Vertical Integration PDP Working Group
TRANSCRIPTION
Thursday 03 June 2010 at 19:00 UTC

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 http://audio.icann.org/gnso/gnso-vi-pdp-20100603.mp3

On page:
http://gnso.icann.org/calendar/#jun
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Michele Neylon
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Operator: Thank you. I'd like to remind all participants today's conference is being recorded. If you have any objections at this point (unintelligible).

Mikey O'Connor: Thanks. I think in our normal tradition we'll take a minute on reviewing the agenda, just to let a few folks join the call a little late, and then do the roll and then go. So we've got the language out of the DHE to take a look at. I thought we would just take 15 minutes on that and see where we wind up.

I would like to spend about 15 minutes on the notion that came up during the discussion on the last call about harms and perhaps inventing mechanisms to understand, address and review them, because that seems like it might present a path out of some of the conundra that we find ourselves in.

And then the rest of the call devoted to seeing if we can sketch out a deal and a way forward to Brussels. Anything that people would like to add to that?

Okay, I'm not hearing anything. Glen, why don't you go ahead and call the roll, and then we'll get rolling.

Glen de Saint Gery: Thank you, Mikey. Good morning, good afternoon, good evening, everyone. This is the third of June, the Vertical Integration PDP Call. On the call we have Siva Muthusamy, Cheryl Langdon-Orr, Mikey O'Connor, Faisal Shah, Eric Brunner-Williams, Jeff Neuman, Paul Diaz, Steve Pinkos, Kathy Kleiman, Roberto Gaetano, Ken Stubbs, Phil Buckingham, Katrin Ohlmer, Ron Andruff, Brian Cute, Jeffrey Eckhaus, Sebastian Bachollet, Dan Halloran, Scott Austin, Frederick Felman, Jonathan Frakes, Avri Doria, Kristina Rosette, Alan Greenberg.

And for staff we have David Olive; Liz Gasster; I've mentioned Dan Halloran already, Margie Milam, Marika Konings, Mike Zupke and myself, Glen de Saint Gery. Thank you, Mikey. Over to you. And if I've left off anyone, and there are apologies from Michele Neylon.

Mikey O'Connor: Thanks, Glen. There's a note, Glen, in the chats that maybe Tanya could help us with this. There are long and short versions of the mute and unmute messages, and…

Glen de Saint Gery: Oh, yes.

Mikey O'Connor: There's a way to toggle that to the short one, so that when people come off mute, they don't get a big, long message.

Glen de Saint Gery: Definitely. I'll get that sorted out, Mikey, because we shouldn't have that at all. Thank you.

Mikey O'Connor: Great. Great, thanks. Okay, let's see. First up is the new version of the DHE. There's an excerpt of the language in front of you on the screen in Adobe. And I don't know if there's much need for discussion. It seems pretty

clear, but I did want to set some time aside. Margie, do you want to walk us through sort of the high points of this?

Margie Milam: You want me to walk through the high points?

Mikey O'Connor: Yes, I'm assuming - I sent Kurt a note, but I bet he didn't get it. I was hoping that he might join us, but I'm sure he's a busy guy today.

Margie Milam: Let me Jabber him and see if he can get on. I haven't spent a lot of time on this, so I don't know if I'm the person to go through…

Mikey O'Connor: Okay, all right. Tell you what. Why don't we swap the first two agenda items?

Man: Mike?

Mikey O'Connor: Yes, sir.

Man: I'm sorry to interrupt you, but we might inquire to Dan Halloran to see whether or not that's something he was involved in and may be able to explain that.

Mikey O'Connor: Oh, I forgot Dan is on the call. Dan, do you want to take a crack at this? Or should we wait for…

Dan Halloran: I think I'd also like to defer to Kurt. I'm checking with him right now to see if he's intending to join us. We'll get back to you in a minute on that.

Mikey O'Connor: Tell you what. We'll flip the first two agenda items, and see if Kurt can join us in a few minutes, because, you know, I think he's probably the closest to all this. He's probably our best candidate. That said, let's go on to the thought that came up right towards the end of the last call. We were talking about a list of harms -- just the very starting point of the list.

And one of the ideas that kind of popped out of the conversation, and I think it was sort of inspired by the earlier discussion when we were talking about the (CAM) proposal of having some mechanism that was maybe specified in our proposal to be sort of a flexible way to understand and address harms as they came up, both in applications for new gTLDs, and then afterwards.

And I was just curious if proposal advocates or others had any ideas about that, and whether they thought a) it was a good one; and b) if so, how we might do such a thing. Because it seems like a lot of what we're trying to do with the various structures that we've described is preventing harms.

And maybe a way to handle that is not to try and predict every harm in advance, but rather address them either as they come up or as they become an issue. So I was just curious if folks had an idea about that. Ron, go ahead.

Ron Andruff: Thanks, Mikey. Excuse me. Without belaboring what I said at the end of the last call, I think it's really important that we do try to enumerate as many harms as we possibly can.

I think by getting them out on a piece of paper instead of talking about this amorphous idea of what harms are, we can actually try to be as creative as possible to create that list, both of existing harms -- things that have happened already -- or things that we fear might happen.

But ultimately, as we had discussed last week, we can color code those. Say these are issues with our VI co-ownership issues, and these are issues that aren't related to that, but yet are harms. And I think if we can get all of those stated and, you know, out in like a day, we might find ourselves being a lot more comfortable with being able to move forward, saying, "You know what? As we look at it now, we really don't see as many as we through we saw."

Or we may say, "Geez, this is pretty solid evidence as to why we shouldn't go forward with this." So my point is, I think it would be a very good exercise to undertake, and I would hope others would support that.

Mikey O'Connor: Thanks, Ron. That brings to mind another thought. You know, probably what we need is another matrix table kind of affair, and that reminds me that we should probably update the current table of proposals -- the one that Kathy started.

And I'm delinquent for not doing that call. But I'll do that as an action item out of this call to put out a call to update. People could send me those updates. I'll publish a new version of that. Alan, go ahead. Oh, you may be on mute, Alan.

