Vertical Integration PDP Working Group
TRANSCRIPTION
Monday 12 April 2010 at 17:00 UTC

Note: The following is the output of transcribing from an audio recording of Vertical Integration PDP Working Group meeting on Monday 12 April 2010 at 1700 UTC. Although the transcription is largely accurate, in some cases it is incomplete or inaccurate due to inaudible passages or transcription errors. It is posted as an aid to understanding the proceedings at the meeting, but should not be treated as an authoritative record. The audio is also available at
http://audio.icann.org/gnso/gnso-vi-pdp20100412.mp3

On page:
http://gnso.icann.org/calendar/#apr
(transcripts and recordings are found on the calendar page)

Participants on the Call:
Contracted Parties House
Registrars Stakeholder Group
Graham Chynoweth
Paul Diaz
Jeff Eckhaus
Statton Hammock
Krista Papac
Michele Neylon
Tim Ruiz
Ruslan Sattarov
Stéphane van Gelder
Jean Christophe Vignes
Amadeu Abril i Abril - CORE Internet Council of Registrars
Eric Brunner-Williams – CORE Internet Council of Registrars

gTLD Registries Stakeholder Group
Nacho Amadoz
Brian Cute
Kathy Kleiman
Vladimir Shadrunov
Ken Stubbs

Non Contracted Parties House
- Commercial Stakeholders Group
Ronald N. Andruff - CBUC
Berry Cob -CBUC
Jon Nevett   -CBUC
Mikey O'Connor – CBUC- Co-Chair
Michael Palage - CBUC
Jarkko Ruuska - CBUC
Scott Austin IPC
Kristina Rosette - IPC

- Non-Commercial Stakeholder Group
Avri Doria
Milton Mueller

Individuals
Phil Buckingham
Roberto Gaetano – Individual - Co-Chair
Kristian Ormen
Katrin Ohlmer
Steve Pinkos
Faisal Shah
Tero Mustala
Richard Tindal
Anthony van Couvering

ALAC/At Large
Sebastien Bachellot - ALAC
Alan Greenberg – ALAC
Baudoin Schombe

Staff:
Kurt Pritz
Amy Stathos
Margie Milam
Liz Gasster
Glen de Saint Gery

Apologies:
Cheryl Langdon-Orr
Jeff Neuman
Siva Muthusamy

Coordinator: Thank you everyone for standing by. This is the operator, and I just need to inform all participants that today's conference is being recorded. If you have any objections, you may disconnect at this time.

I'd like to introduce your host for today's call. We have Ms. Glen de Saint Gery. Ma'am, you may begin.

Glen de Saint Gery: Thank you. Mikey, do you want me to do a roll call?

Mikey O'Conner: Yes, let's do a roll call really quickly. I don't think it'll take long and I think folks will find it helpful to know who's on the call, so go ahead.

Glen de Saint Gery: Okay. On the call we have Baudouin Schombe, Ruslan Sattarov, (Kristin Cross), Avri Doria, Paul Diaz, Katherene Olmar, Jon Nevett, Vladimir Shadrunov, Richard Tindal, Jarkko Ruuska, Krista Papac -- sorry -- Michele Neylon, Tero Mustala -- I think your name has been misspelled -- Scott Austin, Statton Hammock, Jeffery Eckhaus, (Tyler Show), Milton Muller, Alan Greenberg, Roberto Gaetano, Kathy Kleinman, Michael Palage, Stephane Van Gelder, Kristina Rosette, Tim Ruiz, Jean Christophe Vignes, Ron Andruff, Kristina Ormen, Nacho Amadoz, Barry Cobb, and I think that's all.

And for staff, we have Margie Milam, Amy Stathos, Glen de Saint Gery. And, have I missed anyone?

Dan Halloran: Dan Halloran is here. Hi, Glen.

Glen de Saint Gery: Hi.

Liz Gasster: And Liz.

Glen de Saint Gery: And Liz Gasster. Sorry. Over to you, Mikey.

Mikey O'Connor: Thanks, Glen. Thanks all. Good morning, good afternoon, good evening. This is the 11th of April VI call.

Man: Twelfth.

Mikey O'Connor: Twelfth. Thanks. Twelfth of April. And, I apologize for such a tight agenda, and I hope not to do this again. So, this is going to push along fairly quickly. And Roberto stand by. I'm on a cell phone with a laptop balanced on my lap on holiday, so if I suddenly drop off the call, you may have to pick up the slack for me.

Just a reminder, given the number of people that are on the call, to be especially conscious of muting your phones today. And also, is there any heartburn over the agenda? This would be the time to change it. And also, if people have any other business, this would be the time to let me know. But, we do have an awfully tight agenda, so unless it's really earth shatteringly important, I'd like to hold any other business to a minimum this time.

Avri Doria: I have a question from Avri.

Mikey O'Connor: Sure. Go ahead Avri.

Avri Doria: Is the Adobe working right? I can't seem to get in it.

Mikey O'Connor: It's okay for me.

Avri Doria: Okay. So then it's just me. Thank you. Bye.

Mikey O'Connor: Okay. Thanks, Avri. Anything - anybody else? Okay, I'm going to dive right in. One of the things that I want to commend everybody on is fabulous conversation about both you know, an amazingly productive conversation on the list. (Devil) take the (hind most) on this one. This is a very fast moving and a very busy list, but I think one of the best conversations. Again, a reminder everybody to be on mute. We had somebody cough just then. If we could - mute your phones.

Anyway, there's another half to this that I think we need to get ticked off today, and I just want to spend about 10 minutes, until about 20 after the hour talking about it and imploring you to -- especially those of you who've (been) quiet on the list and quiet on the phone calls -- to think about joining this team. And, that's a team that works with proposers so that as we go through this process, this sort of self-documenting process, at the end we have sort of a similar framework by which we can evaluate the proposals against each other and also against our needs.

And so, on the Adobe in front of you is that little slide deck that I sent, and if you can see that great. And if you can't, it's back aways in the mail list. Maybe somebody could resend it to the list real quick just to bring it to the top of the stack.

I want to go to the second page of that, and I think everybody has control of this for themselves. Is that right, Margie, or am I controlling it?

Margie Milam: That's right. Everyone can control it (unintelligible).

Mikey O'Connor: Okay. So, the next page is what is the goal of the proposal? And, I just want to remind us that these proposals are really going through sort of a little gauntlet. They're starting with us, and we're really the consensus-based development group that hopefully will boil forward one or several really good proposals. They'll then bubble up to the GNSO Council, which is less consensus-based and more representational, for approval. It will probably eventually see some time in front of the GAC as well, and eventually the real goal is to get these proposals approved by the Board and worked into the DAG. So, that's just a repeat.

The next page, the portfolio page is saying that there are really two dimensions to this, and this is really just a consensus reminder that says yes indeed we want proposals with lots of support, but we also want proposals with not much dispersion. So let's imagine that we had a proposal that had a lot of support, but it had a lot of dispersion as well. In other words, a group of people who - even a fairly small group of people who were very uncomfortable with it.

We then would not...

((Crosstalk))

Mikey O'Connor: ...does not have consensus, we would have a lot of support. But, carrying the majority would still be in place, and that's not a desirable outcome for us. So what we want is many supporters, but we also want low dispersion or consensus. And, that's really the goal of the proposal stuff, but also this notion that we're introducing today.

So if you go onto the next page which is titled Roles, you'll see that there are really four equally important roles, and they're raised on the page with no particular intent to imply goodness or badness; just that there wasn't room on the page to have them all in the same place. We've got proponents of proposals, folks like the (Jay)s, and the MMAs, and Kathy - and Phil Buckingham if you're on the call, I may have short changed you. We'll get to that in a minute. But anyway, there are folks who are the proponents of proposals. There are folks who support them. There are folks who oppose a proposal, and that's not a bad thing. It's just part of the deal.

