

**Consumer Metrics Project Discussion
TRANSCRIPTION
Tuesday 06 September 2011 at 2000 UTC**

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<http://audio.icann.org/gnso/gnso-cci-20110906-en.mp3>

On page :

<http://gnso.icann.org/calendar/#aug>
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Wendy Seltzer - NCSG
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Apologies
Olivier Crepin Leblond – ALAC

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

Gisella Gruber: Thank you, Operator. Good morning, good afternoon, good evening to everyone on today's Consumer Metrics Project Conference Call on Tuesday the 6th of September. We have Cheryl Langdon-Orr, Carlos Aguirre, Rosemary Sinclair, Jonathan Robinson, Steve DelBianco. From staff we have Margie Milam, Michael Salazar and myself, Gisella Gruber. And no apologies noted today.

And if I could please remind everyone to state their names when speaking for transcript purposes, thank you. Over to you, Rosemary.

Rosemary Sinclair: Thanks Gisella. Margie's helped with the proposing an agenda for our meeting, which would start -- start, sorry -- with a review of the motions and charter. I'd hoped that we could get that third done pretty quickly.

And then we'll have a look at the - a quick review of the definitions where we have so far -- in particular the applicable national laws point.

And then we can start the work on actually the metrics that we might propose for consideration.

And then we get to that I'd like to suggest we do that in two ways -- going through the elements competition and consumer trust and consumer choice. The first element, I think, is looking for existing metrics in ICANN that could be used.

And then secondly, any suggestions we might wish to make if we feel that the existing metrics weren't up to the task.

So that was my thinking for what we're trying to cover today.

So if we go back to reviewing the motion and the charter I've got the charter in front of me. I haven't got the motion. But perhaps if we look at the charter

first -- and I'll have to look at it full screen, which means I lose the hands if the queue when I do that.

But I am just interested in people's reactions to my suggested amendments. The deadline on this is the 14th of September. I have to have the motion to council. In essence, what I was trying to do with my amendments is to go towards a working group that is open to everybody but is not a cross-community working group in the formal sense.

And it might be useful, Jonathan, if you're able to just let us know how the work on cross-community working groups is going. And secondly, just to make the point that the output of this group's work is a report that would be sent to the SOs and ACs of their consideration in forming their response to the Board request.

So that's the kind of reasoning behind my suggested changes. But I really am keen to make sure that everyone in our group is happy with this before I take the next step.

Steve DelBianco: Sounds good, Rosemary.

Rosemary Sinclair: Thanks, Steve. That's great. Cheryl, your hand's in the queue.

Cheryl Langdon-Orr: Thank you very much, Rosemary. Cheryl Langdon-Orr for the transcript record. On reading these -- and don't - I'm happy with the amendments that's - take that as read. But what it is really saying to me is there is little difference between this charter and intent, and what we have previously done as joint working groups.

For example GNSO and CCTN - ccNSO and have had joint working groups to the GNSO and ALAC have had joint working groups. Now I'm not saying you should put this forward as a joint working group charter but I just wanted you to be aware, Rosemary, that there is a number of precedents.

We - a charter had been adopted by other joint partners -- I guess, for the want of a better word. Now these aren't duly or multiply chartered organizations to all issues, such as the JIS working group, which actually started out in its first iteration as a work - as a joint working group. But when it was repurposed there was differentiation between GNSO charter and that the ALAC wished to go through, with ALAC wanting a bit more.

But just that precedent makes me wonder if someone in the GNSO Council may not recognize that and that you just need to be prepared. But that is Pat's - another classification or fallback. If that was the case there would be virtually no difference other than in its titling, as far as I can see, anyway.

Rosemary Sinclair: Okay. Thanks Cheryl. So the suggestion is to call it a joint working group rather than an open working group.

Cheryl Langdon-Orr: Well Rosemary, I'm unaware as - I'm not aware of the current sensitivities of the GNSO Council as to anything that isn't purely GNSO workgroup charter. I just wanted to say that, you know, if someone is suggesting that, that that would be a secondary position in terms of titling.

But by my reading, having actually sat on any number of these things -- joint, cross, and individual GNSO could chart it over - organizationally chartered work groups. This charter would fit perfectly into that model, as well.

Rosemary Sinclair: Okay, that's great. Thanks Cheryl. Jonathan I wonder if you're able to just give us any relevant information about the cross-community working group's progress, if you think it's relevant to our work?

Jonathan Robinson: Look, Rosemary, I'm more than happy to do that. And I very much appreciate you asking. The slightly depressing input is that we haven't moved it very far at all over the last month or so for a number of reasons.

But primarily that - at the last meeting, which was back in late July, we didn't have much strong participation. And I also struggled to get clarity from those that were involved, as to how we - whether this was - we sort of struggled with exactly this issue -- whether this was purely a GNSO effort or was going to reach our further.

So I've -- as you've probably seen today -- attempts to reenergize it. So unfortunately I - while I very much appreciate you asking, I can't give you a lot of guidance on this because we haven't taken it as far as I might have liked.

Rosemary Sinclair: That's fine. Thanks for that. I was just wondering whether there was some minefield that I was about to step into. But happily sounds like not.

Jonathan Robinson: So we'll - yes, as far as I know, not. But there is - it does seem to be a little bit of a sensitivity as - around whether we - whether with this is - with how we deal with this prior to getting the joint working group way of working sorted out.

I - personally I'm very - I think that the broader the participation and involvement the better. But that's very much my personal view. And I'm not sure of the politics or views on this more broadly on that.

So - and then unfortunately we - as you know, our next council meeting is still a couple of weeks away. So ideally we'd be able to have this discussion at the council meeting as soon as possible.

Rosemary Sinclair: Okay. Thanks Jonathan. So are there any comments on the charter? And are we able to put the motion up, Margie?

Margie Milam: Yes, hold on a second. I'll just go ahead and do that .

Rosemary Sinclair: Thank you. Steve, did you want to make a comment while this is - and Margie's putting up the motion?

Steve DelBianco: Hey thanks, Rosemary. This is in response to some of what, I mean, you anticipated by asking Jonathan Robinson about the cross-community working group progress. And we're all aware that that's been a bristly topic.

