

**Vertical Integration PDP Working Group  
TRANSCRIPTION  
Monday 31 May 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 31 May 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-pdp-20100531.mp3>

On page:

<http://gnso.icann.org/calendar/#may> <<http://gnso.icann.org/calendar/#may>>

(transcripts and recordings are found on the calendar page)

**Participants on the Call:**

**Contracted Parties House**

**Registrars Stakeholder Group**

Jeff Eckhaus

Michele Neylon

Jothan Frakes

Stéphane van Gelder

Thomas Barrett

Volker Greimann

**gTLD Registries Stakeholder Group**

Ken Stubbs

**Non Contracted Parties House**

**- Commercial Stakeholders Group**

Berry Cob -CBUC

Mikey O'Connor – CBUC- Co-Chair

Jarkko Ruuska - CBUC

Ronald N. Andruff – CBUC

Michael Palage – CBUC

Scott Austin - IPC

**Individuals**

Roberto Gaetano – Individual - Co-Chair

Phil Buckingham

Tero Mustala

Katrin Ohlmer

**ALAC/At Large**

Cheryl Langdon-Orr

Sebastien Bachellot

Alan Greenberg

Siva Muthusamy

**Staff:**

Kurt Pritz

David Olive

Glen de Saint Gery  
Marika Konings  
Mike Zupke

**Apologies:**

Baudoin Schombe  
Jon Nevett -CBUC  
Avri Doria - NCSG  
Kristina Rosette – IPC  
Paul Diaz – RsSG  
jeff Neuman – RySG  
Vika Mpisane  
Richard Tindal

Coordinator: Excuse me. This call is now being recorded. You may begin.

Mikey O'Connor: Thanks Glen. Thanks (Diane). This is Mikey O'Connor on this - the Vertical Integration call for May 31, 2000. And welcome all.

Today the agenda is a little fluid partly because I don't know exactly when or even if Kurt is going to be able to join us for the call. The odds are good that he's going to be able to join but I don't know exactly when. So we'll sort of proceed. And when Kurt joins the call we'll sort of break away from whatever we're doing and visit with him.

I'd like to encourage everybody to please mute. We have a lot of folks on the call and we're getting a fair amount of background noise. So if you're on but not muted please do.

So the agenda is we'll take a look at DAG 4. I must have been hallucinating when I thought that the DAG 4 was going to be out last Friday. It's not due out until today. So we don't have the language and we may just want to defer this conversation till the next call. But we'll see how much Kurt can share with us if and when he joins us.

And then I have proposed a listening session around the formerly MMA now (CAM) proposal. And that's what's up on the screen at the moment.

I just got another proposal, the email from Ken Stubbs. If we have time we might want to breeze through that one too quickly as well and...

Ken Stubbs: Brian Cute - I forwarded that on behalf of Brian Cute, Mike.

Mikey O'Connor: Oh yes. Sorry about that. Thanks, Ken, for clarifying that.

And then I developed a short starter kit list of harms because the conversation at the last call sort of revolved around that. And I went hunting for a list and couldn't find one so I thought we'd spend a few minutes reviewing that and adding any obvious ones that I missed and then any other business.

Is there anything that either people are uncomfortable with or would like to add to this agenda? Okay. Glen, why don't you call the roll and then we'll get started.

Glen de Saint Gery: I'll do that with pleasure, Mikey. Good morning, good afternoon, good evening everyone. This is the Vertical Integration call on Monday the 31st of May.

And on the call we have Mikey O'Connor, Sebastian Bachollet, Richard -- no, sorry, Richard Tindal has not been reached yet -- Cheryl Langdon-Orr, (Faulker Gryman), Michele Neylon, Berry Cobb, Brian Cute, Ron Andruff, Phil Buckingham, (Piero Mustala), Alan Greenberg, Katrin Ohlmer, Thomas Barrett, Michael Palage, Ken Stubbs, Jarkko Ruuska and Jeff Eckhaus. And for staff we have David Olive, Marika Konings, Mike Zupke and Glen de Saint Gery, myself. Have I left off anyone?

Over to you, Mikey. Thank you. Yes.

Mikey O'Connor: Thank you Glen.

Glen de Saint Gery: I have left off Roberto Gaetano, didn't I? And Roberto is on mute.

Roberto Gaetano: On mute.

Glen de Saint Gery: Thank you.

Roberto Gaetano: I couldn't tell you.

Mikey O'Connor: Oh good. Okay. Well welcome all, especially those of you taking time off from the holiday weekend.

And until Kurt joins I think what we'll do is work our way through the two updated proposals that we've got. Brian, Ken, are you comfortable with that or would you rather just remain out of the spotlight today? I sort of put you on the spot with that idea. I didn't mean to.

Brian Cute: Mikey, this is Brian. I'm happy to walk through the proposal and have any discussion folks want to have.