And then, the notion that we're introducing today is that there are also folks who help evaluate. And what we're really trying to get to I think is a place where we're all proponents of the proposal, so that as we march forward into the subsequent round of discussion with the GNSO, and the GAC, and the Board, you will essentially have a group of people from across the stakeholder groups inside and outside the GNSO who are all proponents of these proposals.

And the reason that they will have become proponents is because the objections got flushed out in our group, on our list mostly. You know, they got met. They got answered. We did a good job of evaluating. As we evaluated we found more things that we needed to hammer on, and eventually we get to the point where we come as close as we possibly can to a group of people that all support a proposal, and we carried them forward.

Stephane, you have your hand up. Won't you go ahead.

Stephane Van Gelder: Thanks, Mikey. Just to kind of follow on one thing. You've mentioned twice that the GAC would be consulted on this as well. That's not part of the process in terms of direct consultation. They would - this is a working group that will come back with a recommendation to the Council that will be either ratified or not by the GNSO Council as a PDP, and that will go to the Board directly then.

The GAC has representation on the Board, but it wouldn't be a proposal that would need to be vetted by the GAC directly, independently of the rest of the process. Just a clarification.

Mikey O'Connor: Yes. Good clarification. Let me run through this queue that's building, and then we'll carry on. Avri, you're next.

Avri Doria: Yes. I had two questions - I mean two comments. One of them came as I was listening to Stephane. While it is true that there is no step that requires (unintelligible) by the GAC. A, we do have GAC related participants. And B, it's to be hoped that they would - they can talk to us while we were doing it so we wouldn't end up all coming to consensus with something and at the end of the day have them say, "But no. This cannot be."

The other thing that I was going to bring up is as part of the mechanism for achieving this consensus, one of the things we might want to consider having is each of these proposals in its changing format easily available on the Wiki so that it's really easy to go back. So that when I hear someone say, "Well, isn't this proposal just like that one, except for A, B, and C," be able to get a quick reference as opposed to having to thumb through emails trying to figure out what the latest version of the proposal from X is. Thanks.

Mikey O'Connor: Absolutely. In fact, if I can save that one for the next little chunk of Mikey process stuff, which is coming up. One of the things that I would want to point out there is that what we'd like to do is get into a cycle where once a week some things start to happen. And one of the once a week things that we'd like

to see happen is the latest version of each proposal getting posted to the Wiki so that we can A, see the progress as it gets refined; but B, also have a quick and easy quick place to look at the current version. And so you know, I'd give that a big thumbs up for sure.

Michael, go ahead.

Michael Palage: Thank you. Thanks. Mike Palage. Just to provide a little further clarification to the statements that Stephane and Avri made, which I both support. During the ICANN Board GAC working group session that was I think held on Sunday in Nairobi, there was a specific - I think there was a consensus among the participants that getting GAC involved earlier in the policy development process would probably be more constructive to prevent finding out concerns later in the process.

So again, I agree with Stephane's statement about the GAC's role, but I also think Avri's point about trying to identify potential potholes sooner as opposed to later would be in everybody's best interest. Thank you.

Mikey O'Connor: Great. Thanks folks for the comments, and I couldn't agree more. I'm going to push along here. I'm not going to go to the page that's called Evaluation "Track". And, this is as defined as I've gotten it. I've debated about how prescriptive to get about this, and decided I would not get real prescriptive. Because, what I'd like to see is a group of folks form and do some inventing on their own.

But, there are sort of three major things that need to get done in addition to what the proposal proponents are doing. And, that is we need to come to a set of definitions. You know, there's been a fair amount of discussion about some of the definitions on the list. We need to nail those down. And then, we need to understand how the proposals - if they differ from those definitions at all, we need to understand in what way they want to differ. So, that's one component that's the process.

Another is that the MMA team and Barry started coming up with a pretty neat list of use cases. And what would be I think useful about that would be to have - I don't think we need to come up with an exhaustive list -- you know a hundred use cases -- but it would be good to come up with a complete list that then could be in a form where a proposal proponent could say, "Okay, these six use cases would be included in our proposal, and these remaining ones would not." So, that we could compare proposals against essentially a matrix of use cases.

And then the final chunks that we need to (dole) is similarly a set of criteria by which we want to evaluate the proposals, and then a mechanism to track essentially our results of the - of that analysis.

And beyond that, I don't have a huge - you know, I started inventing a prescriptive thing and decided I would rather leave that to the group that's forming. So going to the last page, Page 6, here's the little process that's in front of us. We right now have a pretty active but very small minority of folks on the list who are proposal proponents. We need to broaden the participation to include those of you who are not as vocal. And, I thought that this group might be a way to do that. So, we need some of you to volunteer, and that's sort of the first step.

I don't want to do it on the call. That's going to take way too long. But, those of you who would like to participate in this process, please volunteer. The list - if anybody would sort of like to be a sub-team leader, indicate that as well. This I think is going to be a pretty substantial amount of work, and just like everything else in this working group, it's going to have to happen fairly fast. So hopefully within the next few days, we will have a group of people formed who can then do some things really quickly.

One of the things that needs to happen is we need to gather up what we've already got. We have definitions from various places, both on the list and

from the staff in our charter. We have use cases that some of us have already developed. We have criteria that's been talked about. There's just a gathering exercise that needs to take place, and this needs to be put in sort of an orderly pile so that we can all look at it and review it, and understand it, and...

The next part is the fixing part. Is that enough? Do we need to revise them? Do we agree, et cetera? Again, that used to happen pretty quickly, and a preliminary draft kit put together. And then, the bulk of the work, and the ongoing work of this group will be to assist proponents with folding these lists and (keeping) to their proposals. And, essentially documenting how the proposals align with these three pieces of information.

Roberto and I were talking on our other call and saying that we're already producing a fantastic -- and I mean this in the most positive way -- a fantastic amount of information that we need to document as efficiently as we can. You know, there's way that we can possibly go through all the folks on the list and analyze them after the fact. We have to have some sort of self-documenting in place.

And so, this last step is really I think the most engaging and the most important, so that basically at any point in time if somebody came and asked us, "Where are you at?" Just like Avri mentioned earlier, we could point to the Wiki and say here's where we're at. We have this list of proposals. We have them evaluated against these criteria, these use cases, these definitions, and this at this moment in time is a snapshot of where we are. And, sort of like a whole tram in reverse, hopefully the focus on this will grow clearer, and clearer, and clearer as the weeks go by.

But almost immediately, we should start to see the outline of where we are, and have this be essentially a self-documenting process. I've already run just a little bit over my time, and I apologize for that. Again, this is just a terrifically tight schedule, but this is the time to cry out and say, "Gad no! This is

terrible." If people are comfortable with this, I'd like to just end it now and encourage people, especially those of you who are not proposal proponents, to jump on the list and volunteer to participate in this.

I have not been following the chat, so if there's anything that's coming up here that people want to bring forward, this would be a good time. But, if we're okay at least in general, I'll try and draw a line on this and move on to the next (chunk).

I think this is what call close enough for government work, so I'm going to move on. Margie, could you bring up the next little slide deck that I sent off to the list? The one that talks about sort of the approach?

Margie Milam: Yes.

Mikey O'Connor: Thank you.

And I again apologize to all on the call for my slightly lame behavior. I'm on holiday and I'm doing this on my lap and on a cell phone. So, if I just completely fall off the edge, bear with me.

Margie Milam: Is this the one? Mikey, is this the right one?

Mikey O'Connor: Yes. That's perfect. Thanks. If we go to the second page of this one, which is the one that's called Approach, the reason I wanted to sort of slide right into this is because I've already started talking about it. The idea here is that, especially given how short our time is, rather than doing sort of a waterfall approach, which in a way is the way that a PDP is normally structured, we wanted to try an iterative approach, and we're already well underway. We've got proposals that are out. We've got two more to listen to today at least, maybe more. And to the extent that we can get those out there and start iterating on them, we sort of leap ahead in being able to respond to some of the time pressures that we're under.