I went back and read the Board's resolution from Nairobi, where they first asked for input on - from across the community, on things like joint applicant support. And that is a part of what provoked some of the council blowback to the Board saying, you know, "You're heaping new work on us."

So let's just be clear. I reread the resolutions. The Board didn't ask for a cross-community working group. The Board asked several ALAC NSOs. For, you know, for input -- for advice. And that to be sure, that does heap new work on the ALAC's NSOs.

But the Board didn't insist upon some new mechanism called a cross-community working group. They didn't in Nairobi for the joint applicant support and they didn't in Cartagena when they adopted the resolution that we're talking about today.

They just asked for advice and they leave it to the ACs and SOs about whether we want to come together in devising some sort of advice that we could present to the Board.

So the progress that Jonathan cited doesn't necessarily negate responding to the Board's resolution for advice. It just says that it's difficult to do so in a way that's cross-community. Thank you.

Rosemary Sinclair: Okay. Thanks Steve. The motion is now up on the screen. And I'll take Cheryl's suggestion and go back, I think, to joint working groups because that is a known entity. But are there any comments on the motion that's before you now?

Steve DelBianco: Rosemary, one quick point. Were we going to leave the word report out of the third results? I believe we were afraid that the word report would be too formal. Update would be sufficient?

Rosemary Sinclair: Okay, fine. So I'll take - update. Now that's the third result, I think. Steve is it? To produce and - yes. Okay.

Steve DelBianco: What one?

Rosemary Sinclair: A report to update and open to joint. And then I'll send that. Great.

Cheryl Langdon-Orr: It's Cheryl here. I haven't put my hand up. Sorry Rosemary.

Rosemary Sinclair: Oh, sure. Yes, go.

Cheryl Langdon-Orr: No I just, you know, the coffee is only just starting to kick in that part of the world. They need to forgive us the details, don't they Rosemary?

Just so you understand the difference between a - what does it take to be a cross-community work group which this is not intended to be under these (unintelligible). And Steve's intervention was absolutely accurate.

And what it means to be a joint working group. When you've got a joint working group, just so some of the new councilors understand there is only one beast -- one type of beast -- in the world of ICANN and the various bylaws that we operate under that can charter in terms of something that's going to be, you know, PDPs and those sorts of things.

And so we tend to fall back to - which is a support organization, so it's only GNSO or we'll say GNSO. And so what we've done in the past, historically, is when something has headed in that direction and you want particular SO input, you'd use this model of a joint working group.

And I guess that's what - a useful precedent to go with. And of course, in the case of - with the ccNSO and GNSO working together, well then you've got, clearly, two SOs who have to agree on a single charter. But it's absolutely fitting under this model that this is - because an AC doesn't have the same structural basis for forming work groups as such.

Now the argument against that particular (price of intercourse) is that this is not a PDP process. This is a piece of advice. So as long as when you're in the thrust and parry of the ccNSO -- I'm sorry, the GNSO council -- discussion on this, you know that yes, the thoughts and advice could go either way on that -- that we are clearly understanding this is not the basis to some form of policy development process.

It's a piece of that joint work. But the emails we'll use -- the precedent model that has been used for other types of policy development processes. Then I think you've got a - sort of a dollar each way and probably you wouldn't use so that will come in a timely manner.

Steve, I haven't misled there, have I? He might be muted.

Rosemary Sinclair: Did - are you - Steve are you there?

Steve DelBianco: I am, I am.

Rosemary Sinclair: Oh, okay. And Cheryl was just...

Cheryl Langdon-Orr: I just - I was just asking Steve I hadn't misled Rosemary there? That...

Steve DelBianco: No, not at all Cheryl...

Cheryl Langdon-Orr: ...and there is some differences?

Steve DelBianco: ...we're copacetic.

Cheryl Langdon-Orr: I'm just very aware that I'm not GNSO, you know.

Rosemary Sinclair: Or I would like - I think I'm happy as long as everybody else is happy for me to take the motion and the charter forward...

Cheryl Langdon-Orr: Yes, yes.

Rosemary Sinclair: ...which means we now can get back to the substance of the conversation, which is great.

So Margie, I wonder if you could just put up our - the piece of work, the spreadsheet, where you're capturing all our thoughts about definition. And here we go. And take us, if you don't mind, to the most recent definition that we were working with firstly for competition, if we can have a look at that one first?

Margie Milam: Rosemary, it's Margie. It's set for you to scroll yourself. So it could be included...

Rosemary Sinclair: Okay, thank you.

Margie Milam: ...to scroll that section. Let me find out which - what page it's on. So I believe it's -- we're on consumer trusts. And so what I added, if you'd look beyond to Section 3 on Page 4 I added Section 3.3 in response to Steve DelBianco's comment today in the email chat - in the email today.

Rosemary Sinclair: That's 3.3?

Margie Milam: Yes.

Rosemary Sinclair: Okay. So that's on consumer trust. Well why don't we have a look at that one first and see how we feel about that. And then we can go back to the other two.

So if everybody can get - is there - everybody is now looking at 3.3? So the definition we're proposing for consumer trust -- the degree of confidence amongst registrants and users that entail the registry operator is fulfilling its proposed purpose and is complying with ICANN policies and applicable national laws.

Do you want to give us just a teeny background, Steve? I know you sent the email referencing those sources, which I found very helpful. But would you like to just give us a little background on this change?

Steve DelBianco: Thanks Rosemary. It was in response to the discussion a week ago, where Wendy and at least one or two others expressed discomfort at calling out the word national laws in there, as part of what we would be looking into.

So with the general agreement with the rest of the definition, including the word policy -- the ICANN policies -- and there was some question about whether to call it out.

And I tried to argue that it was good politics and good optics to call this out, because I think it would speak to one of our target audiences in terms of driving the affirmation reviews.

And that is governments -- and specifically the GAC -- to show that we're really attentive to our obligations -- our existing obligations -- to live up to national laws, and to document that they're existing obligations.

I did just a little bit of research and sent around an email earlier today indicating where in the articles of incorporation and the bylaws and the affirmation to commitments and prominently in the guidebook national laws

are cited as part of what ICANN has to uphold when it implements and enforces its contracts.

