Objective 1. So I do feel confident that we can look at Objective 2 and have a clear understanding of what the first objective is. Are people - do people not agree with that?

I see Jeff has his hand up.

Jeff Eckhaus: Yes, I just decided - yes, I do agree with that, actually was referring back to the earlier point that you brought up which I - which this was I guess the email which you initially sent and Margie responded to.

Well, I believe that this was the objectives - well, let's call it the overall objective of the group is for this to be considered for (bag) not to be a gating item for it, but to be considered for it.

And that was the idea here or the objective. And that it's not independent of the (bag). I think just going back to that question that I thought that that was the goal here for the next (bag) to have this in there. And one of the objectives for this group to have it sort of clarified for there. But as we said, not to be a gating item for the next (bag).

Stéphane Van Gelder: Well, staff was precise in its issues report, saying that one of the - one of the reasons it recommended a PDP not be initiated was that whatever work was done on this it would be too late to include it in the first round of applications for the new gTLDs and therefore could not be included in the (bag).

This doesn't mean that if we are able to meet the deadline I'm sure staff that was working on the (bag) would look at the work that we're doing and that the working group will do. But the recommendation that staff made clearly was that this was not a prerequisite for the fourth version of the (bag).

And I see Avri, you have your hand up. Can I just say that if you are making points on the chat it may help to make them also on, you know, by speaking up, because I'm unable to keep track of everything. Avri, please.

Avri Doria: Okay. And I believe that whether it gates the (bag) or not it must gate the first round. We did not accept the staff's recommendation that we not do a PDP

and I think by setting a 16-week deadline I think the council basically said this needs to be done before final decisions.

Now whether (Bag 4) includes with finality what they are going to allow in terms of, you know, vertical integration - obviously (Bag 3) or (Bag B4) can say, "Listen, there is no vertical integration. There is, you know, no joint marketing. Everything is as it was."

And then yes, there's no change in policy. But if there's anything different that may or may not be a change in policy I think it has to wait for this. That is why I believe - I mean I wasn't part of the council - but that is why I believe the council's (year) was do it fast.

So it doesn't gate it. But I mean I believe that not doing it is, you know, not basically going ahead with the first round without having resolved these issues unless status quo holds and a lot of good reasons for status quo not holding, you know, the (boutique) and the (dot grams). So you know, I'll hand back.

Stéphane Van Gelder: But that wasn't what was suggested, going ahead without resolving these issues. What was suggested was that any policy that was set out of this work wouldn't be able - wouldn't be applicable to existing registries and to - it wouldn't be possible to include it in time for the first round. But I see Margie has her hand up so you may want to push those points further.

Margie Milam: Yes, a couple points in responding to Avri. And we covered fairly detailed in the issues report. You know, it's difficult to identify what is status quo. And (Brian) raised this earlier. There's all different approaches in the, you know, in the current agreement.

And so when you throw out terms like is it a change of policy, we don't see that there is a policy on this at this point. There's a practice of registry agreements with different provisions, and that's all laid out in the issues

report. But I think it's, you know, probably need to be a little more clear on what we're talking about because I think there is a misconception on whether or not there actually is a policy on this right now and there's a status quo. Because if you really want to look at what the status quo it's everywhere with different models and different registries.

Stéphane Van Gelder: But do you feel, as a group, feel that we should include this in the charter? Some wording referencing both points have been make, both that is there a policy or not?

Avri's just said on the chat that the de facto policy and Margie and staff have always I think made the point that there isn't an actual policy to date on this. Do you feel that we should include some reference to this in the charter, which is what we're working on today?

And do you also - going back to Avri's earlier suggestion - feel that we should in the charter somewhere suggest that this work should be completed in time to be integrated in before the first round?

Brian Cute:This is (Brian).

Stéphane Van Gelder: Yes, (Brian), please go ahead.