Another component of this is this idea that in addition to sort of the weekly update of the Wiki -- and you'll see in a minute -- that my hope is that proposal proponents will do that on Thursday. And then Mike Zupke and I need to invent this every Friday. And what we would do is some sort of poll across the whole working group just to get a sense of where we're at on consensus. The hope being that as the weeks progress, we will step incrementally closer and closer to consensus.

An important point that I wanted to raise here is that there is no such thing as something that is gone. It's either in the proposal or out of the proposals because we agree that it should either be in or out, or if we don't agree, we can't get the consensus on a given issue, we'll defer it. Remember, that we're in sort of a two pass cycle here. We have a very short-term one and then we have a longer-term one, where if we find issues that we simply cannot get to consensus on, that doesn't mean we don't address them; it means that we defer them for that subsequent task. The hope being that you know to the extent we can, we can get everything in.

The last bullet is I put a little Google calendar together. It's public. And, I did a compressed URL on my own Web site. My site promptly crashed, and so Margie or someone on the staff, if we can get an ICANN URL set up I can send you the full mouthful for the Google calendar, but it's a monster and I didn't want to post that to this little slide deck, so I put it on my own server and it promptly crashed. So, if we can get an ICANN URL that would be great.

Tim, I saw your hand come up.

Tim Ruiz: Yes, Mikey. I'm just trying to - (unintelligible) I took the weekend or actually two days off, so I've got you know, (unintelligible) - I'm trying to go through it the same time I'm talking - I'm trying to listen to you. But, I guess I'm a little confused about you know what the Evaluation team does, and then you talk

about continuously polling for consensus. Is that just with the - some volunteers on the Evaluation team are going to be churning the consensus, or you know the entire group?

Mikey O'Connor: Yes.

Tim Ruiz: And if the team says something - well, what is the Evaluation team doing exactly again?

Mikey O'Connor: Well, I'm viewing the Evaluation team more as a structural team than a content team. I think eventually, what we get to is to say, "Here's the framework by which we evaluate." We have all these criteria. We have all of these use cases. We have all of these definitions. And, it's up to the Evaluation team to make sure that that stuff is tight, so that then the proposal proponent types can make sure that their proposals address all of those now tidy components, and that we all participate -- except for the Chair -- in the polling every week so that we get a sense of where the whole group is at around - and that the evaluation component is to assist us all in understanding what these proposals mean and so forth.

Does that clarify it? It's a great question, and I want to make sure that it's clear, so does that help?

Tim Ruiz: I guess a little. I'm still...

Mikey O'Connor: I mean, this is - we're sort of inventing this as we go.

Tim Ruiz: Yes.

Mikey O'Connor: And you know, I think that one or two turns of the crank will make it A, clearer; and B, may identify some things that need to get fixed along the way. Because you know, we are moving this along on an awfully abbreviated schedule. And so, my thought was that like many rapid development projects,

it's better to get something out there quickly and fix it rather than have it absolutely perfectly designed...

Tim Ruiz: Yes.

Mikey O'Connor: ...before we go with it. And so again, you know I think what this evaluation team notion, it's going to be the same sort of thing as with the proposals, where we'll throw it out there and then people will go, "Wait a minute. That's not right," and then we'll fix it, fix it, fix it just as we fix, fix, fix the proposals. And hopefully in a couple of weeks, we'll be at a place where we'll say, "Okay, these are the criteria. These are the use cases. These are the definitions. This is how the proposals match up with those. And, these are the places where we have consensus and these are the places that we don't."

And that last bit is really the interesting bit. Where do we not have consensus, and where can we work to get the consensus on those places that we don't? And, all of the rest of this is really (tools) to bring a lenses on those issue - you know, bring them into sharp focus, and determine whether we can get to consensus about it. And so, this Evaluation team I think is a team that helps clarify that for folks (like me).

Roberto, go ahead.

Roberto Gaetano: Yes. I'm just wondering whether - since we are going at a fast pace, and I recognize that this proposal has been dropped on the working group during the call without a lot of preparation, and we're getting also short of time, maybe I think that we could discuss this - the proposal on the mailing list, and - you know, and get there a little bit more formalized things instead of continuing spending time on this call.

Mikey O'Connor: I agree. I think that's probably right. We are you know, running late. Let me quickly zip through the rest of this. One of the things that came up on the list - - I'm now on the next page of the slide deck -- was you know what's our plan?

You know, we don't really have a plan, and I wanted to just give you a sense that indeed we do have a plan.

The picture on Page 3 is a thinned out version of one that you saw before. It says look, one of our big fence posts is to get a snapshot of where we're at in time for Brussels so that the GNSO Council can see it and ask questions about it. So that the Board can - you know we won't have a formal slot on the Board agenda, but maybe in the hallway conversations we can talk to folks, or maybe there's an informal way to have a conversation with the Board.

But you know, we really have to do the bulk of our work I think - you know, at least the broad strokes done by Brussels. And so what I did is I put together a schedule -- and I am consciously using the word I rather than we on this -- that drives us pretty hard towards sort of a mid-May deadline, but then leaves us some slack so that if we just find that we can't - you know, if we find things that we still need to work out and we just run out of time, we effectively have some slack in our schedule before we get to Brussels.

We don't have any formal deliverable to do by Brussels, but informally it would be lovely to be able to get to a pretty clear picture of where we're at by mid-May. And one of the reasons for that is because mid-May is the deadline for input into the next iteration of the day, and if we can arrive at a fairly clear picture of where we think we're headed, we might be able to influence you in that deadline, although that's extremely aggressive, and I'm not putting that on the schedule that way.

The next picture is just the same sort of thing. Page 4 is just after Brussels, and that's where the formal deliverables show up. The Council approval. (We're viewed) between the Council approval and the Board approval - all that good stuff. And then, the last page is the - or the second to the last page is the milestone dates, which also show up in that little calendar. And, the last page is this notion of some weekly activities. The vote and - or the polling for consensus and the updates for the repository.

So, just a quick snapshot for those who are saying you know, which way is west? This is west at this point. And again, we can have a chat about it on the list. You know, it's a - okay. I think I want to draw a line under this, unless there's just a terrible screaming problem, and I'm more than happy to carry on the conversation on the list.

All right. Amy and Margie have about ten minutes that they'd like to spend with us. This is a hold over item from the very first agenda of our very first call, just to give us a sense of some of the antitrust issues that are relevant to our conversation. And with that, I'm going to let you take it away Amy and Margie, and we'll shoot for ten minutes to the hour to get done with this, and that's what I've got. Thanks, folks.

Amy Stathos: Great. Thanks Mikey. This is Amy. In understanding all of the references to the short amount of time we have, I don't even think we need to take ten minutes. Margie sent the - it's just a one page kind of a primer around this morning, just as a caveat, as it says in the first paragraph of the primer. I am the company's Counsel. I'm not acting as counsel, and this is not meant to be legal advice. Just a few items of things for the folks on the call to think about as they're going to their discussions.

Most of the registrars and registry reps have heard me say this on more than - on occasion or two, so I don't really need to make a presentation you know. It really goes through in the - it's an (ultimate) paragraph. Just kind of talks about a few things that people should be cognizant of when they're talking through these things when there are competitors on the phone with them. And, I think it's pretty straight forward.

Margie, do you have anything to add?

Margie Milam: No. Perhaps we just open it up for questions if anyone has questions on the memo.

Mikey O'Connor: I'll take a few. Oh boy. Alan. Go ahead Alan, and then Michael.