And finally I said, "A lot of you know that the European Commission staff has put out some draft papers on Internet governance, and one specifically called, you know, applicable national laws where there's focusing on the competition issue."

But I think it shows that whether we agree or not with the European Commission's plan for things, their concern reveals the fact that we are dealing with a political environment that is tightly - highly sensitized, whether ICANN is going to fully explicitly acknowledge the role of national laws govern what ICANN does, and that governments can cite national laws when they're objecting to a new string or a year into it when they're evaluating whether the new gTLD programs met the objectives of consumer trust, consumer choice and competition.

So that's why I presented that as a counter-argument. I realize we haven't resolved it yet. There's nowhere near consensus on this group yet, looking at you, Wendy. But I wanted to give it a good faith effort explaining why I put forth the word national law.

Thanks Rosemary.

Rosemary Sinclair: Thanks Steve. There's a little confusion which I may caused. We've got two 3.3s on the screen but one that we're focusing on is the second, which finishes and applicable national laws. Thanks for pointing that out, Cheryl.

And if I could just respond briefly it was me on the last call that was mulling over whether to call out applicable national laws or to take a position that, at various points, ICANN policies refer to applicable national laws. And Steve has pointed out a number of cases where that happens in his email.

I'm, having thought about it quite carefully and having seen the email, I'm now comfortable with the reference to end applicable national laws. I was worried with all national laws. I was worried even by relevant national laws, because to me it was a question of for whom are these laws relevant?

But the word applicable, to me, tightens the reference so that they are relevant only to ICANN policies.

So thanks for doing that work, Steve. That was really helpful.

Now does anybody else want to make a comment? Carlos and Michael are chatting, which is very useful. But would anybody else like to speak on this particular issue?

Michael Salazar: This Michael. I just...

Man: (Unintelligible). Sorry.

Gisella Gruber: How about we - could we take Michael and then Carlos?

Michael Salazar: Okay.

Gisella Gruber: Thank you.

Michael Salazar: Did - the only question I had is when we say applicable national laws, which applicable national laws? Not, you know, which law is it, but which jurisdiction are we talking about?

Rosemary Sinclair: Okay. Although we say applicable national law.

Woman: Yes.

Michael Salazar: Is it where the registry is incorporated or where it's operating? Is that what we're talking about? I'm just trying to get clarity.

Steve DelBianco: Michael, this is Steve. I cited the words applicable laws from four different documents that govern the way ICANN operates. In all of those cases I guess you would ask the same question you just did. And I guess the answer is it depends on which laws apply.

Michael Salazar: Well, so the difficulty there - or I can see some difficulty. And maybe this isn't the place for the discussion but, you know, where registrations are occurring, you know, overseas or in multiple jurisdictions, and that jurisdiction has an issue with it, but the registry is located someplace else, I think we just - we need to be aware that there may be challenges with how to monitor or measure the success, I guess to applicable national laws.

Rosemary Sinclair: Yes, I mean, it gets us into a interesting topic which, when I did law, was called conflict of laws. I've got no idea what it's called now. But the case that used to be cited was, you know, if you had an Argentinean mother and a Chinese father on a boat in the waters off Australia, what was the nationality of the child that was born?

So that's a very old example but our global Internet world makes all this very relevant. So - and now, Carlos were you wanting to comment now?

Carlos Aguirre: Yes, thank you. My comment is the, you know, relation with the last sentence of the definition. I think the - I think mention applicable national laws, the word applicable is redundant because if we are talking about national laws, national laws are applicable. So for me the word applicable in this last sentence is redundant.

Make sense?

Rosemary Sinclair: Yes. Yes, no, I understand the point, Carlos. I guess for me I am more comfortable -- even through I do understand your point by calling out applicable to make the scope of reference narrow - more narrowly associated with ICANN policies.

But what do others think about this?

Michael Salazar: I think using applicable's pretty standard practice.

Rosemary Sinclair: It's certainly the precedent that Steve has called out for us. We keep losing Wendy out of Adobe Connect. That's no good. Sorry.

Cheryl Langdon-Orr: I understand -- this is Cheryl here -- I understand the counter-arguments about the word applicable. But in the absence of the word applicable, don't we have the opposite problem that there could be arguments that national laws, which are what most of us would consider out of scope in the context of ICANN mandate may be cited as, you know, in some way being applicable?

If we're not going to use the word applicable, don't we need some sort of limitation terminology that indicates a clear tethering to the business that ICANN is focused upon?

Rosemary Sinclair: This is the dilemma, isn't it? And Carlos is making the point in the chat. But all national laws in their country borders are applicable. Certainly to the national legislators, Carlos.

I'm...

Cheryl Langdon-Orr: (Unintelligible).

Rosemary Sinclair: ...inclined to go with the precedent set in other parts of ICANN that Steve has mentioned in his email. So if the general use is a phrase that says

ICANN policies and applicable national laws, then that's where I'm coming down that we go with ICANN policies and applicable national laws.

Jeff, over there.

Carlos Aguirre: Yes, yes Rosemary.

Rosemary Sinclair: Sorry?

Carlos Aguirre: Sorry. Carlos here. Yes, I understand your position. The common use is applicable to national laws. But the precise concepts no need applicable. It's my opinion but I agreed with the majority, obviously.

Rosemary Sinclair: Thank you, Carlos. Wendy?

Wendy Seltzer: Two comments. One is - I would include both relevant and applicable if we're stuck with national laws at all, because I don't want ICANN enforcing registries, employment practices or...

Woman: Here, here.

Wendy Seltzer: And the other is that we were going to combine a piece of the consistency of domain name resolution into this trust definition, I believe. And so I circulated by email a suggestion for that.

Rosemary Sinclair: Yes. No, that's...

Wendy Seltzer: Or is it only after just joining the call?

Rosemary Sinclair: Well, okay. Yes.

Cheryl Langdon-Orr: Okay. I haven't seen it, then.

Rosemary Sinclair: No that - I think that is a good reminder with word going, I think, to include that -- what do we have? We have stability and security or some such - yes, in 3.2 we had some stability and consistency.