Brian Cute:Only for the first point, I'm not going to talk to the time point. I understand what Margie's point is on the policy question and the staff issues report also raise doubts about whether there would be any consensus policy developed out of this PDP.

And as we all know, that's a fundamental question, too, not just policy but consensus policy. So I think with those as open questions, they are important open questions and some recognition of them will probably be appropriate in my view.

Stéphane Van Gelder: Where do you - where would you suggest we put these, in some kind of introduction to the charter, before the objectives, obviously I would have thought.

Brian Cute: Yes, the first word that went to mind was preamble, but introduction or something of that nature, probably, if we're going to include it.

Stéphane Van Gelder: Margie, can you make a note of that that we can include those points as a preamble, and maybe we can refine it off call and put it to the list.

Margie Milam: Yes, can you repeat, sorry, what you think the preamble should cover?

Stéphane Van Gelder: Brian?

Brian Cute: Well, I think there's two points. I think there's the point that you raised, Margie, about the question staff has as to whether these are policy questions. That is something that's been subject to vigorous debate. And then the second question about whether there's consensus policy being developed within the context of this PDP.

Stéphane Van Gelder: Is that okay, Margie?

Margie Milam: Yes, I got it, can you put me...

Stéphane Van Gelder: Thanks. Christina? Sorry, what were you saying?

Margie Milam: Oh just somebody in the queue also another comment, but later.

Stéphane Van Gelder: Okay, (Christina), please go ahead.

(Christina):   Thanks, and apologies in advance, I've been snowed in without electricity. I think it's really important I think that we figure out what the standard form are in terms of just looking at what Avri has proposed.

I think it will be very helpful to identify in what might a acceptable path forward. If we actually sit down and identify and chart out, here are the different forms, and here are the characteristics of each form.

I mean I'm sure there are people on this call who could rattle that off the top of their head, but I don't know how true that is across the community or how true it will be the people who actually in the working group.

Stéphane Van Gelder: Just to make sure I understand what you're suggesting, are you suggesting that we list the possible cases that could be included in the (bag) covering this topic?

(Christina):   No, I'm saying let's look at what's playing out. You know let's go through the gTLD registries, and like I actually...

Stéphane Van Gelder: Okay, sorry.

(Christina):   ...am going to raise you know should all of the objectives be limited to gTLD registries. And so that we can identify what the various forums are so that we can figure out is there one forum that appears to kind of provide the flexibility that certain participants want and provide some of the kind of consumer protection or prevention or discouragement of bad actor conduct that other folks in the community are concerned about. And that might, and it may be that once we do that, we realize there isn't that much more work to do.

Stéphane Van Gelder: Well that, to me, seems like an excellent suggestion. Is that something, Margie, you'd feel is doable? Obviously, I would suggest we limit it to ICANN gTLD contracts and practices, but is that something that can be done?

Margie Milam: Yes, I did a little bit of that legwork already in the issues report, so it's just a matter of repackaging it and making sure I include all registries. I think I had examples of close to all of them. But, yes, I could do that.

Stéphane Van Gelder: Right, that would be, I think very useful, and that might help us refine the objectives once we have that. I don't know who was next, whether it was Margie or Avri. So I'll go to Avri because Margie has just put her hand down.

Avri Doria: Okay, thanks. Two things, one I was really comfortable with that until you said, "And we would need that before we talked about the objectives." Just wanted to point out that one of the things that I had put in this first draft was staff (unintelligible) documentation on existing approaches and practices. That is defining the de facto family cluster or set of things that is today's policy. And you know policy can have an extrinsic or intrinsic definition.

And here we're talking about, there are a certain number of things. It's obviously not the case that everything is allowed, and everything goes, and there is no policy.

Yes, there is no written down type verbal policy, so I thank (Christina) because that's kind of what I was driving at on that. The other question on is this consensus policy, and I admit that that is an issue in terms of if there's going to be an attempt which is objective (perhaps 3) to recommend changes for existing registries.