Alan Greenberg: Okay. I was rather both perturbed and intrigued to read, "Please note that
ICANN Counsel is not counsel for this work group, and should not be
considered legal advice. For specific legal advice regarding antitrust and
competition laws, please consult your own legal counsel." This is an ICANN
work group, and some of us on the call do not retain our own antitrust legal
advice and legal counsel. Either something has to be clarified or we need a
budget to retain legal counsel for the working group.

Mikey O'Connor: Amy? Margie? Any thoughts there?

Amy or Margie, you might be on mute if you're talking.

Liz Gasster: This is Liz. I'm going to actually jump in and (quell) any you know - this has
been a long standing approach to policy where -- every since I've been at
ICANN -- that ICANN Counsel does act on behalf of ICANN, and you know,
interprets and guides us in terms of their role as counsel to the company - to
the organization. Most of the issues that we deal with don't require per se
legal guidance for individuals or from individuals. We're talking about policy
issues for the most part.

Here, we have a situation where there's the potential for the antitrust issues
to arise, and so we're providing general information for the collective group,
but I think it's just intended as that. And it's not that we're recommending that
anyone seek personal counsel you know unless you have more questions or
concerns about the subject matter, where you feel you need personal advice.

I wouldn't attribute additional significance to that statement, other than how
we always operated in terms of that counsel is there to support you know,
ICANN, and to provide interpretations where helpful on you know, ICANN's
documents and such. But, they're not providing legal advice broadly to the

community, where we recognize that the community itself has a broad and divergent interest in any particular matter from a you know, more legal perspective.

Mikey O'Connor: Alan, is your hand up to follow-up? If it is, why don't you go ahead and do that, and then we'll go to Michael and Avri.

Alan Greenberg: Well, I guess I admit confusion. I think I've participated in working groups before where we - the working explicitly asked for a legal opinion on something. Now, that may well have been on an interpretation of an ICANN document, but it - but I think it was typically more general than that. And, I just question if this working group is not part of ICANN, and we have serious concerns about antitrust. I don't see an alternative but to retain our own counsel who will put up his hand and say, "Be quite. You just violated the rules," if ICANN counsel can't do that.

Mikey O'Connor: Why don't we...

Alan Greenberg: I put my hand down.

Mikey O'Connor: ...do one more response on that, and then we'll draw a line on it, and if we need to...

Amy Stathos: Sure. And, this is Amy again. And just to clarify. I think one of the key factors here is that you know, ICANN counsel is not giving advice to individual participants on the working group. I know some people may or may not have antitrust counsel. Many, many do. And I think Liz stated it pretty well in the fact that this is something that's a regular occurrence in that - as long as certainly I've been here, is that the representation is for the organization, and we are here obviously to provide some information as a benefit to the working group itself.

Mikey O'Connor: Okay. Thanks, Amy. Michael, go ahead.

Michael Palage: Yes. Michael Palage here. I guess a couple of questions. And again, I think Alan does raise a good point. I mean with Amy and Dan, we have several hundreds of thousands of dollars of ICANN legal talent. Hopefully, they would be able to provide some guidance to the group if we were going off a cliff. So again, I do think Alan does raise some valid points.

Amy, one of the questions that I have in the proposal that Avri, Milton, and I had recently co-authored, we specifically referenced the standard that ICANN uses in the registry - the ARCEP process where they will refer matters to National Competition Authorities. So my question there, would legal counsel be able to provide some further details on the criteria that were developed in connection with that and share that with this group?

Amy Stathos: You know Mike, I apologize I haven't had a chance to look at your proposal in detail, but I certainly can do that and then...

((Crosstalk))

Michael Palage: So - well so, my question is -- and again, you don't need to read...

Amy Stathos: Hello?

Michael Palage: ...existing...

Mikey O'Connor: Michael, you dropped off there.

Michael Palage: I'm sorry. The existing registry agreements have a provision in there that if there is a new registry service request that raises competition concerns, that ICANN will refer it to a National Competition Authority. That is in place in 15 gTLDs. There - ICANN has processed over 20 or 30 registry funnel requests over the last five years, so what we would - what we - I think the team as well as the group would find beneficial is what are the criteria that ICANN are

using as part of the ARCEP in deciding when - whether to refer something to a National Competition Authority?

Amy Stathos: Look - hey Michael, if you want to put that in writing, we'll certainly take a look at it and try - and look to see how we can respond to that.

Liz Gasster: This is Liz. I would like to just jump in on if you have further questions for - substantive questions for legal and general, like the Mike just posed, we really want to - because there are so many questions coming out of this group, just be sure that we identify the questions that are actually the questions that the group is asking, and track them so we don't lose them.

So, I just want to echo what Amy is saying for all these questions that are coming out that are substantive for staff, that we're going to - we already kind of asked Roberto and Mike O'Conner to help us a little as staff keep track of these. We know - and also, just make sure that these are questions coming out of the whole group, in addition individual questions. Not that I'm implying yours is at all, Mike, but just as a general matter.

So, if you can (unintelligible) to help with the group on if you have questions like that on the call, just help us follow-up in the chat or in email, and confirm that you know these are in the context of how they're relating to the group here, so we're just keeping track of the ones that the group - and trying to respond to the ones that group is posing to us.

Michael Palage: Sure. And...

Mikey O'Connor: This is Mikey. I'm going to cut in. Michael, why don't you take that one to the list for the - and I'll give it - implementer of the Chair that you know will consider this a question of the group, because I think we do need to know that. But, I kind of want to push things along, if that's okay.

Michael Palage: Well, just one other final question - and I did put this on the list, so it's there and it has been discussed by other group members, or there are at least three to five that have already specifically raised the criteria. So, I think that does meet it.

One final follow-up. Again Amy, in the context of what ICANN's position here. In the (Cray) report, in the - one of the Appendices, they talked about monopolies and bottle neck facilities. The fact that ICANN has a monopoly over what TLDs go into the root, does ICANN have a position on what liability it might have as a sort of a controller of that essential bottle neck facility in the process that we're undertaking? And, I will leave it at that, and if you could put that in writing or respond, that would be nice.

Mikey O'Connor: Well Michael, why don't you put that one to the list as well, and then we'll - you know, this is part of that self-documenting thing so that we can push that along to the staff for comment as well.

Avri.

Avri Doria: Yes, Mike. I think this is (specific and related) to the notes. It has been my experience both in ICANN and other industry type groups that have similar type provisions about anti-competitive behavior, that the staff and the legal counsel perhaps are not counseling us on those things, but they certainly can be counted on to raise the alarm flag any time they perceive something that deserves an alarm flag, and aren't just sort of sitting there passively sort saying, "Well you know, if you blow it, the courts will get you later folks."

And so, I would kind of expect that same level of service of pulling an alert, especially for those of us that don't have a corporate counsel, aren't corporate. As, these are just - participants in the group are not commercial or not corporate, and who don't want to be responsible for accidently leading any competitor into temptation.

Mikey O'Connor: Thanks, Avri. I tend to agree. Can we count on the staff for that? If we're just running off the cliff, that somebody will stick their hand up and say, "Hey folks, you're getting close to the edge." Liz, or Amy, or somebody.

((Crosstalk))

Mikey O'Connor: I think that get's to Alan's point as well.

Amy Stathos: So Mikey just the last point. I mean, we'll certainly think about what level of support as legal counsel we could look at to providing to the group, but you know it is difficult, the fact that we are not actually the group's counsel and we're not counsel for any of the individual participants. But, we'll certainly look at that and try to get back to you with some more focused understanding of that.

Mikey O'Connor: True.

Liz Gasster: I do think it's -- it's Liz -- I just think with more perspective, there's going to be a limit. We're - you know, we're not a trade association. We're unique. You know, we are providing limited guidance and support in areas where we can, and I just - yes, we'll get back to you of course, but you know, there is just - there is a limit here.