Alan Greenberg: Sorry. I was trying to go off mute, but you cut out for four seconds while I was doing it.

Mikey O'Connor: Okay.

Alan Greenberg: My apologies.

Mikey O'Connor: No worries.

Alan Greenberg: I raised my hand in reaction to something you said, and that was the question of instead of trying to enumerate harms, should we just wait for them and then react. I'm paraphrasing, but I think that was basically what you said. And I think that's the mode we are operating in right now, and we have proven to be not very reactive until unless the harm is so large that - we occasionally do react quickly.

Most of the time we don't react quickly. We're not very nimble, and we either find out that, sorry, there's nothing we can do about it, because the rules say

it's allowed, or we start a long, involved process which often takes years to try to address the rules.

Mikey O'Connor: Yes, I was thinking that maybe we would need some sort of mechanism that was a little more adroit than that. And I may have also added more to the paragraph than I should. What I was really interested in was exploring some sort of mechanism to handle this kind of stuff. That's what a PDP is. Yes, I know. Okay, Jeffrey?

Jeffrey Eckhaus: Yes, I just wanted to follow up and agree with what Ron stated, and I think that we should put the list of harms that we know it exists, or what we could imagine. And then I think the most important point is to say, "Are these dependent upon cross-ownership? Can they exist now in our current format?"

And then maybe, I think, another thing would be once we have that list, that people who put proposals together, under this part of their proposal or under that, it could or could not exist. Or say, you know, this part of my proposal does protect against this harm. This part does not protect against this harm. Maybe so we sort of get an idea of what the harms are, the potentials, and what parts of the proposals can help against them.

And I think - but also just to be clear, the other part is to say not to just, you know, worry about fear-mongering, and to say, "Hey, listen. This is only possible with co-ownership and or, you know, or this is possible now." And just to separate those out so we know the difference. So because then there's a difference between launching new TLDs and allowing co-ownership.

So just I want to be clear about that. But I think that is a good idea, and I think Jeff Neuman pointed out a lot of links in a previous email of where some of the harms that people alleged would occur were in. Not that they're facts as harms, but some were alleged. And then we could also discuss the further

merit of whether those are just, you know, harms that could never occur and people are worried about.

Because it's like I think Richard Tyndall said it, saying if we allow co-ownership, it will cause global warming. You know, is that a legitimate harm or not? So we need to go through some of those as well.

Mikey O'Connor: Okay, thanks, Jeff. Ken Stubbs? Sorry, I won't do that again.

Ken Stubbs: Hello, Mikey. Can you hear me okay?

Mikey O'Connor: Yes. I can hear you fine.

Ken Stubbs: Okay, fine. One of the problems we've had, and one of the reasons that ICANN has not been necessarily - I won't say responsive. But the current process that we have for dealing with issues does not provide for any, in many ways, real clarity. By that I mean the process isn't, in most cases, either incredibly cumbersome or the sanctions are so onerous that it makes it very difficult to deal with.

And one of the things that ICANN is going to have to do, and I'm certainly not proposing necessarily doing it now, because if they do, the odds are it will either create havoc or will cause an additional extensive delay in the new TLD process. And that is ICANN has to take a very close look in the future as to how they can deal with sanctions for bad behavior.

And I think they're going to have to develop some sort of a method for stratifying the sanctions to make them make sense, number one. Number two, they'll have to provide some sort of a way of filtering the complaints and so forth, so you don't end up with a situation where you have 3000 complaints about the fact that somebody doesn't have something, or if something is not accurate.

And it becomes just an incredible job for managing from a complaint standpoint. I do think that this is an evolving process, and I do think that once ICANN gets off the ground here, they're going to have to take a very close look at this. I think it's very difficult to put a sanction out that says, "If you make a mistake, we can put you out of business, force you to sell your company, or anything like this."

Because all that does, in most cases, is create a lawsuit and an interminable delay -- six months, a year -- it could be even longer than that. So from a practical standpoint, it is something that needs to be looked at. And I think it is possible to even stratify the harms down the road. I don't think that was necessarily the mandate of the charter of this working group.

But I do think that ICANN needs to take a close look at that as they move forward and evolve. And it's a compliance issue. At the same time, I don't know how you can hard-code something like that into a contract at the very beginning without having a clear process that is manageable. And I think we all would agree that a lot of the processes that ICANN has in place have not been as manageable as everyone would like to see it. Thanks, Mike.

Mikey O'Connor: Thanks, Ken. Scott, go ahead.

Scott Austin: Thanks, Mikey. A short comment that two calls ago, it seems like when I brought up the issue of harms, that either there were none or living in denial. Because we couldn't come to agreement the last four certain times. So I'm just very glad that we are going to, because I think that's our mission. I don't think being so concerned about affiliated or related sanctions, but I think the idea was just, as Jeff has said, that there are some more direct relations to the idea of vertical integration. That's it.

Mikey O'Connor: Thanks, Scott. I think that's it for the queue. I think I've kind of got my marching orders. Let me take the action to take another try at the list, and build the first draft of a table with a few columns.

And I'll try and push that out to the list for the proposal advocates to take a look at and perhaps - you know, I like Jeff's idea of letting the proposal advocates maybe weave that into their document and describe how their proposal addresses those harms. So let me take an action to push something out on that and see where we wind up.

Not seeing anything, oh, I guess Siva's got something in the chat. Let's see. If we take the approach of reacting to harms rather than superficial measures such as cross-ownership controls, then we will necessarily have to evolve a good mechanism to address harms; mechanisms to react to harms. Prerequisite, be to strengthen the processes for registrants to report harms. At the moment we don't have processes that (unintelligible) registrant issues to ICANN.

Oh, and I've got a note that Kurt is on the call. Perfect timing, Kurt. Let's wrap up the harms discussion, and switch back to the conversation about the new language in the DAG. Kurt's on the call. Maybe he can just give us a few highlights and respond to a few questions. And many thanks, Kurt, for joining us, probably on such short notice.