But certainly for any new registries, this would be, not consensus policy, it would be the rules under which they would - the policy under which they were created.

So even if it turns out that the issue of is it consensus policy and can anybody be made to change what they do based on some analysis that may or may not happen, that, yes is a very good question and is a hard question.

But and no one ever said in this one that that's what would happen. But certainly in terms of defining the future and bringing up what might be questions with the existing things possible. And just I wanted to keep clear that because some current registry might not think its consensus policy does not mean that it's not applicable to a new gTLD.

Stéphane Van Gelder: I understand what you're saying, but one other things I meant was that for example for Objective 3 I think it would be hard to move much further with that discussion on Objective 3 without having a clear vision provided by staff at what the current situation is for most - well' all of the gTLD registries.

Avri Doria: Can I ask a question? Do you think it would be impossible to put that as an objective for the working group? Or it would be impossible to do the work. I agree with the second, but certainly, you could have an objective that once you've done the documentation and you look at everything, then you could do Objective 3.

Stéphane Van Gelder: Well, if we are able - let me answer your question in a different way. If we are able all to agree on Objective 3 as it stands, which may be possible, I have no idea.

Then yes, we can move ahead and while staff is doing that groundwork, then you know we can possibly suggest a charter for the working group in a relatively short amount of time, which is I think an objective that we all share.

But that would mean us being able to agree on Objective 3. I'm not sure everyone would be confident with doing that without having a clear idea of what 's currently the practice, but I may be wrong. Jeff?

Jeff Eckhaus: Yes, I think Stéphane, you just said it. I'm kind of - I think we're getting into some - Objective 3 seems to me like some - I won't say circular logic, but it's saying, well, one, examine the current gTLD contract and practices approved

by ICANN which, as for the documentation, I think Margie did most of that in the issues report. If there's some left out, I don't think there were many on that.

And then you're saying if determined if any of them are outside the current policy framework, but what are the - if they're approved by ICANN and they would be within the policy framework regarding vertical integration? And I'm not even sure we know what the current policy framework regarding vertical integration is.

So, if they're approved, then how are they - and then the last point is saying, how do we respond to these exceptions if they're within, if they're approved, and they're within the framework, how are they then exceptions? I'm just - I'm very confused by that Objective 3.

So I don't know if we know what the current policy framework is and if everything's included - if everything is currently approved, then how could they be outside of that or exceptions. I hope that question didn't confuse people even further.

Stéphane Van Gelder: We may need to just to make a point of clarification that we're not - we're not to here to answer what the objectives are setting. That's the working group's job. So we're not here to provide answers to the questions we're asking, we're here to set the questions (unintelligible).

Jeff Eckhaus: I was just asking if that question makes sense to answer.

Stéphane Van Gelder: Okay.

Jeff Eckhaus: If that can be answered. And I'm not looking to (unintelligible) if I understand, but what I'm saying is, is that a question the group can answer - or I'm not sure of that. That's what I'm asking. I don't want to put up questions and objectives that are unanswerable...

Stéphane Van Gelder: I agree.

Jeff Eckhaus: ...or just lead to further confusion.

Stéphane Van Gelder: Yes, that's clear. Avri I see your hand up. Can I just say there's 20
minutes left in the call. Is there, at this point, how would people want to move
on with these objectives before we start considering the definitions which I'm
hoping we can finalize today.

Are people comfortable with Margie and I doing some work and providing
suggestions to the lists and maybe trying to finalize some objectives on the
list. I see Jeff, you agree with what I'm suggesting. Is that okay with
everybody? Okay. Avri?

Avri Doria: Okay, yes, I just typed it. All was saying is Objective 1 defines what it is you
would then compare the existing practice to. In other words, in Objective 1,
you've figured out what are the guidelines for doing this, and that's what gets
discussed.

And in Objective 3, you then compare current practice to those guidelines
that you talked about then and talked about perhaps the guidelines are this
kind of protection must exist for consumers, or however it gets put.