Mikey O'Connor: Terrific. Okay. Well why don't we spend about a half an hour on the (CAM) proposal and then about a half an hour on the one that you just submitted, Brian, and about 15 minutes on harms. And then if Kurt joins we'll break away and maybe spend 15 minutes with Kurt, and we'll call it a day.

So here's what I'd like to do. I've got the (CAM) proposal up there in the middle of the room. And hopefully you all can scroll about in it. I've sort of run out of screen space. What I would like to do is the same sort of ground rules that we had at the last call where this is not a challenge/respond session. This is a session where it's really designed to provide the folks who wrote the proposal -- in this case Michael, Milton and Avri -- with feedback.

And so Michael is on the call and can answer clarifying questions. But I don't want to get into a debate. I just want to capture in sales speak what we used

to call objections and concerns so that drafters of the proposal can get some feedback on their proposal and perhaps incorporate those thoughts into a subsequent draft.

And so I'm hoping that folks have had a chance to read this proposal and can share with us things that concern them about it or things that they would like to propose which if incorporated would make them comfortable enough to perhaps be able to support it because we are getting pretty close to the wire here, people. The deadline that we have established for a tentative deal, at least the rough outlines of a deal, is the next call, Thursday. And so we really need to bear down and see if we can get there.

Roberto and I were speaking about that a little bit before the call and thought that there's likely to be a lot of conversation between now and Thursday. And anything that we can do to facilitate that conversation is what we are trying to get accomplished today, now.

Michael Palage: So Mikey, this is Mike. If you want, maybe I could, perhaps to speed up this discussion -- and I don't think we'll need a whole half hour -- but to speed it up perhaps I could just highlight the evolutionary differences from the original MMA proposal to this current (CAM) proposal.

And again those - the changes we made actually were in response to the initial feedback. So what we tried to do was be reiterative in our thinking and take the feedback.

So, you know, perhaps let me just jump in and highlight at a high level some of those evolutionary changes in response to feedbacks and see whether people think it was a good thing, a bad thing or - I think that may - instead of requiring them to read through the whole document this may spur discussion and make it a little more interactive. That's what I would propose.

Mikey O'Connor: That's fine. Why don't you try...

Michael Palage: Okay.

Mikey O'Connor: And, you know, hit it pretty briefly because I really want this to be mostly about the views of other folks. But...

Michael Palage: Yes. I'll keep it to two minutes. So...

Mikey O'Connor: Okay.

Michael Palage: The - I'll keep it to two minutes. The original MMA proposal relied heavily on competition authorities to handle matters which we thought were outside of ICANN's limited scope as a technical coordinating body. Now the - and what we tried to do in that initial proposal was point to different mechanisms within the U.S. Department of Justice and other mechanisms that might be available to facilitate this.

Now the concern from those participants, a number of the group members, were that this might overwhelm competition authorities or that competition authorities did not - were not properly suited to handle the influx of hundreds of applications and that things might get lost. So in response to what we thought was very valid and legitimate concerns we went back and we - what we proposed is, if you will, a competition standing committee.

Now standing committees are something that are already recognized within the existing ICANN governance structure or organizational structure. For example there is a standing technical committee that will evaluate the stability and security concerns of new registry service requests.

So this is a panel of, I believe, 20-some experts that are paid in annual retainer to be on-call should ICANN have any technical questions regarding the stability, security of proposed registry RSTEP proposals submitted by registry operators. And this panel will also, I believe, have a role in

connection with the new gTLD process as well if there's an extended technical evaluation.

So looking to build on that we thought if ICANN is outsourcing this responsibility - the technical responsibilities to technical experts would it not be prudent for them to outsource this to a standing body of economists to handle these determinations. And it was interesting because ICANN recently just provided guidance on how they handle competition analysis right now in connection with the existing funnel requests. And ICANN has said here are a list of questions and we sometimes consult with outside legal counsel to make these determinations.

So we think that this proposed standing committee not only has utility in connection with the new gTLD process but also provides a basis into a much more predictable, authoritative decision in connection with funnel requests which impact all registry operators. So that is...

Mikey O'Connor: So Michael...

Michael Palage: I think - yes?

Mikey O'Connor: Michael, I'm going to interrupt you. Kurt just joined the call.

Michael Palage: Okay.

Mikey O'Connor: And I know that Kurt's time is short today for a bunch of reasons. And so what I want to do is sort of take the priority interrupt and...

Michael Palage: Please do. Please do.

Mikey O'Connor: And...

Mikey O'Connor: I'm done.

Kurt Pritz: Well no, this - wait. This is Kurt. Let Mike finish. It's fine. It's okay. I'm on for awhile.

Michael Palage: No. You're at a higher pay grade, Kurt, so please take the floor. And...

Kurt Pritz: But I wanted to hear your idea anyway about the economists.