So if we could - is it possible, Margie, to put Wendy's definition up on the screen for us? And I guess I'm - if we just go back to chatting about Carlos' points that - was it Carlos' point? No, Wendy's point that we put relevant and applicable. Then I think that's a worthwhile suggestion too.

Margie Milam: Rosemary, it's Margie. If you just scroll up, Wendy's original definition's at 3.2. And the reason I didn't update this was because I believed that it was action for, I think, Wendy and/or Steve to come up with a combined - a definition to circulate to the list.

So I didn't take a stab at doing that, although I can certainly do that if you guys want to give me instructions on how to combine them.

Rosemary Sinclair: Well I think now what we've got, Margie, is an email from Wendy where she's making a suggestion on how to do that. So if it's possible for you to grab that email and put that definition up for us?

Margie Milam: I don't have Wendy's email. Wendy, can you resend it?

Wendy Seltzer: It was just a sentence, but I will put into the chat if that's helpful.

Rosemary Sinclair: Okay, that's great.

Margie Milam: Yes, that would...

Rosemary Sinclair: Thanks, Wendy.

Wendy Seltzer: Yes. Adobe will let me.

Rosemary Sinclair: Well I think it's probably worth just waiting and find if consumer trust went off.

Wendy Seltzer: Yes. So this is Wendy. I put into the chat, that the suggested (unintelligible) trust refers to the confidence registrants and users can have in the consistency of name resolution from the registrar and registry -- I put in to distinguish from DNF's resolution elsewhere in the now existing, as we acknowledge that that was outside of ICANN's scope.

Rosemary Sinclair: Okay, so if I've got it right it would read consumer trust refers to the degree of confidence -- and now I've lost it off my screen. Hang on -- I'll go back. The degree of confidence registrars and users can have in the consistency of name resolution from the registrar and registry.

And then I'm - we'd need to link it to - so we've got that point about consistency. Then we need to make the link to the point to that purpose, policy and national laws.

Wendy Seltzer: And I had proposed simply the conjunction and. I don't think there's much link between the two.

Rosemary Sinclair: Okay, sorry I'm - okay. And that a TLD registry operator is fulfilling its...

Wendy Seltzer: Yes.

Rosemary Sinclair: ...proposed and complying with ICANN. Good. Okay. Well would you mind just combining those, Margie, and putting them on the screen for us? And now we're still in the chat talking about applicable.

Michael, do you want to just take us through your concerns?

Michael Salazar: I was just - you know, if applicable's meant to narrow the scope, I had added some terminology here that says applicable national laws related to the

domain name system. I think Steve's, perhaps rightfully so, says that this could be an area of contention for governments if we try to limit.

But my concern is sort of along what Wendy says. And we want to - we don't want to look at labor laws for how they manage their staff.

Woman: That's right.

Rosemary Sinclair: So if we've - I hesitate to step away from the precedent that has been thought out, I feel sure, in other forums related to ICANN matters. And I'm seeing - I don't know that's - sorry. That's Margie typing the definition for us.

And have we not - we've got complying with ICANN policies and applicable national laws, which is precedent. That - those - that phrase has been used. So the other way of coming at it is ICANN policies and ICANN relevant and applicable national laws.

So you repeat ICANN to really close up the - define the territory.

Steve DelBianco: Rosemary this is Steve. I got my hand up.

Rosemary Sinclair: Sorry Steve. Yes, go. I'm busily looking at the chat. It's distracting for me. Steve?

Steve DelBianco Thank you. Yes, the notion of trust is in the eyes of the beholder. And we said that the - what matters most are registrants and users. And their degree of trust one year after the new gTLDs are up, and when we get to the metrics I hope this will come out.

It's we'd love to be able to measure whether they feel that they trust .bank more than they trusted a bank named dot com or they trust certain community-driven TLDs as upholding the promises they made when they

said they would restrict registrants, the Web sites in that community to the highest standards of membership.

And many of them are promising, in their application, that they'll even have content restrictions. I was at the NXT Conference two weeks ago in San Francisco. And it's amazing to hear the applicants all say that they're going to have strong content restrictions on registrants to whom they grant domain names in their community-based TLDs.

And in some cases they would be community-based to get the extra scoring point. In some cases they'd be just community affiliates.

So all of these promises speak to the million dollar question of why are we having new TLDs? Because they answer the question by saying, "We're going to differentiate in an enhancement space, with community-focused TLDs that'll generate content that serves people that don't get that kind of confidence today."

So if that's the promise they're making, part of the consumer trust question has to be answered by saying, "Are they keeping their promises?" And the they are the TLD operators.

This - I'm trying to respond to you a little bit, Wendy, is that if it isn't I - it isn't ICANN, it's the TLD registry operator who made promises. Now ICANN has a role to address whether they're living up to their promises. And - but it's up to the community to object if people think they're not.

So if a government feels that its new TLD is not upholding any particular national law that applies to it -- not to ICANN, but to the registry operator or sites that are in its registry -- it's up to them to complain. And part of our job is to assess the quantity of those complaints.

By the same token, if trademark community feels that - feel the operator's not upholding policies with respect to rights protections, their complaints would make their way into the one-year new TLD program review.

So when we assess the degree of trust we're gathering information about whether consumer trust has been enhanced by the gTLD program, which is exactly what the affirmation requires.

But I don't mean to imply in all those cases that we've heaped upon ICANN's compliance department lots of new burdens for them to proactively police it. ICANN has a choice.

They may choose not to proactively police and wait for complaints to come in, or they may choose by setting metrics like this to send a signal that they're going to take a hard look at this at the one-year review point, and that's not going to bode well for TLDs that fail to uphold their promises.

Thank you.

Rosemary Sinclair: Thanks Steve. Margie, you had your hand up for a while. Do you want to quickly comment? And then I've got Wendy in the queue.

Margie Milam: Oh, I think I forgot to take it down. But...

Rosemary Sinclair: It's okay.

Margie Milam: Look at the notes section and see if I've got the notes section correctly. If I've captured the definition correctly.

Rosemary Sinclair: Okay. Thanks for that. So we're all looking just in the notes section at Margie's combination. Wendy, do you want to comment?