If it - if it's a set of questions. And then Objective 3 basically takes the things
that was defined that staff would work on that Margie said that you know she
would start or has already started in terms of looking at what's currently in the
contracts, and saying, hey does this meet what we think it should do?

Then if it doesn't, then you have the question of, can you start a consensus
policy on it. How do you fix this? Do you put out a note where you ask all the
registries to voluntarily change what they're doing to try and come more in
line with Objective 1.

How ever that works, that's a different question, and that's why it was only in - and if so makes recommendation as to how to respond to these things. But the exception is Objective 1, you've set - this is what a policy should have. This is what the policy should be. In Question 3, then, you look at current reality and see if it matches what you think should be.

Stéphane Van Gelder: Okay, thanks for that. And I'll - just one more thing I'd like to add is if anyone has, in light of our discussions today, an Objective 4 - I'm not advocating we should have one - but if there is one, please forward it any suggestions to the list so that Margie and I can take those onboard and then come back with a set of objectives for the group.

Can we move on to the definitions? I don't know who is working the Adobe, but in fact in - or is that just to scroll down? Yes, it is. Okay. So we had basically two major definitions that, yes, just a note - I see what you just - a comment you just made. Do you want to just speak to that briefly, (Jonathan), because that's an important point in my view?

(Jonathan): Yes.

Stéphane Van Gelder: Go ahead.

(Jonathan): Well, there are some who believe that this topic of vertical integration is being leveraged as a method of creating delay before the ultimate final application guidebook can be delivered. And we should probably be cognizant of the perception of that and make sure to do our work expediently.

Stéphane Van Gelder: Okay.

(Jonathan): It might be worth capturing that in the objective.

Stéphane Van Gelder: Okay, Margie will take that on board. And I agree with (Barry)'s point that we might want to have objectives. I would suggest that if we are able to determine objectives by the end of next week, that would be useful, I think. I don't think it's realistic for us to try and meet the next council meeting deadline for suggestions and to provide the council with a suggested charter.

I think that would be too difficult for us at this stage. But I think we can aim to finalize the objectives - if we can finalize the definitions today in the last 15 minutes that we have left, and I think we can't finalize the - yes, that line would be tomorrow, (Christina).

So that would be impossible to meet, although we could ask for an exception. But I think it would still be hard. I think we should work towards the end of next week to finalize the objectives.

So let's move on to the definitions. We have a definition for the VI which is - I'll just read that out - defined as a "business structure in which there is no separation between the registry operator and the registrar in relation to a particular gTLD. They are either own" - owned, I suppose that's a typo - "and operated by the same company or have another contractor affiliation that covers the specific gTLD and that the main name supplier is not required to provide full and equal access to independent firms to sell names under its gTLD."

Then there were alternatives supplied for a definition for cross ownership. Can I just ask, first of all, does anyone have any major problems with the definition of VI as it's stated there? No?

Brian Cute: This is (Brian).

Stéphane Van Gelder: (Brian), please go ahead. Yes, again I think precision is important. It says "ownership - owner and operated by the same company" and does have precise meanings or have another contractual affiliation that covers the

specific TDL. "Covers a specific TLD" is a bit vague, and I think an issue is control.

It's not just ownership, it's control, and you can have control through a contract depending on the nature of the commercial relationship as well. So I'm bringing these issues up as a matter of precision and eliminating vagueness.

Stéphane Van Gelder: Okay, well I don't think we have - I think it's fair to say that the first sentence doesn't pose any specific problems. Then moving on to the points that you're making, now "either owned and operated by the same company."

Now what could we suggest there or have another contractual affiliation that covers the specific TLD. And we could add "control" there, or "replace covers" - which is vague - "by control that controls the specific gTLD," is that something that everyone would be happy with to start with?

Tony Harris: Can I get in the queue? Tony Harris.