Amy Stathos: Yes. Thanks, Liz.

Liz Gasster: And, I guess on the questions too, I really want to make sure that the questions that we respond to and that you're expecting us to respond to as a group are questions of the group, and that just going through the group as a funnel to ask any and all questions that staff related to this (unintelligible).

I know it sounds like I'm being very hardnosed, and I don't mean to be, but I just want to make sure - we're looking for the Chairs in the groups to help us respond on the things that are most important for you to respond to, and it's

not a value judgment issue. It's a resource issue. And, it's a way of tracking things to make sure that we are able to respond. So, I thank you for that.

Mikey O'Connor: Okay. I'm going to draw a line under this. Michael, I assume your hand's up from before, and I'm going to get on to the two proposals that I - is Phil Buckingham on the call?

Phil Buckingham: Yes.

Mikey O'Connor: If you are, Phil, did you want to present your proposal today? And if so, would it be alright if I deferred you to next week?

Phil Buckingham: Can you hear me? Mikey?

Mikey O'Connor: There we go. Yes, I can hear.

Phil Buckingham: Hi, Mikey. Yes, I just sent to Margie that I didn't want to speak about it. Basically, wanted everybody to read it and obviously discuss it, and they think it's a good idea to go forward, then obviously supply the information that I am after individually from everybody.

Mikey O'Connor: Okay.

Phil Buckingham: Is that okay?

Mikey O'Connor: Why don't we turn that discussion on on the list, and if it turns out that folks want to carry forward with that, we'll put on the agenda for next week to talk about it, and you can develop a little bit more formal set of materials.

All right. We are now at five minutes to the hour. We - could we do 15 minutes to each proposal, and then (unintelligible) and Kathy try and wrap up MMA by a quarter - like somewhere between 10 and 15 minutes after the hour, Kathy by about 25 after the hour we'll spend just a few minutes talking

about - it's a single registrant question, and we'll defer his face-to-face meeting to the list. How about that for a little agenda compression.

So with that - MMA, who's your spokesperson? And Margie, if you could get their material up on the Adobe, we'll go.

Michael Palage: This is Mike. I mean what I'll do is I'll go through and try to plough through it rather quickly, although there may be some aspects where Milton and Avri may like to perhaps contribute. So starting with the proposal, since we're short on time.

The first aspect in our proposal deals with the issue of co-ownership. And, what we are proposing is to allow registry operators or registrars to own 15% of an affiliated registrar or registry. This is very similar to I believe the proposal that Jon Nevett had originally proposed last week with the ability of that entity to require a waiver to acquire greater than the 15% share.

What we proposed here is two-fold. Is one that if you currently have more than 40% market share, you would be barred from the first round from increasing your ownership in one of these affiliated entities beyond 15%. But, if you read the footnote Number 3, we had a lot of concern about this, and we're wavering about withdrawing this from the proposal. And, if read the emails on the list, I think we try to provide some details about the concerns of false negatives.

It's our view however that since there are not a lot of people that would be potentially running up against that 40% market share in the current environment, that the majority of the applications or requests to exceed 15% would be submitted to ICANN. ICANN would start a 30-day public forum. At the end of that 30-day public forum, those comments with no editorial comment from ICANN staff would be bundled and would be forwarded to the appropriate competition authority. And again, this was part of the previous

question that I had asked Amy about ICANN's experience with the funnel requests.

What would happen after the submission to the competition authority would be that there would be a 45-day review period, and this is one of the concepts that was actually incorporated from the Salop and Wright proposal -- ICANN's economist experts -- that would provide that completion authority 45 days to review the application. Most competition authorities from our limited understanding do not give approvals of these types of deals. They - in fact, they don't give green lights; they give red lights showing that they have potential enforcement concerns. So if there were not enforcement concerns after that initial 45-day period, the application would proceed to be approved by ICANN.

If that competition authority raised some concerns there would be a delay, and the timing of that delay would be based upon the period of time that that agency would need to conduct its investigation. And, what we - the timing element we're looking at right now is 60 days after that agency had requested or had received the last document request from the company. And again, as detailed in one of the emails to the list earlier today, that timing is based upon some of the practices that are currently used by the US Department of Justice in connection with reviewing potential mergers and acquisitions.

So, that is the concept with regard to co-ownership. We believe the pros are that we try to create a level playing field, and provide a framework that scales not only going forward, but also retroactively. The only potential con is while we think we could potentially reach agreement on this framework by Brussels, drafting the exact legal documents and terms would potentially take a little longer.

What I'd like to do now is to stop there and perhaps answer any questions on that particular aspect. One or two, if there are any from the group.

Mikey O'Connor: Michael, why don't you go ahead and manage your own queue.

Michael Palage: Yes.

Tim Ruiz: Yes. This is Tim. I'd like in the queue.

Michael Palage: Yes, Tim. Go, please.

Tim Ruiz: Yes. Well just to clarify Michael, if - so if - during the application process for new gTLDs this would apply as well, right? So, if - any - and, I'll - guess I'm trying to figure out how it would apply in the application process. And sorry if I missed that, but that's my question.

Michael Palage: Sure. And, I tried to answer this I believe - I believe I answered this to Richard Tindal's question earlier today. And just to touch on it briefly, in theory if this was to be applied - let's just say we passed the policy and it went into effect September 1. In theory, applying this retroactively, a (New Star) affiliate would be able to sit there and apply to be an ICANN accredited register -- a VeriSign, whatever -- would be able to apply to be an ICANN accredited registrar at that time. Addressing - so that would be the case.

Now in response to the concerns that Richard - or excuse me, Jeff Eckhaus had raised during some of my talks with him last week, he was concerned about equity. Making sure that someone such as the Demand Media would be able to have certainty when it applied - going forth for an application as part of the DAG to ensure that they had smooth sailing.

We looked at - Avri, Milton, and I looked at different aspects of that trying to address it, but we realized that creating another process was really only adding a whole bunch of layers of complication and potentially delaying the process. And when you looked at how this would be applied by National Competition Authorities, a registry that had zero market share, we struggled

to see how that application would potentially be denied having zero market share when you wanted to use your own registrar.

So, I think when you look at how this would be applied, (New Star), Demand Media, whether you're a registry that wanted to be a registrar, or a registry wanted - being a registrar, you would actually have equal parity in the upcoming round. That was our intention, and we think we've embodied that in the proposal.

Mikey O'Connor: Michael, do you want to keep an eye on the queue, and...

((Crosstalk))

Michael Palage: Yes. I'm - and the time. I'm - yes - oh, are people raising their hands in the...

Mikey O'Connor: Yes. You've got a few in Adobe as well.

Michael Palage: Yes. I just saw that. Okay, if we can Richard, go.

Richard Tindal: Yes, this is Richard. Can you hear me okay?

Michael Palage: Yes. Perfect.

Richard Tindal: So, when is the earliest that someone could put an application in to have more than 15%? We're in the whole sort of process - the application process for TLDs.

Michael Palage: I would assume - and again, we have not said when they could apply. If this was to - let's just say become policy on October 1, I don't see why Demand Media could not sit there and say we want to be a registry operator and/or you know announce their intention to say here's a separate subsidiary. I don't see why that would be blocked, just like (New Star) would not be prohibited, or (Affilius), or any other existing registry operator would be prohibited at that

time from going to ICANN saying we'd like to become an ICANN accredited registrar.

The way we interpreted it, they'd both be able to apply at the same time from a parity standpoint.

Richard Tindal: Okay. So, if that's before an actual application is submitted, which I think is what you just said, then the competition authority, and in fact the public comment is going to sort of happen in a bit of a vacuum isn't it?

Michael Palage: Yes.

Richard Tindal: Because at that point, there's no data for anyone to comment on, or am I misunderstanding this.

Man: Yes.

Michael Palage: Correct.