Kurt Pritz: No, no, that's okay. This call is always on my calendar, and I apologize for being late. You know, I think it would - well the intent of what's published here is to provide clarification. So, you know, as an example, Alan's question in the last meeting went to, you know, what does cross-ownership mean. Does it mean one share of stock? Or something less, if there's something less than that?

So what's in the guidebook and in the contract is meant to provide clarification on that, and that's the primary purpose. And then in the guidebook also there is - and in the contract there's sort of wrapper-like around, you know, the intent of the Board in doing this -- the goals of the Board and their go-forth position.

So it's meant to provide clarification and also that context. And so it really does great to the extent that (unintelligible) questions. I don't know if I'll be able to answer them, because, you know, this is meant to anticipate and answer questions. But I'll do my best, and in cases where I can't, well, you know, we'll defer it and, you know, we'll get something in writing.

Mikey O'Connor: Yes, I think mostly it's extremely helpful if there are questions that have come up from members of the group as they're contemplating our way forward, this would be a good time to get them on the table and at least get them in front of Kurt. And then if he can answer them right off the bat, great. But if not, certainly he can't be expected to have every answer to every question right away.

Ken, I'm assuming your hand is left over from last time. So I'm going to skip to Ron, but if you want to be in the queue, I'll come back to you. Ron, go ahead.

Ron Andruff: Thank, Mikey. Thanks, Kurt. Ron Andruff. Kurt, I just wanted to ask about in the footnotes, the fifth footnote or the fifth point in the footnote says the Board will review this issue again if no GNSO policy results on these topics.

Is that to say that if this working group does not come up with some consensus, then the Board will then review what it's already put in place? Or is there something I'm missing here?

Kurt Pritz: That's what it means, taking into account public comment and taking into account, you know, the work that this group's done.

Ron Andruff: Okay, so basically there's still an out then for the Board at some point to say well we're not happy with the - I guess it's pretty clear. If the GNSO policy - if the GNSO does not come back and say here's the policy, then the Board would take it upon themselves…

Glen de Saint Gery: (Unintelligible)

Ron Andruff: I'm sorry?

Mikey O'Connor: Glen, were you trying to…

Glen de Saint Gery: I'm sorry, Mikey. It should not have been entered in by name. I am
                    testing the mute.

Mikey O'Connor: It doesn't work. It's a great day when Glen makes a mistake, I'll tell you. I'm
                    going to write that one down in the book. That doesn't happen very often.
                    Okay.

Kurt Pritz: Not necessarily - this is Kurt. Not necessarily meaning the Board would
                    change, but meaning the Board can review, will review this issue again.

Ron Andruff: That's what I need to hear. Thank you very much.

Mikey O'Connor: Okay, Jeff Neuman.

Jeff Neuman: Hey, Kurt. I'm looking at the version that's on Adobe, and I'm assuming that's
                    just copied word-for-word from the actual contract. Is that right? Mikey, just
                    a quick question.

Mikey O'Connor: I'm not sure, you know. Margie, did you…

Margie Milam: Yes, I cut it out from the Module 1, and then further down from the form
                    agreement.

Jeff Neuman: Okay, so at the end of 2.9, there's a - I'm going to get on this phone just in
                    case it's my speaker that was…

Mikey O'Connor: Oh, you know, that was. That was causing the echo. Good thinking.

Jeff Neuman: Okay, good. Sorry about that. The last sentence in 2.9 is bracketed. Is there a reason that that's bracketed? It says registry (unintelligible) will permit any distributor to provide registry services.

Kurt Pritz: 2.9C? Is that what you're looking at?

Jeff Neuman: Sorry, 2.9A -- the last sentence. There's just a bracket around it, so I'm just kind of…

Dan Halloran: Jeff, this is Dan Halloran. I don't think there's anything special there. I think we use brackets a lot as just kind of code like, you know, look here, we especially want to comment on this, or this is up in the air still. So in addition to the note that Kurt put out in the footnote which brackets that whole 2.9, that's a double bracket, I guess.

Jeff Neuman: Okay, because then my question on that is, a distributor -- would you consider or would this agreement consider that another registry being a distributor? Like who's a distributor? Is it just a registrar reseller or something like that? Or would that include another registry?

Man: I think I'd take that or turn it around as a request. Put that in as a comment. And if you have opinions on that, anything's not clear or could be clarified, give suggestions on that.

Jeff Neuman: Well you guys wrote the language. I'm just asking what you meant by it. And then my comment will be dependent on what is meant by it.

Man: I think - I mean I think I've given this line before that it doesn't matter what we thought. What matters is what the words say on the paper, and if you think it needs to be clearer, then let's clarify it.

Jeff Neuman: I'm sorry. I don't mean to be - I'm trying to be nice about this, and trying to figure out. But you guys wrote it. You guys should be able to explain it to us, and I understand if there's a gray area and you say, "Well we didn't know what to do in that case and so we're punting it and, you know, we thought distributor meant this when we wrote the language, but you guys are free to tell us your comments on it."

                 But to say you wrote the words, but you don't know what the words meant, I mean, I'm sorry. I'm just trying to be nice here.

Man: Jeff, I'm not taking offense or anything. I just - I mean you have a totally valid question. Is registry operator included as distributor of domain names? And I'm saying maybe that's something to be clarifying.

Man: Jeff, are you asking if a registry is a distributor of domain names? Not whether any registry is considered a distributor, but rather if a registry is distributing domain names to third parties?

Jeff Neuman: Yes, is a registry operator itself or someone that provides back-end services considered a - are they a distributor? In other words, does this provision prohibit a registry from using any other potential back-end registry provider as being a back-end provider for that TLD?

Man: So, yes, Jeff, I mean I hate to - I'm just - in the spirit of trying to be helpful, I think, you know, if you think it's a question, I think we should probably look at it again and try and clarify it. I think if you look at 2.9A, like the second sentence where it says registry operator, dot, dot, dot, you know, shall not act as a - any form of distributor.