Stéphane Van Gelder: Yes, please, Tony. Go ahead.

Tony Harris: Yes, I was just thinking about the last part of the sentence and "the domain name supplier is not required to provide full and equal access." Actually, it may be you could have a case theoretically of vertical integration as it is described previously in this sentence.

And maybe the you know it might be in the interest of this company, this vertically integrated company, to provide full and equal access to independent firms.

So perhaps the definition does not, per se, signify that the domain name supplier is not required to provide full and equal access. It may be the case you know.

Stéphane Van Gelder: Are you suggesting that we strike that last part of the phrase?

Tony Harris: Well, I don't know but it seems that it may not necessarily be the case, right. I mean, you could be vertically integrated and say, "Hey, I want you know I want the reseller chain to handle this also."

It's like the case where you have a factory that makes jeans, they have their own outlet, but they're also interested in having you know the retail chain handle their jeans you know to the market.

Stéphane Van Gelder: I'm glad you brought this up because I - and this is, we discussed this on the list. I had a problem with the "not required to provide full and equal access."

Because my understanding of what - I think it was (Milton), who suggested this. My understanding of what he was suggesting was going against the basic recommendation that the you know all the accredited registrars, be treated equally and without discrimination, but so I was not at ease with that last part of the definition. I have to agree, I have to admit.

But can I just go back because if we - if we're able to close some points, that might be useful. There's been a suggestion for the second sentence, "they are either owned or control - controlled, sorry - by the same company or have another contractual affiliation that covers" - what was the word that we - "controls the specific gTLD." Up to that point, is that okay for everybody? Okay.

Brian Cute: (Unintelligible).

Stéphane Van Gelder: Sorry, who was that?

Brian Cute: It's (Brian), I think that's more precise.

Stéphane Van Gelder: Okay, thanks (Brian). So Margie can you - did you get that?

Margie Milam: Yes, I did.

Stéphane Van Gelder: Right. Jeff, you had a point that you wanted to make?

Jeff Eckhaus: And this is referring to what I guess - what you were just discussing about the - sorry about the last point in the sentence with the equal access. I'm sorry.

Stéphane Van Gelder: Yes.

((Crosstalk))

Jeff Eckhaus: Yes, (unintelligible) on the vertical integration. I think I just want to be clear that that's just a definition and that I think that one of the other pieces we've discussed - and I think that was in (Bag 3) is (unintelligible). I know this is called about - sorry, "about vertical integration" but that we want to make the distinction between vertical integration and cross ownership.

So because in the - I think they're sort of getting blended together, and I want to make sure that they're not because they are two separate items. What (Milty) and I believe what he was he was saying was that's sort of a vertical integrated entity is what he's saying and then there's also a cross-owned entity.

So those are two separate ones and two separate, I believe, items to discuss because I hope that makes sense that the cross ownership, you could have cross ownership and require full and equal access.

And that is still - that would not be a vertically integrated company. If that makes sense. I think that we're just kind of hung up on that vertical - and the vertically integrated company is a cross-owned company and that's not true.

Stéphane Van Gelder: Okay, I'm not sure actually anyone's actually said that, but perhaps I don't know. One thing is clear, we are working on two separate definitions and part of the reason for that is to make sure they are seen as being very separate things, so VI, NCO, are both defined in our charter.

But I'm wondering if the group wants to leave that last part from the comma and the domain name supplier, that last part with the VI definition in there or not.

Man: Might I make a suggestion?

Stéphane Van Gelder: Yes, please.

Man: Perhaps we could say "and the domain name supplier, 'may' not be required" but not make it "is."

Stéphane Van Gelder: Yes (unintelligible).

Man: Because there may be cases like if it's a sponsored TLD, then obviously he may not be required to provide full and equal access. I mean, take the case of (Doug Post).

Stéphane Van Gelder: Yes.

Man: So you know if you - if you leave it conditional, it's not - it doesn't really get tied down.