Wendy Seltzer: Yes. I think we have a problem of the level at which we're applying our scrutiny. And I heard it particularly in the examples around .bank. We're - I think we can't be asking whether .bank is creating a trustworthy environment. We have to be asking whether trust in the system is met, and not about the specific practices of particular applicants.

If no applicant proposes a domain that has any restrictions at all, counterfactual as that might be, does that mean that there is less consumer trust in ICANN? No, if they get - it merely means that nobody has proposed different sorts of domains. So...

Jonathan Robinson: But, but, but, but, Wendy -- I'm sorry, this is Jonathan -- it seems that the reverse is true, though. But if people do propose special requirements on their registrants and restrictions on content, and those things are not met, it will, in fact, have a negative impact on consumer trust.

Wendy Seltzer: Although they may not care one way or the other about the enforcement of national law.

Okay, I just - I suppose that there is a further difference in what we say here and how it ever gets applied. But I want...

Jonathan Robinson: It's really about measuring it...

Wendy Seltzer: ...to make it clear that...

Jonathan Robinson: ...whether or not...

Wendy Seltzer: ...we're not here putting obligations on ICANN to enforce various conditions.

Rosemary Sinclair: I'm also...

Jonathan Robinson: Not at all.

Rosemary Sinclair: Sorry. Jonathan did you want to reply?

Jonathan Robinson: Oh I'm sorry. I mean, I didn't mean to interrupt. I mean, I think that is an important distinction to make that we're not putting any kind of regulations on ICANN that they have to enforce these agreements make by it.

But we've been asked to do, and what ICANN was asked to do is to find ways to measure whether or not the new program has the trust of consumers and to check in on that. And we're looking for ways to measure that trust. And one of the metrics that will likely affect consumer trust is whether or not the actors in the program are keeping the commitments that they make.

Rosemary Sinclair: Yes, Rosemary here. And I think the definition does that because what our proposed definition says is that we're going to look at whether a TLD registry office - operator is fulfilling its proposed purpose.

So to me, that is confined to those operators who propose purposes and say they're going to do things. And under this definition we would have a look at whether they are or they aren't.

When we come to the discussion about metrics we then - then we look to see, as I was suggesting earlier, what is it that we're measuring now that could indicate to us in 12 months after the introduction of the new gTLDs whether consumer trust is where we want it to be.

So using what we've already got by way of metrics and then secondly, if having looked at what we already have in place, we find some gap, we would suggest another metric or a process or some other way of measuring this particular definition.

Steve, do you want to come in now?

Steve DelBianco: Hey, thank you. I'd love to dive into the specifics of potential metrics. But I did want to close off on - I quickly pasted in the verbatim text from the affirmation commitments, when we have committed at ICANN to do a review one year in.

And it's like, I guess it was Jonathan Zuck was saying, that ICANN is committed to do a review to examine the extent to which the introduction of gTLDs has promoted competition, consumer trust and choice.

So it's the program of the introduction of new gTLDs. That's the thing that has to be evaluated. And that will be partly based on the processes that ICANN follow, but partly based on the proof in the pudding of one year later the TLDs that were introduced enhance consumer trust. Did they promote and enhance consumer trust vis-à-vis what it was before then?

And that is partly a function of the promises made for the new TLD. If all the TLDs are generic words like .web, .net, .com and a thousand different variants, well there's no promises made at all on consumer trust there, so there's no promises to hold them to.

Instead we'd end up just looking to see whether there's been more or less cybersquatting pursuant to the new registry contract. And that is an issue about whether ICANN compliance is doing its job.

There may also be a national laws. I'll bring it back in -- the guidebook makes it clear that any applicant may receive a GAC early warning, a governmental notice or even GAC advice if a government feels that an application would violate national law.

I guess in those cases we're mostly talking about strings that would offend a censor and the sensibilities of some minister. I hate those kinds of censorship laws but we're committed to allow governments to file an objection.

So if an applicant claims they're going to use their strings of - for .sex, and they're going to use it strictly to help differentiate boys and girls, and then after their launched a year later they make .sex all about porn.

Well then they will have violated their promise from what the string purpose was that's Question 18 in the guidebook. They will have violated their purpose and not passed the opportunity for some governments to file objections based on their laws.

We don't have to agree with the laws but we can agree that a year later if that happens, that will not enhance consumer trust and create tremendous problems for ICANN with our key audience and our key community member of the government.

Thanks.

Rosemary Sinclair: Thanks Steve. All right. I - so are there any full comments on the definition of consumer trust that is now in the notes section?

Steve DelBianco: This is Steve DelBianco. I don't believe the word ICANN can possibly be used a second time in front of relevant laws. And I think that relevance and applicable is a belt and suspenders. All of the other citations I found in existing ICANN documents speak to applicable and not relevant and applicable.

So I would drop ICANN and relevant from that.

Rosemary Sinclair: Okay. And I'm - what - are there any other comments about that? I guess I'm happy to go with the - what has become the standard way of describing this, which is the phrase ICANN policies and applicable national laws.

Are there others who feel differently about that? Why - in that case, why don't we propose, for the moment, and after we've had look at the metrics we

might want to have another look at these definitions to make sure that at the end of all of this we've got workable concepts and metrics that people can actually use.

So where we're at the moment on consumer trust is consumer trust refers to the confidence registrants and users can have in the consistency of domain name resolution from the registrant or registry, and the degree of confidence among registrants and users that a TDL registry operator is fulfilling its proposed purpose and is complying with ICANN policies and applicable national laws.

Okay, so I think we'll keep that as our working definition for the moment. What I'd like to suggest now is that we go back to the beginning and have a look at our definition for competition and start thinking about the metrics that we could suggest for reviewing competition 12 months after the introduction of the new gTLDs.

So - and I wonder if we could just keep - I don't know how we would do this, Margie, but I find it very useful to go back to that affirmation of commitments section that Steve put up earlier.

So perhaps if we take consumer trust out of the notes section and put it into the spreadsheet and then just keep that affirmation of commitments review undertaking on the notes screen for the time being to just remind ourselves what we're trying to do here.

So if we can then scroll back to competition, which is - we've got 1.1, 1.2, 1.3. Okay, we might need to just review the - which of these definitions we're going for competition and then start the discussion about the metrics.