                 So if you interpret distributor to mean just acting as registry operator, it would sort of circle in and implode on itself. Because the registry operator then couldn't act as registry operator for its own TLD, if that's considered distributing domain names.

Jeff Neuman: But then you have that whole thing, or any other (unintelligible) domain, which wouldn't necessarily make it implode on itself. It would just mean that the first part of the clause only applies to the last part.

Mikey O'Connor: This is Mikey. I'm going to draw a line here and say maybe, Jeff, what we need is for you to sharpen that question up and put it on the list and have those guys take a swing at it. But did you want to follow up then on that?

Jeff Neuman: Yes, I mean I guess the follow-up, which I'm probably going to get the same answer from is I'm assuming by putting registry operator and - you know what? I will actually - I'll withdraw it. We can go onto the next person. Because I'm going to get the same answer. So it's okay.

Mikey O'Connor: Okay. You know, I think it's a great question, and I think we do need an answer, but I think we're getting a little stuck on this. Kathy? You may be on mute, Kathy.

Ken Stubbs: I don't have my hand up.

Mikey O'Connor: No, no. Kathy.

Ken Stubbs: I'm sorry. I thought you said Ken.

Mikey O'Connor: No worries. Still not hearing Kathy unfortunately. Let's see if I can tell from the…

Cheryl Langdon-Orr: Cheryl here for Kathy. Kathy's written in the chat. She's fallen off the call and is coming back in now.

Mikey O'Connor: Oh, thank you, Cheryl.

Cheryl Langdon-Orr: So I think you'll hear her when she dials back in.

Mikey O'Connor: Okay. Avri, did you want to bring your question up out of the chat? Avri?

Avri Doria: Okay, it's a long unmuting. If you'd like me to, I could say it out loud.

Mikey O'Connor: Yes. (Unintelligible) a good one.

Avri Doria: When I first read that, I reviewed - I'm talking about the Board reviewing the implementation, reserving the right to review the implementation at a later time. And I was wondering whether that was any different than them reserving the right to review the entire implementation at a later time.

Or were people actually looking at it as some sort of lifeline to people that a) didn't like the re-interpreted zero cross-ownership and were hoping it would go away; or b) weren't happy with the direction of the consensus process? Or was it just normal? The Board can always review stuff later until it's final.

Mikey O'Connor: Kurt, or…

Kathy Kleiman: Mikey?

Mikey O'Connor: Yes, Kathy.

Kathy Kleiman: Mikey, I've gotten back on the call. Sorry for keeping everyone waiting.

Mikey O'Connor: No worries. Hang on for just a second, Kathy. I slipped a question from Avri in there first.

Kathy Kleiman: Oh, excellent.

Mikey O'Connor: As soon as this is done, we'll come back to you. Kurt, do you want to talk to Avri's question at all?

Kurt Pritz: Yes. I think Avri's right. The Board can, you know, until the implementation plan or the guidebook is fully approved by the Board, any issue can be revisited. I think we've seen that in this, you know, the implementation where we thought issues were settled and visited. So but I think the Board wanted to, you know, make a point here.

This wasn't a resolution by the Board, but sort of a discussion in a sense by the Board that they, if there wasn't a consensus, you know, they would review the module at the next meeting or subsequently. And it would be the GNSO census model, or they would review the (unintelligible). Obviously in conveying their sense, they wanted to make a point.

Mikey O'Connor: Yes, okay. Kathy?

Kathy Kleiman: Yes. Hi, Kurt. Thanks so much for being on the call. I had a question in the note about the note on the first page on the bottom about Number 2. And I don't know if you can provide a little more light, but it says a very strict interpretation of the resolutions might create unintended consequences. Those are important words, but can you provide a little more detail about what they mean?

Kurt Pritz: Well again, not speaking for the Board, but reporting some of what was said and the sense that I got from it, and this wording is that there were questions leading up to the publication of this about the consequences of owning one share of stock in a registry or a registrar. And in a publicly held company, what are the consequences of that and some other consequences.

So this language that you see here in Module 1 and in the contract is meant to provide clarification and avoid those - what's termed here to be unintended consequences.

Kathy Kleiman: But based on something you said earlier, is it my understanding that the DAG4 is meant to clarify anything? That this section is meant to clarify

anything that might have been misread or overbroad in the resolutions, but we can read this section very strictly -- the new section very strictly?

Kurt Pritz: Yes, I think the new section is the set of rules. But of course the comment we're looking for is, you know, are there still, you know, who knows what we mean by unintended consequences. That's in the mind of the beholder. But are there still consequences that are, you know, adverse to what the goals of the whole program are, by this language?

So this implementation that you see here was intended to avoid unintended consequences, and I'm sure the Board and certainly us want to - and you want to hear if there are some consequences to this that are adverse to the goals of the program.

Kathy Kleiman: Fair enough. Thank you.

Mikey O'Connor: Thanks, Kathy. Jeff Neuman? Or is that left over from before?

Jeff Neuman: No, this is a new point. It's just - shoot. Let me try. One of the things I'm going to - one of the unintended consequences is generally public companies don't know who their shareholders are unless they own more than 5%. So I like the 2% rule, but I think for a public company it's not going to be enforceable, because they won't really know who owns more than 2%. They'll only know (unintelligible) more than five.

Kurt Pritz: Right. This is Kurt. And that's a US rule, too, right?

Jeff Neuman: Yes. Correct, that's only US, yes.

Kurt Pritz: So it's more complex than that, but it's a good point.

Jeff Neuman: Right. I'll file that as a comment.

Mikey O'Connor: Thank you. Jeff Eckhaus?

Jeffrey Eckhaus: Yes. I actually had two questions, and one is related to actually Jeff
                    Neuman's. And if let's say I decided, you know, say a registrar decided to
                    invest, I don't know, something like $105 million into VeriSign, and buy
                    VeriSign stock and own, you know, 2.2%. How would, you know, I guess is it
                    up to that person to file the objection?   And I guess you're sort of saying,
                    "Hey, we'll have to look into that."