((Crosstalk))

Milton Muller: There is a - this is Milton, and I have to get off as soon as I finish. There is a data point. It's how much market share do the applicants have in the existing market? So, if you're I don't know (ENOM) for example, then what do you have? Ten percent of the registrar market and zero percent of the registry market. The competition authority would look at that I assume, and say not a problem.

Richard Tindal: Okay. But, we don't even know what the TLDs even applied for at that point, do we?

Man: Yes. No. Okay.

Richard Tindal: That's the - the context of market share I think would have to be relevant to the actual TLD being applied for. I mean they might be applying for some very specific TLD for a very specific market, and therefore a 10% market share generally in the gTLD market might not be relevant at all.

I'm just wondering what sort of information the competition authority is really going to have to make any sort of meaningful judgment, and I'm wondering what sort of data that the public have to make, so the public comments at that early point.

Michael Palage: And put it this way. Richard, these are -- as I said -- constructive data points. And, what we - perhaps what we might do is perhaps go back to ICANN's own economic experts that recommended this referral as well, and perhaps get their input on the timing of their proposal. So again, this was not - this was something where we were trying to incorporate elements from proposals that were already out there.

So...

Milton Muller: Just want more comment from me. Richard, I don't know what you mean when you say there's no market - I mean that your particular selection of a top-level domain string would affect the market that you're in? I have trouble with that. I don't understand how a competition authority would say that if you choose .music for example, that - and you have 0% of the registry market and 5% of the registrar market, I think they're going to look at you as having a miniscule market share. It doesn't matter whether it's .music or .food, or (unintelligible). I just don't get that.

Michael Palage: All right. We're - unfortunately with the queue, we're probably only going to get through one part of the proposal, but Jon, go ahead.

Jon Nevett: Thanks. Two quick questions. I don't know if Milton's still on, but first question is some of the other proposals - I guess Jeff's proposal and my proposal

talked about having a restriction on having more than 15% of a registrar or registry that operated in the same TLD. Is that the same in yours?

In other words, if a registry applied to be - or a registrar applied to be a registry, they might be restricted from selling their own TLD, but they could still be an applicant TLD.

Michael Palage: So, I believe our - I believe the answer is no. And, our approach is we would allow - so again, the one hypothetical I think we used previously, this Demand Media applying for a .web, and then electing to use (ENOM) as it's registrar in selling that domain names. That would be allowed in this proposal, provided that the safeguards that we have called for later on are there.

And the basis of that thinking was when you look at the competition that evolved in the com, net, org space, when VeriSign owned both a registry and a registrar, 100% at the time, was in part because of those safeguards that provided a level playing field in the marketplace. So, this proposal would not prohibit an ownership. As I said, Demand Media could use (ENOM) to provide .web registrations. That's...

Jon Nevett: Presumably, if the safeguards aren't there, then they - that they could still be the registry operator, but they just can't sell it at (ENOM).

Michael Palage: If the safeguards were not there, yes. Safeguards are an important provision; however, in both Jeff Eckhouse as well as Jeff Neuman, I believe safeguard proposals were sort of recognized. I didn't see push back from the use of safeguards to protect end registrant interests there.

Jon Nevett: All right.

Michael Palage: Is that - was that...

((Crosstalk))

Jon Nevett: Yes. I'm good, thanks.

Michael Palage: Okay. Excellent. Scott, you're next.

Scott Austin: Okay, Thank you. I'm going to raise the question that I raised last week, when
                         we use a touchstone, like a 15% to determine control. I think that we also
                         need to take into consideration like your typical control issues in any
                         corporate setting. I mean, that's sort of a traditional stock context. Anything
                         could be overwritten by things like shareholder agreements, voting trusts,
                         preferred stock versus common stock.

                         My question is 15% of what? Because 15% of - if there's a shareholder's
                         agreement that says it requires unanimity for anything to be taken - an action
                         to be taken by that registrar would still be - you'd still have a controlling
                         interest even with much less than 15%.

Michael Palage: Scott, that - 100% agree, and that actually - that point has already been
                         articulated I think very accurately by Jeff Neuman. And so, when we get into
                         the next part of the proposal, which talks about how you would allow an
                         affiliate to provide services - an affiliate registrar to provide services within a
                         registry, the talk of control there is modeled after the language that Jeff
                         Neuman has done. And I think he modeled that after the Security and
                         Exchange, how they...

Scott Austin: Yes. That's what my suggestion would be. The SEC. But okay, so that's one
                         item. The other item my question was how is market share defined? And, I
                         think there's a lot of different things floating around on the chat. But, things
                         like substitutes. You know, if it's .music, then someone else has .jazz or
                         .classical, or you know these genres, is that going to be a trade off in terms of
                         market share?

Michael Palage: Well, and that's actually one of the points that we had raised on the - what some of the email correspondence that I had earlier on the list is those potential complications. I think Jon and Richard both raised this. Because we do not want to - one of the driving factors of us considering to withdraw that 40% threshold bar was there might be some false negatives that ICANN might interpret without having the expertise. And one of the reasons why we believe, or are willing to accept the fact that letting - let everything go through to competition authorities may be the better approach.

Again, we're - I think the group is open to listening to ideas from the group on that as well. All right.

Scott Austin: Okay.

Michael Palage: So, I think Kathy - I think you're going to get the last question, and then you'll probably take over, because we've exceeded our 15 minute allotment of time. So, you get the last question, and then you'll probably take over the presentation...

Kathy Kleinman: Great. Can you hear me?

Michael Palage: ...for your proposal. Yes.

Kathy Kleinman: Excellent. Great presentation, Mike, and I'm going to jump the gun a little bit to the next section, which has to do with the monitoring. Because maybe you haven't heard much push back, but there are a lot of people who are very concerned about the safeguards. And, that's why -- advocates of structural separation -- because they're - it creates the ability to not just say that there'll be strict controls on data, on confidential information on proprietary information as it passes between the registry and the registrar affiliate in the same TLD. But, it mandates the separation so that it's not an issue of policing or auditing.

So let me ask you, how do you create a system where you have to monitor for all of these things? How are you going to look inside these companies and audit? And then, how are you going to do it internationally? And, I ask that as a former Data Security Auditor, because this is really tough stuff.

Michael Palage: Well actually, I would say part of the answer to that is your own proposal, which talks about how not to change things. Now is not a fundamental time for change. So if you go back to 1999 Kathy, the safeguards that were in place to prevent self-dealing, when VeriSign owned 100% of the registry and 100% of the registrar, those safeguards allowed competition to happen. The reason VeriSign sold off (NSI) was it was no longer an advantage, right. It was - you know, GoDaddys, (ENOM)s, these (one in ones). They were able to sit there and if you will flourish in a market that had - you know, basically had the registry owning a registrar, but relying upon those compliance.

Now what we've done is if you go back and you look at - and you talk about how this will be done, VeriSign had to comply with an external audit that was undertaken as an annual audit that it had to pay for. So as you said, there was a case - I forget whether it was Arthur Anderson, but it was one of the larger accounting firms that came in and undertook this audit.

And again, this is something that (PIR) affiliates - most registries undergo an audit as part of their normal operations, so this would potentially be another aspect that they would have to pay for if they elected to provide within their own TLD.

The other data point that I would offer is in 1999 when you looked at the penalties if VeriSign - if (NSI) somehow violated those self-dealing rules it was kind of weak. ICANN didn't - there was not a lot of teeth. There was a potential fine if it wasn't corrected. What we're proposing here in our three strikes rule is that if there is a violation, that registrar would be prohibited from providing new registrations for a three month period of time.

On a second violation, they not only would be prohibited from providing new registrations, but actually renewals for a six month period of time. So, the potential penalties here that would be uncovered through the audit that they're paying for through a neutral third party are of - I don't want to say Draconian, but are of such a substantial value that there is a built in incentive for that entity to honor those, and thus providing the direct benefit to registrants, knowing that these safeguards are in place.