So 1.1 was the original BC definition, which then changed to 1.2 -- have I got this right, Steve? And then I thought - then Wendy has got economic

measures. So I'm just not sure which definition we're going to use although we seem to have a number of measures described in 1.3 in our spreadsheet.

Margie Milam: Rosemary it's Margie. Just to clarify how I've drafted this. As people come up with additional definitions they go to the next number. So the very last one, which is 1.4, is sort of where we ended up on the last time we talked about it.

Rosemary Sinclair: Thank you Margie.

Margie Milam: But I have...

Rosemary Sinclair: Definitely I need more coffee.

Margie Milam: Yes, and, and I...

Rosemary Sinclair: So the definition - the working definition we've got at the moment -- competition is evident in the quantity and diversity of TLD registry operators and registrars. Okay.

So if we're confirming that as our working definition - and we did have a couple of comments from Wendy and then Tim Ruiz, we need to clarify - back end operators and not just see...

Gosh. Let's take things step at a time. So are we happy with the definition in 1.4, I guess is the first question?

So I think - well I'll take silence as yes for the moment. So the next question then is what sort of - how would we go about measuring the quantity and diversity of TLD registry operators and registrars?

So do we go back to Wendy's suggestion at 1.3, which is that we're looking at the number of suppliers? And then we get into some economic-type measures about market concentration and barriers to entry and pricing close

to marginal cost, which I think is new work, whereas the list of suppliers is probably something that we've got now.

Jonathan Robinson: Yes, I mean, I - I'm sorry. This is -- should I raise my hand? Sorry.

Rosemary Sinclair: Is that Steve? No. Oh, Jonathan.

Steve DelBianco: Well Jonathan was up first.

Jonathan Robinson: Jonathan. Yes, I mean, I thought we had a pretty extensive discussion about trying to do a cost-based analysis of this because, I mean, everybody's business model is going to be so different. So I don't think there's going to be an objective way to measure competition as the function of marginal costs...

Rosemary Sinclair: Yes.

Jonathan Robinson: ...for the price. I think we just have to look at consumer-facing diversity and options for taking your business...

Rosemary Sinclair: Yes?

Jonathan Robinson: ...because they're going to have a lot of non-financial differentiators if what went on at the NAC Conference is to be believed.

Rosemary Sinclair: Yes. Thanks Jonathan. Steve?

Steve DelBianco: Before I turn to pricing I wanted to sort of jump on the idea that we're going to be asking for measures before and after the new gTLD program about the number of suppliers. So why don't we articulate the different flavors of supplier? This is some things that Tim Ruiz would come back with and I'm pretty sure Wendy would agree that if you look at the registry backend operators, the quantity before and the quantity after.

You look at the number of TLD operators. And I realize they may, in some cases, be their own backend or they may farm out the backend to someone else.

So those would be two measure of suppliers. And then on the registrar's side, accredited registrars, before and after, and perhaps even accredited registrars and their resellers before and after. We'd do before noncontroversial quantitative measures that I'll bet the ICANN staff could come up with in a half an hour if they needed to.

So I'm just trying to start with something that's easy. Thank you.

Rosemary Sinclair: Thanks Steve. So we're thinking that - of really quite straightforward number of suppliers-type measures -- registrars - registries, registrars before and after.

Jonathan is your hand still up?

Jonathan Robinson: No. Sorry.

Rosemary Sinclair: Okay, thank you. Wendy?

Wendy Seltzer: I'm sorry. I missed a bit of the discussion earlier. But I'm still puzzled over why we're talking number and not also concentration.

Steve DelBianco: Wendy, numbers were just meant to be the first and easiest thing to measure. And if you're good with those, why don't you jump onto concentration as another set of metrics?

Wendy Seltzer: So number and proportion of the marketplace give us concentration.

Steve DelBianco: But Wendy -- this is Steve -- last call they did say that the proportion of the marketplace might just be of the new marketplace because it will be difficult to have meaningful statistics when you compare it to an installed base of hundreds of millions of domain names and existing TLDs.

So if we share...

Wendy Seltzer: Of we're not necessarily being asked to - we're being asked whether it has increased the competition if the increase is negligible as compared to the installed base then that's a finding to report.

Steve DelBianco: Agreed. But let's also try to report the findings on - of the new name registration that occurred within a year of the first TLD launch. How many of those registrations occurred in domains that are new -- brand new versus the names that were around before the new program? How many occurred with operators that were new versus operators that were around before the program? Things like that.

Wendy Seltzer: I think now we're going to have to back and ask how do we trust the existing operators if - or to what degree is consumer trust fostered by?

Steve DelBianco: Well that's great. When we get to consumer trust metrics -- we've discussed this before too -- we would do surveys which we try to ascertain whether there's been an improvement of trust in the current level of trust of the TLDs.

And I always bring up the example of the bank.com versus a .bank. So, yes, we'll get to that...

Wendy Seltzer: But there, once again, you're asking about the - how much trust a particular operator in the metric rather than how much they trust - or how much they are given a framework of trust.

Rosemary Sinclair: Okay. Can - I think we need to -- if we can, and I know it's difficult -- just concentrate on the metrics for competition. And if we can record those points, Margie, so that when we get back to consumer trust we then have that discussion about the institutional framework versus individual operators.

But to - back onto just...

Wendy Seltzer: I'm just -- I'm sorry - I - the only reason I brought us back there was to suggest that we need some parallelism among our thinking on the various subjects. They were put into our charter in parallel and if we can use things that are better defined to help us think about things that are ill-defined perhaps we can make some progress.

Rosemary Sinclair: Yes, for sure, for sure. So - but back on the point then about competition, but taking Wendy's points that we kind of need to keep thinking forward than backwards at the same time, looking at measuring competition then the two suggestions that we've got are the number of suppliers and the market share of those suppliers.

Jonathan Robinson: Yes, I mean, I'd be very interested in somewhat more behavioral and less arbitrary numbers too such as number of new Web sites, rather than just pointers to old ones that would suggest some level of defensive registration and not in increasing competition.

Rosemary Sinclair: That's an interesting metric, yes.