                    But my further question is what happens - in this part it's saying on
                    applications will not be considered, but in the registration agreement, the
                    same terms are used. But I don't think there was a provision of what would
                    happen if the 2% ownership was gone over once somebody already had that
                    TLD. Was that considered? Or did I miss that? And could someone point
                    out what would be the ramifications if that 2% was crossed?

Kurt Pritz: Hang on a second.

Mikey O'Connor: That was Kurt.

Kurt Pritz: This is Kurt saying hang on a second.

Dan Halloran: This is Dan again. That's another one we'll look at, and I'd invite that to be
                    submitted to comment, please.

Jeff Neuman: I mean, this is Jeff Neuman. I could talk about what a public company does if
                    that helps, but I don't know if that'll help you out.

Dan Halloran: Sure.

Jeff Neuman: So if a public company want restrictions on their shares, they have to put that
                    into their charter. So VeriSign would have to update, like NeuStar would
                    have to update its corporate documents to indicate that no one can own more

than a certain percentage. Once it has knowledge if someone purchased those shares, it can force, by virtue of its shareholder agreement, it usually can force a divestiture of shares up and to the amount that the restriction would set.

So we have that restriction now at 5%, with a telecom service provider cannot own more than 5% of NeuStar. With a public company, once someone purchases over 5%, we're immediately notified that that happens. And if they're a telecom service provider, which has only happened once, we basically send them a notice that they have to divest, and within 10, 15 days, they have to divest. I mean that kind of thing could happen in this case, too.

Man: That, Jeff, to answer that it's sort of the way a company would implement this restriction. But I think…

Jeff Neuman: Yes.

Man: The other side is what happens if they don't, I guess.

Jeff Neuman: Right, exactly. That was my question. I knew that, Jeff. I understood that. I knew that point in advance. I was just curious what happens if it goes over.

Man: So I think the general idea behind this, and I was - Kurt and I were kind of parsing through 2.9B to see where exactly it fits, and it might need to be looked at again. But the general idea would be, you know, you have to do that or you'd be in breach of the agreement. So we're trying to make sure…

Jeff Neuman: Right. It's not an immediate - I just thought if you guys knew it offhand. If not, then you could come back to us on the list. That's fine. We could just move ahead with other questions and sort of get back to that one.

Mikey O'Connor: Yes, this is Mikey. I think that that does sound like one to sort of do the same thing -- to ping it to the list or maybe, yes, frame it as a question to the list and let Kurt and Dan reply to it.

Kurt Pritz: Yes, thanks. We'd appreciate that.

Mikey O'Connor: You know, and give some time. It's a pretty long, new document to parse through real quick. Scott, go ahead.

Scott Austin: Yes, Mikey. The only - my comment on Jeff's statements there regarding control, if you look at the comments on the PDDRP the post-delegation dispute resolution process, there's a specific comment about amending that to apply to both registrars as well as registries. And it could be something as simple as (unintelligible) registrars to disclose their ownership in registries. So that it would be a percentage, but it'd just be a disclosure of their ownership.

Mikey O'Connor: Yes, and I think that gets to the same dichotomy.

Scott Austin: Well it talks about…

Mikey O'Connor: That doesn't address the issue of what happens if they exceed it.

Scott Austin: Right. Well but I though DRP was there for ICANN to police the agreements, in saying that the registrars would (unintelligible) both entities.

Mikey O'Connor: Okay. So maybe that can get folded into both the question and the reply for Kurt and Dan. Other questions for Kurt, while we've got him? If not, I think I'll draw the curtain down on this part of the agenda. We're running a little late, so I don't want to spend a whole lot more time on this. But I'll take a couple more. Kathy, go ahead.

Kathy Kleiman: Yes. I was wondering if Kurt might share, and maybe you can't, what the expectation is from the working group, Kurt. If there isn't a consensus coming out of the working group, what might the Board be expected to say.

Kurt Pritz: I expect the Board to look at the comments and the work of the GNSO groups, you know, to date, and review it. But I would, you know, you're exactly right. I wouldn't even speculate on what that might be.

Kathy Kleiman: Fair enough. Thank you.

Kurt Pritz: But, you know, I will say that the Board, you know, arrived at this position after considerable discussion and consideration. I just want to convey that it wasn't a lightly taken position, and with a we'll see attitude. It was a seriously considered position, but with the caveat that they're going to review it later. They're trying to do the right balancing. I'm sure I screwed it up.

Kathy Kleiman: Thank you.

Mikey O'Connor: Hard one to summarize. Thanks, Kurt. Anybody else? Okay, I'm going to move us on to the next agenda item, which is to sort of take our temperature and see where we're at on a deal, and see if we can plot a way forward. We are at our self-imposed deadline. Today's the day. And at least this observer isn't sensing that we're there yet, but I wanted to get the sense of the group and figure out what we do.

                   So I guess this is mostly a call to - especially the most active negotiator/proposal advocate-type people. Do you sense convergence happening around the various facets of the proposals, or not? And if not, what do we do to get beyond this? Any thoughts?

                   Avri wrote in the chat, "Lock us in a room until there's white smoke." I'm kind of attracted to that myself. For those who - I don't know that I've actually posted this to the list, but we do have a face-to-face session scheduled in

Brussels for us on Saturday morning. I think it's 9:00 am local time, Brussels. And clearly it would be helpful if we could be further along than we are now by the time we get there. But, you know, that's sort of our absolutely last, second-to-the-last chance, I guess. Avri, go ahead.

Avri Doria: Yes, I mean I'm only half kidding. But then again, I'm usually only half kidding. I haven't seen this happen in ICANN. It's certainly something that happened -- and I know people are going to say, "Oh, but that was just technical stuff" -- in the IETF, where we would have serious proponents of different solutions. And basically what would often happen is we'd be told to go off, go away and, you know, sort of see if it was possible to arrive at a common view of the proposals we were putting in.

I did it at least twice -- once when I was the chair that asked for such a thing to happen, and once when I was the neutral person that was added to the group to see if I could help it happen. Eventually we did come to a common protocol on the second one. So that is one possible scenario where, you know, those of us that, you know, think we've got something, think that we - on trying to reach consensus.