Stéphane Van Gelder: Is everyone comfortable with that? The change being proposed is "and the domain name suppler may not" instead of "is not"

Man: Be...

Stéphane Van Gelder: ...may not be required to provide full and equal access to blah, blah, blah. Is that okay with everybody? Jeff? Do you still have your hand up?

Jeff Eckhaus: Yes, yes, no, I'm sorry let me put it down. So I think I'm okay with that. I need to just think about it because my whole - sorry, just to reiterate my point is that I just wanted to make sure that as we're going through the definition, that we don't treat cross ownership as a form of vertical integration. I hope that makes sense.

Stéphane Van Gelder: Yes, okay. So can we move with that change and move on to the cross ownership definition. Okay, hearing no objections, now we have - we have two separate definitions being proposed.

One is "cross ownership is defined as the controlling ownership of the share of the registry by a registrar or vice versa." And (Milton) suggested CO is defined as "the ownership of the controlling share of the registry by a registrar, or vice versa," addition," while maintaining the contractual and functional separation and equal access arrangements required by ICANN policies and contracts. "

Now, would people be - how comfortable is the group with (Milton)'s additions? I mean, his - that version of the definition does seem more comprehensive.

Man: Yes.

Stéphane Van Gelder: Is everyone okay with using that? Let me put the question that way.

Brian Cute: This is (Brian). I'm going to go back the prior speaker's comments about distinguishing between vertical integration and cross ownership. And remember in this entire debate, there was cross ownership, there was 15% minority stakes, there is a prohibition on selling in your own TLD, there is

equal access and nondiscrimination provisions and each of these elements has their own nature, has their own purpose, has their own definition. And some of them are implementations or safeguards effectively.

I think there is value where we can in clearly defining each of them in their own right and not necessarily creating definitional inter-relationships between these different elements that either cloud the meaning of the single item, whether it's cross ownership, whether it's prohibition and selling in your own TLD, whether it's you know equal access.

That's I think we're better served by trying to remain (unintelligible) each of them definitionary in their own right and then work on the (unintelligible) function or inter-relationship from the working group.

Stéphane Van Gelder: Okay, thanks. So we have to move on. Are you suggesting that we add another alternative, that we use one of the alternatives that's being suggested, that we don't use a definition of cross ownership? Can you just clarify that?

Brian Cute: In the immediate moment, what I'm suggesting is that the first one to my mind is more useful than the second one which ties three different elements together in one definition.

Stéphane Van Gelder: Okay, is everybody okay with that.

Jeff Eckhaus: It's Jeff here, sorry. Not necessarily because then we would need - because that was the whole - that was the difference then we go back to the first one as well on that and we got to think about how it relates to this PDP and saying okay, the cross ownership is different than vertical integration and there's yet there's the shares.

But in a new entity or whatever going forward the registry/registrar that we want to put the different pieces saying okay they would be bound by

contractual and functional you know the arrangements required by ICANN. I think it's not just, hey somebody owns 51% and that's it. I think there's more to it especially as it relates to this PDP.

Stéphane Van Gelder: Okay, it sounds like we're not going to resolve this in the last ten minutes. Jeff, (Brian), could I at least ask one of you to suggest - well (Brian), you're satisfied with Avri's proposal, so there's you know that's clear. Jeff you're suggesting something else. Could I ask you to send that (unintelligible).

((Crosstalk))

Jeff Eckhaus: (Unintelligible) oh, I was suggesting (Milton)'s actually.

Stéphane Van Gelder: Okay, sorry. I misunderstood that. Well in that case we need to reach some sort of consensus and you know either I mean (Milton)'s is an extension of Avri's so that we don't have one and the other. No it is not, Avri, do you want to speak to that?

Avri Doria: Yes, basically what I'm trying to say is there are two concepts here, and there are many ways for something to be vertically integrated, cross ownership under certain conditions may be one of them.