Steve DelBianco: Steve. Jonathan Zuck wasn't on a previous call. We had attempted to put things like that into the choice category and let competition be a more of a supplier focus. Not a consumer focus but more of a supplier focus metric.

But we don't have to stick with that. If we do stick with that, then what Jonathan Zuck just suggested fits great in the choice, because for our

registrant it's really not a important measure of choice if they went out and got defensive registration and simply point to the existing page they already had.

That won't be seen as beneficial increase in choice to them. Let's keep that alive, but I don't think it fits as much with the supplier side metrics that we're trying to come up with here.

Jonathan Robinson: I mean, it's all in that same category of these overlapping issues. Because, I mean, obviously...

Rosemary Sinclair: Yes, that's right. And I think it's quite helpful if we focus in the competition area on market structure, and then we've got our consumer choice too, as our kind of demands side area for metrics.

So are we - at the moment we've got a number of suppliers and market share, which are relatively -- well maybe I should ask this as a question. Are these easy to measure -- these two metrics -- number of suppliers and market share?

Jonathan Robinson: I think it would have to be, I mean, it's probably worth looking at the numbers backward. But, I mean, I think for the most part, if we're promoting competition it's got to be the go-forward markets. The next, you know, billion registrations, et cetera, and what the take-up share is or something like that, as opposed to market share.

Rosemary Sinclair: Yes, okay.

Jonathan Robinson: Good night.

Rosemary Sinclair: Okay, so that's an important contribution, Jonathan, that our measures in a kind of general sense are about progress and uptake and the development of this market, rather than trying to compare the new part of this market with the total market, which of course, includes the incumbents.

So this - that to me is a kind of a future-looking element to our measurement process.

Jonathan Robinson: Right. I mean, it's sort of the - I mean, it's again how competition and choice are somewhat intertwined. But, I mean, obviously if going forward are sufficiently typed by these new TLDs then it means the competition has been created. And if they aren't then perhaps it hasn't.

Rosemary Sinclair: Yes.

Steve DelBianco: May I? I had my hand up, Rosemary.

Rosemary Sinclair: Yes.

Steve DelBianco: If we measure a year later and new entrants, new suppliers are responsible for 15% of the domain names registered in the year since new TLDs came out...

Rosemary Sinclair: Yes?

Steve DelBianco: ...that is a remarkable number. And you might also do the number Wendy mentioned earlier, that at the end of the year the new registrants have 1/10 of 1% of the total registration.

Those numbers could be true because of the huge installed base of domain names that already exist. So to Jonathan's point we have to look at both -- what Wendy asked for, which is market share of total names under registration.

And secondly have to look at the new entrants' share of the new registration since that will be a better idea of whether the competition has stimulated

opportunities for people to register names in places they didn't before and that some of that is going to yield the operators who didn't operate in a TLD.

Rosemary Sinclair: Yes.

Steve DelBianco: I think it starts to get at the new entrants, because we asked about barriers to entry as a somewhat qualitative measure which barriers to entry diminish competition. But measured in the positive we would want to include new statistics that say that whenever we measure the quantity of suppliers in the new TLD space, we would also ask are they brand new?

And if they are brand new we put a check in that box as soon as we can assemble statistics that say - that only do we have this many suppliers - this many percent - this percent of the new suppliers who are in fact brand new.

Now when you measure one year after the first TLD is launched there are going to be many TLDs that won't even have been it the root but a few days at the end of that year.

So the total quantity of names in each TLD is partly a function of how long they were even up when we get to the end of that artificial time period of one year. Let's make a note of that. I'm not saying we can address that statistically but it means that all of our data will be heavily weighted in favor of the registrations that are done in the TLDs that launched early in that year, as opposed to late that...

Jonathan Robinson: Yes, I mean, that's possible to derive a formula for that. It takes of uptake from launch, or something like that.

Rosemary Sinclair: Okay. I think I - my suggestion is that we just note all those suggestions at the moment. We've got about 20 minutes left in this call and I can see in the chat that Carlos is making some very valid points but, you know, just focusing on the supply side of the market and not looking at things on the

consumer point of view is not the full answer. And we certainly agree with that.

But I think if we just could spend a little time today talking about consumer choice, and Margie's just wanting us to look at the notes section to make sure that she's captured the metrics we talked about today. And that's a good suggestion, Margie. We'll do that .

And then I'd like to spend the last 15 minutes of our call today on metrics relating to consumer choice. And then on our next call we can continue that and get back to consumer trust.

So in the notes section of the metrics so for a number of suppliers before and after new gTLDs, number of registry operators, number of backend registry operators, number of accredited registrars before and after, market share of those suppliers before and after, new entrants' share of new registrations, market share of all registrations including existing registrations.

And I think - okay. I think that captures it. Any comments on that?

Jonathan Robinson: This is Jonathan. If I can interject?

Rosemary Sinclair: Yes.

Jonathan Robinson: I'm a little bit concerned about a measure that's related to backend registry providers because I don't know...

Rosemary Sinclair: Right.

Jonathan Robinson: ...the program now that exists to try and expand that number.

Rosemary Sinclair: Sorry Jonathan, the program is directed to try to expand that number.

Jonathan Robinson: In other words I...

Rosemary Sinclair: Yes.

Jonathan Robinson: ...I'm not sure that there's anybody working on the problem of making sure there's plenty of backend registry operators. I mean, that's a measure that we're coming up with because it - because we think it might be nice if that turned out to be the case.

But if every new domain that gets applied for decides that they want to use (New Star) as their backend, I'm not sure that there's a mechanism to object to that or to correct for that. because I'm not sure that any of the things that are being measured internally in the guidebook that exists, unless I'm missing something.

Rosemary Sinclair: Okay. And I'm not sure that we need to go from measuring to objecting. I think we're just trying...

Jonathan Robinson: No, all I mean is I'm not sure we should be measuring something that nobody's actually trying to bring about.

Rosemary Sinclair: Yes, okay.

Jonathan Robinson: I'm not...

Rosemary Sinclair: So if we...

Jonathan Robinson: I'm not suggesting adding objections...

Rosemary Sinclair: No.