I know that on the (CAM) proposal, while we obviously haven't reached it yet, we were trying to take into account the things people said, and trying to get there while staying faithful to a couple principles, you know, basically the competition authority principal, et cetera. So I mean that's one possibility, and that's kind of what I meant in my flip way. Thanks.

Mikey O'Connor: Well I was only half kidding when I laughed, because I tend to agree that this is certainly an approach. And I guess the question is, is there a way to do this before we get to Brussels? In other words, there's no, you know, or does it require, and it may require, face-to-face interaction? Or is it something where - I mean in a way I was sort of hopeful the deadline would put that kind of pressure on. But I don't think we made it.

There was a conversation on the call two calls ago, I think, which many of the work group said that they were comfortable going into Brussels without an agreement. In fact, I think a majority of that call, or at least a majority of the folks polled on that call were comfortable going to Brussels without an agreement.

And I guess the question is - maybe I can use the poll again. Close this chat window, or this - I'll open this poll.

Cheryl Langdon-Orr: Mikey, can you speak up? I'm finding it almost impossible to hear you. Cheryl here.

Mikey O'Connor: Sorry, I'm thinking and talking at the same time. What if we just took a poll, re-polled on the question. Do we think we can come to an agreement before Brussels? Let's put it that way. I agree I think we can get to an agreement, or no, I don't think we can get to an agreement before Brussels.

Ken Stubbs: Mikey, it's Ken. I have a point of order.

Mikey O'Connor: Go ahead.

Ken Stubbs: I'm sorry. Define agreement. I'm not being silly, you know, I mean…

Mikey O'Connor: Yes, no. I think that basically the product of the working group is essentially a proposal that has, in a perfect world, absolute consensus in a real world. At least rough consensus. And that's what I'm talking about, is the agreement around such a proposal before we get to Brussels. You know, I'm sort of playing off of Avri's point, which is I think we really do need to figure out a way to increase the pressure on people to move their positions together.

And we haven't seen a whole lot of movement. So one approach is to say we go to Brussels and we didn't get to consensus around a proposal, and thus we'll turn over our proceedings to the Board and carry on into our second

phase. You know, I'm at sixes and sevens. I really don't know how to proceed at this point. Jeff, and then Cheryl.

Jeffrey Eckhaus: Yes, thanks, Mikey. I think that today might be a little early to conduct that poll, just because now that the new guidebook has come out and there's clarification, and certain people, certain groups that, you know, thought, you know, weren't sure of their position are now sure of their position, and some are not, and there's a lot more clarification.

I think that there should be some more discussion now, because certain things changed. And I think that maybe we might be able to have this poll again on Monday, and you might get more of a response, as people continue to digest the guidebook and their positions, and discussions continue.

Mikey O'Connor: So maybe set the deadline back to at least to next Monday, given the timing of the arrival of the guidebook? Is that - what should we use as sort of our pressure-generating device? Is Monday a realistic deadline to put enough pressure on folks to have their conversations and move proposals closer together?

Ken Stubbs: Mike, it's Ken. Put me on the list.

Mikey O'Connor: Yes, I'll put you on the queue after Cheryl.

Ken Stubbs: Sorry.

Mikey O'Connor: Cheryl, go ahead.

Cheryl Langdon-Orr: Thank you, Mikey. I just wanted to point out, which I think is the appropriate time to point it out, and I've just sent a follow-up email to the email Alan Greenberg sent to the list earlier today, whenever it is in your today. Because what it does, to some extent, is start putting some clear polling on the table.

Alan made several very -- I feel for obvious reasons when you see my email -- important points on this and what should be happing before, after or during Brussels; but also where he currently sits in terms of support or otherwise for what is on the table. I've just done exactly the same thing. Maybe if more of us do that, that might also help to a) take the temperature, and b) put the pressure on the (unintelligible).

Mikey O'Connor: That sounds great. Ken, you're next.

Ken Stubbs: Yes. I'm inclined to say that I think we might need just a little more time as opposed to Monday. I think we have to be realistic that we have a weekend, and it's always more difficult for people to communicate on a weekend. Granted I know we have emails but, you know, I think we should be realistic and assume that there's a much greater chance that we would have something done of the second meeting of next week. And, you know, that's just the way I feel about it.

Mikey O'Connor: Well if we were to take that approach, would there be something that could be done that's useful on the Monday call? Or should we just cancel that one and put all the pressure on a week from today? What's your thought on that, Ken?

Ken Stubbs: Well my thought on that would be that if it either - I wouldn't necessarily cancel the call, because there may be a request for additional clarifications, for elaborations. Somebody may come up with a request for someone to expound on something that may have come up in the next few days.

You know, I really don't know. But I'm more comfortable with something a little further out in the week. But that's just - I'm one of, gosh, what have we got -- 35, 40 people on the call here? Maybe someone else has some…

Mikey O'Connor: Yes, no. No, I certainly understand your thought.

Ken Stubbs: I think the idea of putting pressure is important, but you have to be realistic.

Mikey O'Connor: Right.

Ken Stubbs: And I think the point was made, you know, people are still digesting the latest issue of the day. And it requires some very close evaluation of one's goals and one's current positions, and what one feels it can get. And I'm talking about as a member of this group, we are (unintelligible) Step 10. That's all.

Mikey O'Connor: Yes, okay. Brian, go ahead.

Brian Cute: Yes, another consideration that might be one way to work this is, you know, you and Roberto are going to have to write a report. So kind of work backwards on the calendar. And you're going to write a report that either primarily says we went through the process and this proposal has majority substantial consensus support, whatever it is.

                  Or you're going to write a report that says we didn't come up with a single report. We've got a couple. We've got three. Here's how they're supported respectively, and we, you know, have this grid. And the grid might even be in your first report.
                  But I think maybe prudently to calendar back, you would have to have either of those two versions of the report completed and ready. Is it Send button? And then work the calendar back that gives you guys enough time to either accept the splintered results and finish your report, or the single proposal result and finish your report.