One can also have a cross ownership relationship without being vertically integrated, for example, by use of the full and equal access to all registrar's rule. So that makes the two definitions really orthogonal to each other.

And so if you extend cross ownership to include the rules that say, but it can't be this, or it can be that, you've basically not extended it, you've changed it, so.

Stéphane Van Gelder: I see your point, but there's not full consensus on this from the groups, there is...

Avri Doria: Oh, yes, no I wasn't saying this should be agreed to by everybody. I was just saying that I don't see it that way.

Stéphane Van Gelder: Okay, right. Okay. It's 8 o'clock. Sorry, it's not 8 o'clock everywhere but it's the (unintelligible) and so I suggest - we haven't been able to do everything that we set out to do.

I suggest we take it to the left. I would like to set a deadline for any suggestions for both these definitions and the objectives by the end of next week.

Perhaps we can set a deadline for Wednesday for any suggestions, and then give ourselves a couple of days on this to be able to initiate discussion on those suggestions and then reach consensus.

Does that sound okay for everybody? So that would be Wednesday deadline for submissions and then discussion - another couple of days of discussion and we work to finalize those elements by Friday COB.

Man: Friday, the 19th?

Stéphane Van Gelder: This Friday.

Man: Oh, this Friday, okay.

Man: (Unintelligible) you said next week (unintelligible).

Brian Cute: You did say next week, this is (Brian).

Stéphane Van Gelder: This Friday of next weeks. Sorry, yes, you're right. I'm getting confused with my calendar. I did mean the 19th, yes. Is that okay for everybody? Or is that too much time? Would people like to cut that shorter? I

have no problem trying to work faster if we're able to. I just don't want to set, you know, deadlines that people don't feel they can meet.

Man: I, for one, won't be available that much next week, so anything that can be discussed this week is best for me, but.

Stéphane Van Gelder: Well in that case, would people feel more comfortable with deadlines for submissions this Thursday the 11th and perhaps giving up until the weekend for discussions and a final determination on Monday the 15th. Are people more comfortable with that? (Unintelligible) I take that as a yes, then, if no one says anything. So let's work to that, then.

Let's set the deadline for submissions. Please submit any suggestions that you may have by this Thursday for both the objectives and the definitions. And we will then work on the list to determine which of these suggestions we want to take on board and try and reach consensus.

Margie, could you please send the bullets of the points, the edits that have been proposed today to the list so those can be turned into starting points for that discussion?

Margie Milam: Oh, yes, I can do that. And I also wanted to ask should we try to schedule another call already? (Unintelligible).

Glen de Saint Gery Yes, when would you want the call to take place?

Stéphane Van Gelder: I was thinking that we should schedule perhaps another call in the week starting the 15th and then we could have (Star) send out the doodle, or we could decide that we can try and do it next Tuesday.

I can tell you that I won't be able to make next Tuesday, but if that's the only time other people can do it, then perhaps we can move that way, or we can work the doodle. But I would suggest we have a call next week.

Woman: Would Wednesday suit you better, Stéphane?

Stéphane Van Gelder: It depends what time, Glen.

Glen de Saint Géry: Okay.

Stéphane Van Gelder: Let's not discuss that here, but, Glen, can you get a doodle sent
                    out for next week, Monday, Tuesday, Wednesday.

Glen de Saint Géry: Okay, I'll do that.

Stéphane Van Gelder: For me it's easier - what's today? Today's was 18 UTC. For me it's
                    easier 17 UTC, but.

Glen de Saint Géry: Okay, thank you.

Stéphane Van Gelder: You know whatever the majority can do is best. Okay? Thanks
                    very much for everyone's input and participation. And apologies for not
                    covering as much as we'd hoped. Let's try and do that on the list. I speak to
                    you all soon. Thanks very much.

Glen de Saint Géry: Thank you.

Man: Bye-bye.

Man: Bye-bye.

Man: Bye-bye.

((Crosstalk))

END