Jonathan Robinson: ...in their absence. I'm not sure that anyone has taken it on as their task to increase or maintain the number of backend registry operators. I could be

mistaken about that but I'm not sure we should be measuring something that no one has as their objective.

Rosemary Sinclair: I think what we were doing was addressing a comment from Tim Ruiz who said - his comment was, "We need to clarify that by referring to registry operator we are including backend operators, not just the entity that signs the agreement with ICANN and by..." No, I'll just leave it at that.

Jonathan Robinson: I understand that's what we're trying to do. I'm not...

Rosemary Sinclair: Yes.

Jonathan Robinson: ...(unintelligible) by the metric. I just caution us in establishing a metric for something - for which it is no one's job to manage. I hope I'm not being unclear but, I mean, you know, when it - no one has it as their mandate inside ICANN to...

Rosemary Sinclair: Yes.

Jonathan Robinson: ...maintain or increase the number of backend operators. So creating that as metric is a little bit arbitrary given that it's not a programmatic goal that's already been established.

We're imposing a fanciful metric when it doesn't exist currently as a program goal, nor does a mechanism to try and make it so exists within the current program.

Rosemary Sinclair: So that just raises a point or reminds us that when we're thinking about metrics we should be thinking about things that are relevant to ICANN's activities and not just kind of a whole lot of things that would be interesting to know but nothing that anybody's going to take notice of.

Thanks Jonathan. And I think that's a fair point. I think we should come up with a short as possible a list of things that we're going to measure, and be measuring things that ICANN would take notice of and do something about. So I think that's a reasonable point.

So could we - how do we - I - having said that, I am just happy to capture things at the moment and then come back. So perhaps if we - could be put brackets around number of backend registry providers and then we can come back and really decide which of these metrics we want to go forward with.

Steve?

Steve DelBianco: Thanks Rosemary. I just - I think Jonathan took us on to something. If somebody took any one of our seven metrics for competition and said, "Since this is a metric? It now has programmatic importance," that would be a mistake.

In fact, what we are trying to come up with is several independent secondary measures that contribute to answering the question, "Do we have more competition?"

So none of them, in and of itself, would be sufficient to show competition, nor would any of them be necessary to show competition. Instead, what we're saying is that at the end of the year we want ICANN to measure all of these things without having a programmatic objective in place for any single one thing, because our - one of our goals - one of our three goals is at the end of the year to show that we have -- through the new gTLD program -- introduce competition on the supplier side.

And all of us in this phone call are confident we're going to have an increased number of suppliers. But it would be crazy to ask ICANN to suddenly get into some sort of affirmative action program to promote suppliers who either aren't qualified or unable to do so.

We already have a joint application support to help applicants who can't afford it. So in that respect, ICANN is going to promote competition because they're going to subsidize some applicants who couldn't otherwise afford it.

The square brackets really go around all the metrics and say that they're all indirect measures of the goal of competition on the supply side. None of them is, in and of itself, a direct measure that necessarily warrants programmatic action.

Jonathan Robinson: I agree with that point, Steve, I - and I don't want to belabor this. So I'm also happy Rosemary's to put it in brackets, as you suggest. But I think it's - it's safe not to believe that that program itself will be judged a year from now, and that it's, in fact, the intention that is be judged.

And because the program was sold on the idea of creating competition I suspect the competition people were talking about was, in fact, the people applying and the types of TLDs that were available and the types of sort of - I don't know what they're called -- the things that Steve's been describing -- these sort of programmatic commitments within TLDs for certain types of contents or certain types of business practices.

And so the program was sold on increasing competition. I'm not sure that it was sold on increasing competition except removed from the user or the consumer of the system. And so we're creating something on which the program will be judged but it was not the means or the context in which the program was in the first place.

Steve DelBianco: Jonathan, this is Steve. I'd be happy your competition weren't here and it was just consumer choice that we focused on, because the only thing that really matters is registrants and users and their choice of TLDs. I don't think they give much concern at all to the diversity of suppliers behind that choice.

But this is the bed we are sleeping in now, and competition is distinct from choice in terms of the affirmation of commitments and the resolutions. So we sort of had to find a way to deal with competition that was distinct from choice, and what makes (unintelligible) by itself.

Jonathan Robinson: Okay. I don't want to get into a back and forth but I think the competition will be addressed between TLDs and their programmatic commitments. So that is a form of competition, which is come buy a TLD from, you know, buy your domain from us because of what we do to index our registrants or protect your privacy, et cetera.

And those are the means -- those programmatic commitments become the means. And frankly, the, you know, how - what our percentage of uptime, et cetera, those are all things that are going to be used to differentiate TLDs in the minds of consumers and therefore allows them to compete with each other.

But I think the idea of backend service providers is something that's going to be - is going to shake out for a completely different reason.

Rosemary Sinclair: Okay, that's - I...

Jonathan Robinson: (Unintelligible) with it, but we can move on, certainly.

Rosemary Sinclair: Yes, and I just wanted to make the point that when we get our document prepared of course competition, consumer trust, and consumer choice won't exist as separate elements. It's - we've made these artificially, if you like, distinctions for the purposes of just being able to manage the conversation.

But it could never be the case that just measuring competition in a market structure sense would be enough -- pardon me -- enough to properly understand how this market had developed after 12 months.

And it's - I suppose it - that's why I keep saying, well let's just, you know, note that down for the moment and have a look at the next element of our discussion and then if something emerges from that next bit of the discussion we can go back and, you know, rework our earlier outcomes.

I think it's really important that we keep everything under review until we, you know, get to the end of the process and then probably go around the circle a couple of times.

So I'm just wondering, given that it's 7:25 my time now, whether we might leave our conversation here and then in two weeks time when we meet again, we can get straight into consumer choice and perhaps even get a little into consumer trust.

Is everybody okay about that approach?

Cheryl Langdon-Orr: Yes, that's all right for me.

Rosemary Sinclair: Yes, are there any - yes, okay. So I'm seeing thumbs up and comments from Cheryl. Thank you.

All right, well I think as usual we've covered a lot of ground and had some really terrific discussion today. And our next time is a fortnight from today when we keep going with the work on metrics but relating to consumer choice and consumer trust.

Thanks everybody.

END