Mikey O'Connor: There was - Jeff Neuman was firing away on the chat while you were talking, Brian, and saying that the working group writes the report, not the chairs.
                  And just, Jeff, I can't remember if you were on the call. I volunteered to draft a report. I wouldn't write it, but I could be the scribe. And I think that may be what Brian is meaning there. At least that's the way I spin it.

Brian Cute: I mean writing. You guys have to physically write it. Yes, obviously the group signs off on the report, but you guys have to do the writing. Or we collectively do the writing.

Mikey O'Connor: Yes.

Man: Mikey, I (unintelligible) question that's directly tied to this conversation that you're having right now.

Mikey O'Connor: Okay, go ahead.

Man: At this point in time, does it appear that either you or Roberto will be in Brussels?

Mikey O'Connor: Oh, I have good news to report on all fronts. We will both be in Brussels, starting on Friday. Roberto gets there a little later in the day. I get there midday, and we'll both be there through the Wednesday public session. And I will be there through the end of the week. So you have me, the junior co-chair, and Roberto, the senior co-chair, there for at least the first two-thirds of the meeting.

Okay, back to Brian's point. I may start doing a little bit of at least an outline of a report. But, Brian, I think you're right. Basically the report right now is pretty easy to write. It's either we have a proposal and here it is, or we have several, and here's how the group feels about them. So I'm not feeling like there's a lot of timeline issue there.

I wish I could use that as a pressure point, but I don't want to. I think that this pressure needs to be just self-imposed pressure, rather than a kind of a, you know, normally I would say absolutely. But in fact I think this report could be written literally in hours, because so much of the work is really contained in the proposals, not in the wrapper that goes around it. Siva?

Siva Muthusamy: Yes, I just wanted to suggest one of the ways by which we can move faster towards a consensus. Apart from having discussions on form and apart from our remaining changes, we can start preparing a draft document which everybody starts editing (unintelligible).

It can be a draft document that you as the chair of the working group begin, on its - all of us the (unintelligible) commenting and editing, modifying like a wiki or a Google document. So that, I think, is closer to a consensus process.

Mikey O'Connor: Thanks, Siva. That's something I considered, and it's often done in formal consensus process. In fact, that's what we did here in Minnesota. And the reason I'm not pushing real hard on that is because we really have several drafts like that already in the form of the proposals.

And I found it difficult to make the transition from the multi-draft to the single one logistically. And so that's why I've been putting pressure on especially the proposal advocates to consolidate them. But I would entertain thoughts on that.

I mean I'd be happy to take a stab at it, but as I said, I started down that road and kind of hit a bit of a dead end. So I could use some help. Let's see. I haven't been watching the queue. Brian, is yours left over from before? I'm going to assume that it was. If I'm in error and you want to speak again, Brian, just let me know. Jeff, go ahead.

Jeffrey Eckhaus: Thanks. Yes, I think I agree with you on the report is really - I mean if we want to put this together as a proposal but, you know, the different proposals and where they stand, but I mean I think what the - if I read the footnote correctly, it says that, you know, that we already have the position. We have the default position. This is where we are unless the GN - it says, although let me just read it -- to develop a stakeholder-based policy on these issues.

So I mean we could submit it, but I think maybe some of the GNSO experts could help me. What would we need to have a GNSO, you know, based stakeholder policy? What would need to be passed for that to happen? I mean the actual numbers. Maybe somebody could help me, because right now we have, you know, so much disagreement between different stakeholder groups and different pieces.

So I'm curious what we would need to do. Because as I see it now, the report would just be here are the proposals. Here are the people that support it and, you know, but we have not enough to seem like we can get a consensus policy that we stay with the Board position.

Mikey O'Connor: Before I throw that open to the rest of the group, I think one of the telling phrases is that one that we quizzed Kurt about, that said that the Board, you know, they specifically left themselves the opportunity to review our proceedings.

And so one possible outcome -- I'm not terribly keen on this outcome, mind you -- but one possible outcome would be that we prepare a report that says we have three major points of view. Here they are. And the Board takes that document and makes their own decision. And I think the obvious drawback to that is that it means that we aren't shaping the policy. We're basically pumping it.

And so I think it would be really helpful if we could hammer out something that we actually agree on, that we can then work up through the Council and to the Board so that, you know, there really is - I mean this is not unlike the situation that we were in in Minnesota, where we had extreme consumer advocates and carriers in the same room trying to come up policy about broadband.

And I don't think that's impossible. I think that we can do that, and I think that some of the places where we find opportunities to meet are in some of the

sort of thinking outside the box-type proposals, like the one that Mike Palage described in the (CAM) proposal. I'm not saying that I'm for it or agin it. I'm just saying, you know, that's an example of something like that. But I think that the fallback is we don't agree. We have several proposals, and it basically goes back to the board.

Jeff Eckhaus: Mikey, it's Jeff. Can I just respond to that? I don't think our job is to present any of the proposals or our work to the Board. I thought it was to present it to the GNSO. Right. I mean the Board is free, of course, to look at information, but we're not submitting this to the Board. It's just the GNSO, and then they can vote on it or not, and then but the Board already has a position.

Mikey O'Connor: Right, but, you know, what I read into that paragraph is that - and what I also am kind of reading into Kurt's response, is that they are watching. And that they…

Man: That was frightening, by the way.

Mikey O'Connor: Well there you go. So, you know, I agree. We are not preparing proposals for the Board, but I think the fact that if we came up with a report that looked like that, they would read it. And they might act on it. So I think it's beholden on us to do the very best we can to sort of not leave that unlocked grenade rolling around on the floor.

I think it's much better if we can actually come to an agreement. Make some compromises. Unite around it and present that to the GNSO, et cetera, etcetera. The usual process. Because there is this sort of sub-text that's there. Roberto, go ahead.

Roberto Gaetano: Yes. I was kind of responding to these kind of comments. I think that that's correct. We do reports and present our results to the GNSO. But I tend to disagree on the fact that the Board has already a position. But the fact that the Board must take a position in Nairobi, was clearly to give the ball back.