Kathy Kleinman: Sure.

Mikey O'Connor: This is Mikey. I'm going to leap in. Michael, you're right. You've kind of run out of time. I think what we'll do is we'll hold the second half or the rest of your proposal over for the next call. And for those of you in the chat who are saying, "Dang nabbit, when are we going to talk about proposals?" It's always a balancing act. I promise that we won't have much process stuff next time. It'll be pretty much proposals and content.

But, Roberto suggested in the chat that we hold the (XR) discussion and the (safe) discussion over either to the list or to the next call. I didn't see any howls of protest, so I think that's what we'll do. We'll let Kathy take 15 minutes and take us out until the end of the half hour, and that'll be it for today. Kathy, it's up to you.

Kathy Kleinman: Great. Just checking again that I'm off mute.

Mikey O'Connor: You're off mute.

Kathy Kleinman: Terrific. First everyone, apologies for dropping this in so late, but I wanted to get it in, and we may be fleshing this out over time (unintelligible), but it was important to get it into the working group. And, important to have (as many issues) on the table as possible, so PIR is trying to add to this - you know, to this very important working group process.

We're going to go back to the main model, which is one of full structural separation. I'll talk about it in detail in just a second, but the idea of full structural separation is more than just a percentage of control. This is a complete separation of operational resources. Assets, processes, financial systems, and control. In the end, this will create a system of much easier tracking and audit, so that what you have to track and what you have to audit is very narrow. You know, form really follows function, and structure really dictates use.

And, we point kind of in some of our opening material to the sub-prime mortgage crisis in the United States, where we heard a lot of cries for innovation, a lot of unwinding of regulation, and yet the results were unintended, unanticipated, and very, very difficult to unwind. And that, especially against the end-users, the consumers, the people who own their houses and lost their houses. So, it's a terrible situation and structural separation and traditional regulation help.

We know the system that we've worked with. It's worked very well. It created you know, robust - the system that we've had in place for so many years at ICANN has really created robust competition among registrars, and really outstand - you know, an outstanding marketplace. And now, we're opening up competition on registries and we're not sure you have to cross over the line on this.

So going into our report, we've got the main model which is - and you'll see the title. It's not full structural separation of registries. It's full structural separation of registries and registrars of course. I've already defined what that separation means, and almost by definition it's going to be easily verifiable, easily (depositable), and that's a big issue when you're talking internationally or when you're talking just in general. Audits are difficult, and I say that as a former Data Security Auditor.

The penalties. I agree with Mike here completely. Penalties for violation must be clear, severe, and rapidly implemented, and we're adopting the 15% ownership interest maximum. The exceptions here are the ones in - you know, you can try to question me on this, but I'll refer back to you know, the intelligence of the group. The exceptions are the ones we've been talking about for a long time. The single registrant gTLD, the community based gTLD, and what we currently call the orphan TLD. TLD that's just not (accept) by enough registrars to make a difference to give it a marketplace.

But, we're going to do something a little different here. Rather than saying that the single registrant gTLD is an absolute, now you own it in (perpetuity), you know, we're watching lists of - amazing issues have been raised regarding Google and others, and what happens, so let's just draw a bright line. Once you hit a certain number and (reposit) 50,000, but it's open to discussion, once you hit a certain number of registrations, you switch over, and you have to use ICANN accredited registrars.

The same with community based gTLDs and the same with organized TLDs. This is a process of kind of launching something, and once it gets big enough, the possibilities for gaining are innumerable, so you switch back to the main model.

Mikey O'Connor: This is Mikey. Kathy, let me just jump in and remind everybody to mute. Even I'm muted on this call, so thanks. We've got some folks who aren't who are sort of um-humming along with you, and I just wanted to make it clear that it's not me.

Kathy Kleinman: Well, I hope they're humming favorably, or um-humming in key.

Okay, now Section 2 of the proposal entitled Innovative and Efficient Marketing. Harkening to say Jeff Eckhouse's slides on benefits and to other - we want to see access to TLDs. We want to see innovation. We really want to see that ability to reach the registrant. That's the whole purpose of this, right.

Opening this up and getting new gTLDs, getting to the main means to new communities, to developing countries, to future communities. Also its commercial and non-commercial.

So, we have an idea there, which is to follow the vast majority of equal access provisions, of (one through eight), everything involving technical equal access, and you'll see that I copied registry pros equivalent access certification so that we're going to have - we're repositing you know, complete equivalent access of connections, of software, of access to registry customer support, to reconciliations. All of the materials, but one change. That the registrars can come to registries with a particular proposal that allows them better to serve their developing countries, their communities.

In that registries be able to respond to those proposals and be able to accept targeted marketing proposals. It doesn't change any of the base lines. It doesn't change any of the equal access on the technical side. But, it will foster and raise competition to new ideas and innovation, which you know - but it will foster it across-the-board so that all registrars come up with all registries on this type of visual. ICANN accredited registrars working with the new gTLD registries, and just open up the system much better to innovation across-the-board, not just in that narrow cross-ownership of the registrar and the registry.

So with that, let me throw this out to the group. Thank you.

Mikey O'Connor: Okay, I'll manage the queue, Scott. I think your - is your hand up from last time, or is this a new one for you?

Scott Austin: Sorry. It's coming down.

Mikey O'Connor: No worries. Michael, I think you're next.

Michael Palage: You know what I'll do, since I've already spoken, let Jeff and Kristina speak first. Put me at the back of the queue. I want to give them time.

Mikey O'Connor: Okay. That's fine. Jeffrey, go ahead.

Jeff Eckhouse: Okay. Can you guys hear me?

Mikey O'Connor: Yes. We can hear you just fine.

Jeff Eckhouse: Oh, great. So Kathy, there was a lot of you know - you know, like (I'll just publically) - there's a lot of fear mentioned in the proposal, and somehow that ties in that curious ability that the Internet will collapse if there are integration of registries and registrars. So, I just - you know I already see that it occurs in many ccTLDs and some gTLDs like (Golf Pro), and we haven't seen a total collapse.

So, one of the things I was missing from the presentation, can you just maybe explain now or after, how the security and stability is threatened? Like, what are the specifics? What is the gaming that will occur that will affect you know, the whole stability and security of the Internet? I know you know, it's been thrown around that these things will happen, but I'd like to see if you could discuss some of the specifics and what are the fears of - maybe release it in draft note, because I just think that it's not always the separation and the structure, but the actions of people that cause the problems. So, maybe if you could go through it and help me understand it, and other. Okay.

Kathy Kleinman: Jeff, it's of course an excellent point, and it comes back to exactly what I was talking about with Mike. It has to do with how do you - if you say there are going to be separations, that there are going to be separations and protections of data passing - of confidential data, of registry data, proprietary information, how do you enforce these things? These things give a leg up, they give a preference, they give - it becomes unequal treatment when this

information passes, but yet monitoring it frankly is almost impossible, unless you create the bar of structural separation as well as the ownership division.

That creates a very practical, and enforceable, and monitorable way to enforce what we all see to agree, which is that this important proprietary data shouldn't pass between one and the other. That there really should be fair treatment of all registrars by a registry. And yet if they're co-owned, if there's no structural separation verifying that - you can put a lot of penalties in, but if you can't figure it out, if you can't find it, or you can only find it under exceptional circumstances, it's almost impossible to say that's going to be the case.

Jeff Eckhouse: So wait. Just one quick response, and then I'll just stop, is you know what - I'm so - I guess, I feel the question is what happens if that proprietary data is passed along? I know everyone says you know bad things will happen, but I don't know, maybe if we could do it -- not on this call, but on the list -- so what are those bad things? What would happen? And maybe in structures where it exists right now, where - that it does get passed and there are registries (unintelligible), maybe through registrars, why hasn't that happened in those areas where that has already passed through?

Kathy Kleinman: I fully support taking it off to the list, but I think the fundamental answer has to do with fundamental unfairness. But, we'll continue on the list. Thanks.

Marlene Moore: Kristina, you're next.

Kristina Rosette: Sure. Thanks Kathy. Two questions, and I guess I'm just having a hard time getting my mind around this. When you all are putting this together, do you have any examples or hypotheticals as to what you would consider to fall within the efficient marketing exception?

And I guess the second question is, is what's the safeguard that you have proposed to essentially prevent the efficient marketing exception from kind of

swallowing up the whole rule? And when I say rule, I mean the equal access - equivalent access rule.

Kathy Kleinman: Good questions. Examples of efficient marketing, yes. I've heard many of them posed to me, which have to do with really targeting say developing countries, and trying to get proposals that truly target and reward and incentivize gTLD registration within developing countries, where - you know, particularly countries where it's not very (unintelligible) right now. Really incentivizing registrants to go into underserved communities, non-commercial communities, and rewarding them for this process.

Something I've also heard is that a lot of registrants have very innovative ideas, and we want their businesses to benefit from those innovative ideas without necessarily sharing them with the world. And, that just becomes - so as we see this concept of innovation come up again, and again, and again in the materials, and that we agree with it, this is an alternate way to arrive at that innovation between - again, think is far broader and far fairer.

In terms of not allowing the efficient marketing concept to swallow up everything else, all the other provisions for equivalent access stay in, as well as the baseline price. And, I think this actually creates a more competitive environment, but one that - where the rewards really come for those who innovate. But, that that reward is offered across to every registrar that wants to get involved in it.

And just like today, you can't turn down an ICANN accredited registrar who wants to come to you as a registry. You must work with them. And so you know, it's in no one's interest to allow the exception to swallow up anything. It's in the registry's interest to have the best plans and reach the largest communities. So no, I don't think the exception will swallow it up.

Mikey O'Connor: Palage, you're next, but Steve Pinkos is in. You want to let him go first?

Michael Palage: Yes. Anybody that hasn't spoken. So, Steve could take the floor.

Mikey O'Connor: Okay. Steve, you're next.

Steve Pinkos: Thanks, Mike. I appreciate it. And Kathy, hi. Thanks very much for your proposal, and subjecting yourself to the questions today. How are you doing?

Kathy Kleinman: I'm doing great. Good to hear your voice, Steve.

Steve Pinkos: Good. Thank you. I just have a quick question, sort of on the threshold level that you were getting at with Jeff Eckhouse. And I'm trying wrap my arms around it. You know fundamentally, what is so different about this marketplace, or the domain name marketplace that requires - you know really what we're talking about here is a deviation from the norms of doing business. You know usually people are permitted to distribute their own products, you know, absent extraordinary circumstances. Absent extraordinary anti-competitive circumstances, monopolistic circumstances.

And you know talking about the data, you know and the huge advantages that can be gained from the access to this data. You know, people keep talking about that, but is it really - what's so different in this area than the advantage that Apple can gain from knowing their customer data, or Walmart in selling their own brand versus other people's brands at their store that would require - you know again, a deviation from people being permitted to sell their own you know, product in essence?

Mikey O'Connor: This is Mikey. I'm going to jump in. We're at the bottom of the hour. I'm going to ask for five minutes. We're going to cut the call off sharp at 35 minutes after the hour, and congratulations to all for a great conversation. So, we need to get - yikes. My thing just went crazy. We need to get a couple of people (unintelligible), and then drop the call.

Kathy, go ahead.

Kathy Kleinman: Steve, you know great questions of course. And you know, the bottom line is I don't have a crystal ball and neither does anyone else on the call. We do not know what will happen when we unwind these structural separations and the cross-ownership limitations. So, we can say that other marketplaces operate like heck, but in fact here the structural separations have served the ICANN community very, very well, and the Internet community as a whole, and of course the public interest as a whole. The structural separation has created a real robust marketplace.

And so how do unroll it? The economists have kind of urged us to unroll it through -- or some of the economists of course, because they all differ -- have - to just unroll this slowly through some of the exceptions, but not to change the main model. And, what concerns me is I think about some of the economic studies, and I think about gTLDs, and the exclusivity of a gTLD.

It's not - we're not distributing air conditioners or vacuum cleaners, where if you don't like one you can get another. The gTLD is actually difficult. There will be lots of gTLDs. I'm looking forward to that marketplace. But once you have a gTLD, you're going to be tied into that provider. You're tied into .org, or .com, or .music, and the switching costs are very high. And - so that exclusivity of the relationship at the top, I think brings it back to different models where you really protect those distributing - those selling. And this again, I think the structural separation serves us very, very well, and worry how we roll it back if we find out that our marketplace really is as unique as some of us think it is.

Steve Pinkos: Right. Well...

Mikey O'Connor: Well, I'm going to let Palage get in for one question. Tim is going to have the last word, and then we'll wrap up.

Michael Palage: Okay. I'm Michael Palage. I will try to keep this 30 seconds. Kathy, as far as unwinding it, I think the three strikes program provides a rather clear path to how to how to unwind it if there are potential dangers. And again, looking into the crystal ball, when you have safeguards in place as was demonstrated shortly after ICANN's creation, you can create competition in what once was a monopoly marketplace.

Just one other point as well, is you were somewhat concerned or critical about the ability to audit the proposed compliance. I would submit to you that your proposal for structural separation is actually potentially more gainable, and the requirement of Jeff Neuman's control, the SEC control, there are a lot of other ways to have control and influence the market. So, I think our proposal is let's put it out on the table, have some strict mechanism, and that is a lot easier to police as opposed to a regime that has these artificial walls and other artificial complexities or market inefficiencies.

So again, we'll take this up on the list. Tim, hopefully you have...

Kathy Kleinman: Can I just respond briefly.

Mikey O'Connor: Go ahead, Kathy.

Kathy Kleinman: We'll have to agree to disagree. One's just easier to monitor. What is easier to police? What is easier to verify. And, I think history and I think lots, and lots of other economics show us that structural separation is ultimately much easier and much cleaner to monitor or - thanks.

Mikey O'Connor: Tim, go ahead.

Tim Ruiz: Hi, thanks Kathy. Just a question about - or maybe a comment I think as we look further at your proposal, because I know you said that you know, there's details and things that still need to be worked out. But just in regards to the community-based gTLD. I think one of the things to consider there is that

under the current draft up and guidance, there really isn't any - I mean, the community is actually a self designation, so anyone can designate themselves as a community, throw in some restrictions on registrations, and theoretically go through the whole process and be community. There's no required evaluation anyone's claims of community.

So, if there's no contention, no objection, then you know the self-designation sticks and it's a community TLD. So, I would just encourage that you know if we pursue this, that some further consideration be given to that so that we have some safeguards around that so that that can't be gained. And, maybe it's a requirement that communities - all community claims are actually verified or go through that evaluation process, or something of that nature. But, I just think it's something that at least could be given some thought.

Kathy Kleinman: Can I respond to Tim's...

((Crosstalk))

Mikey O'Connor: Yes. Go ahead.

Kathy Kleinman: ...and we agree with you completely that the community space is still being designed to be narrowly defined, narrowly tailored, and to the extent that it is - that what it purports to be is not what it's defined to be. We are absolutely with you on having this working group define it clearly so that it's not an exception that (unintelligible) kind of swallows up everything else.

Mikey O'Connor: Okay people. I appreciate you hanging in for an extra five minutes. I'm going to call the meeting closed. Great job. Thanks a million. See you in a week. Carry on on the list. Terrific work. See you in a week. Bye-bye.

Woman: Bye.

Man: Adios.

END