And that's not, in my opinion - I mean my experience, previous experience with the Board, that the Board has not yet made a decision on vertical integration.

It has only said the defaults. So I think it's really important if we can come with some forms of consensus that the GNSO can then present, if the Council agrees, as the position of the GNSO. We had two people in the beginning as observers from the Board following what was going on in this working group. They have been silent and no longer participating in teleconferences, but I'm sure that there is some sort of monitoring of what is happening here.

So definitely I think that what we are doing here can and will be important for the positions that will be taken in the months to come. So, you know, I would like to say that I would be against a kind of a frustration attitude of the fact that we have not come yet to any significant consensus. But anyway, our game is already set and we are going to go with default solution that the Board has said in Nairobi.

I think that I'm absolutely convinced that we can come up with something, and I think that all the work we need to do is to make a realistic assessment on what we can come up as a consensus, even in Brussels, even if past the term, the deadline. Even if we do that in the physical meeting there that is going to take place on Saturday in Brussels. It will still be significant.

The Board will have the usual workshop on Sunday, and that will be the day after we have our session in Brussels. And I'm sure that what we will be discussing, and the potential consensus forms, we will report it to the Board. So again, what we are doing here is important and can influence the Board's decision in Brussels.

Mikey O'Connor: Thanks, Roberto. Ken, you're on.

Ken Stubbs: Yes, just a couple of things. I'm going to step back about five or ten minutes and agree with you, Mike. I think the idea of publicly editing a document -- I never forget I sat in an IT meeting for four hours while they argued about a one-word substitution. And it just doesn't necessarily work that way.

At the same point in time, trying to take a little bit from what Roberto talked about, I think if you look at all the work product that's been done by this group over the last -- what has it been, six weeks now, or something like this? There are certain commonalities or certain things that are starting to develop that are becoming more and more common as proposals surface, as people comment and stuff like this.

There have been attempts to try to create, let's say, I think Kathy a few weeks back did a matrix. And there's certain things that you can start to look at that are showing up there. And I think there's an obligation to report that there are trends. I honestly think that it - you know as well as I do, when you get a diverse group like this together, you're never going to get everybody to agree on everything.

But at the same point in time, there is clear trends that develop one way or the other, whatever they may be -- types of ownership, types of TLDs, you know, back and forth. I think we have an obligation to communicate that. By the way I would say, Roberto, that there are still Board members that have been on the call. Because I know for a fact George Sadowsky's been on at least one or two of the last two or three calls. Maybe he doesn't stay on very long, but he's signed in over on the attendee list.

And I'm hoping that there are members of the Board that are taking the time to listen to these things, and to look very closely. I'm certain that they are. And I think we just need to keep pushing forward. I would be horribly disappointed if a report came out that said something like this: a whole bunch of people got together for eight weeks, and nobody could agree on anything. We could not arrive at a, you know. That's not true.

There is a lot of agreement in here. There's disagreement as well, but the point is there are threads developing in here all the way down the line. There have been posts in the last three or four days in reaction to both the new DAG and, you know, in reaction to discussion that you know as well as I do are all going on off the list as well.

So, you know, I certainly don't think that we're not capable of providing the Board with some - the Board through the GNSO, with meaningful information that will help them make any decisions as to whether or not they want to move from the current position that they have. Thanks.

Mikey O'Connor: You bet. Thanks, Ken. Here's my summarization. I would ask, and I'll put all this out in a note to the list, too. But I would ask that everybody who's a proposal advocate, who has a row in Kathy's matrix, to go through and update your row and send me a copy of the matrix with that updated row. And I would ask that that's done by close of business tomorrow, just to get a snapshot of where things are at right now. Not to say that it's frozen, but to take that (unintelligible).

We'll set the new deadline for a week from today. We'll meet Monday, because I have a feeling there's plenty to talk about. Avri just raised a good point in the chat and Margie dropped off the call, so I will take an action for Margie. Could everybody also forward the latest version of your proposals to Margie by close of business tomorrow? And she will post them to the wiki, so that we've got that repository up to date.

And we'll keep going, because I agree with everything that folks have just said. I think this is, you know, I like to do a slide when I do a presentation, just reporting on a group like this. And one of the slides that I'll do is the one that captures the number of meetings and emails and work products that we've come up with in this very short working group.

We are, at this point, at about a factor of three times as many emails as some very substantial PDPs that took a year or more. You know, there's nothing to be ashamed of so far, but we do need to drive this one a little bit closer to closure.

So I think that's probably as good a point as any to wrap this up. Let me just touch on the actions that I've got. I will take an action to consolidate my little list plus the links that Jeff sent to the list about the (unintelligible), and I will send a new version of that to the list also by close of business tomorrow.

And if we could get Kathy's table updated -- updates to me by close of business tomorrow -- and then latest versions of proposals to Margie by close of business tomorrow, we'll use those tools to continue the conversation. Keep working and we'll update ourselves on Monday, and try and see where we wind up with the kind of new deadline of Thursday next week.

I think that's it. Anybody got any final thoughts before I sign us off? Okay then.

Woman: Happy birthday. Happy birthday, Mikey.

Mikey O'Connor: Oh, that's right.

Woman: Happy birthday, Kathy.

Mikey O'Connor: Happy birthday, Kathy Kleiman. Yes, to me and Kathy.

Woman: And Roberto coming up this weekend, I think.

Mikey O'Connor: And Roberto's coming up on the weekend. No wonder we get along so well.

((Crosstalk))

Woman: We will be older when we meet again on Monday, anyway.

Mikey O'Connor: It's that one-way street. Okay, thanks, gang. Let's keep at it. I think we can do this. All right, bye-bye.

Woman: Enjoy the day, all. Bye-bye.

Glen de Saint Gery: (Tanya)? (Tanya)? Can you hear me?

Operator: Yes, I sure can. One moment.

Glen de Saint Gery: Thank you.

                              END