Michael Palage: Okay. If you want, you could read it. I'm sure most of the people on the call want to hear you speak as opposed to - basically what we're looking to do is leverage - create a standing committee of economists not unlike the technical standing committee to allow ICANN to remove itself from matters that are outside of its technical - outside of its core mandate.

And we believe that this actually also provides a scalability in connection with the JN Squared proposal because the JN Squared proposal talked about how after 18 months that ICANN might begin to make exceptions on different applications for vertical integration or across ownership. We believe that this panel provides the mechanism to do that today as opposed to having to wait 18 months.

So again that was - that's it at a high level. And if you want, Kurt, I'm sure Mikey or myself could forward to you the most recent proposal. And I think they now want to hear about the DAG 4 so.

Mikey O'Connor: Kurt, let me just -- this is Mikey -- let me just sort of prepare the way for you. Partly this is my mistake because I was - I don't know where I got the idea that the DAG 4 was due out last Friday. And so my thought was that we would have had it - would have seen the language and then could have asked you questions about the language.

But because I was hallucinating or something and in fact the document isn't due out until today this sacrifice that you're making of your time on a holiday

may not be in the right sequence. And so if you can sort of sketch out the highlights of what's in the vertical integration section of the draft I'm sure that people would be all ears. But if you would prefer to wait, let the document come out at its own speed and join us on the next call that's certainly fine with me since it's pretty much my error. And I want to give you a big door out if you want it.

Kurt Pritz: Yes. (Unintelligible). Thanks Mike. Certainly, you know, my so-called sacrifice is much less than everybody else's on this call, especially the Americans who are working today. But if you're not American then you're probably in some weird time zone and making some other form of sacrifice so.

So - yes, so the guidepost has got to be published and in fact I'm driving in to work now so again not that much of a sacrifice to be on the phone. We had hoped to publish it earlier in the weekend but as you know it can always be made better as those of you who have read past guidebooks and the associated documentation know. So we took advantage of the weekend to try to get the English right, the links right, all that stuff right.

So the vertical integration language is found in two places. One is in the Section 1, who can apply. And two is in the contract as it is in the current contract.

The implementation that essentially follows the (unintelligible), the board resolution you'll see some nuance in order to make it clear. So the - attempting the change - any changes that - or any departure from the language of the board to try to make it clear so if in your reading it's not clear to you that'd be an excellent (unintelligible). What this means is it's an excellent question because it means it's not clear.

It - there's language in there, you know, sort of a preamble in one case, I think a footnote in the other that indicates that, you know, this is intended to be a default position. Pending the outcome of your work, you know, the

default could in fact be implemented but was intended and written so that it would not get in the way of any conclusion that this group came to. In other words, you know, if this group came to a certain conclusion and it was hard to undo what had already been done that would - the board said that would be a bad result. So the default position as you can - I can - by the way it's written was written partially so that your work wouldn't have to undo anything that would be difficult.

So essentially my whole speech I'm willing to take questions.

Mikey O'Connor: Thanks Kurt. Questions from the group? I'll keep an eye on the queue and sort of call on folks. But as I said this was primarily my screw-up. I goofed up the timing. And so we may just want to wait until the language hits later today and then we'll go from there.

Alan, go ahead. Alan, you may be on mute. Let's see if - yes.

Alan Greenberg: There's been some discussion on whether the staff interpretation will be whether zero means really zero. That is a registry owning three shares of a registrar or vice versa in a publicly-traded thing is - technically has more than 0%. Is there a threshold of where zero starts?

Kurt Pritz: Yes. So that's a question that we tried to answer really clearly in the language. So read that and call me back when it's still not clear to you. But I think it's a lot clearer.

Then you can - Alan and everybody can understand why I'm not just reading it. I'll tell you this group I feel fine reading it, you know, a few hours in advance of its posting. But there's the angel, you know, the person on the other shoulder that's saying no, just play it straight. So...

Mikey O'Connor: Yes. No - and actually I - as a co-chair I agree with you, Kurt. I think that is much cleaner. Any other questions like that for Kurt before we let him go back to A, vacation and B, work?

Man: So Kurt, what...

Man: Well that's...

Man: Time does ICANN - Kurt, what time does ICANN anticipate hitting the update button so that we could read this stuff? It's (unintelligible).

Kurt Pritz: You know, I don't know.

Man: (Unintelligible).

Kurt Pritz: Yes. Like - this - It's like painting your house, right? You forgot how long it's going to take to multiply by three.

All the documents, with the exception of one or two that are completely done are posted on a trial website. And then that's just internal to ICANN. And then, well you know, it's all about laying it out and moving it around and writing the right preamble to - one set of words that everybody reads and coordinating the activities of some people that are in the office and some people are outside the office.

So, you know, I hope for late this afternoon. But that would be the worst-case thing, you know.

Man: So 5:00 pm Pacific Time in the good case scenario, 8 o'clock in the worst case. There you go.

Kurt Pritz: An hour after 8 o'clock but then, you know, my wife will be really angry with me and a whole lot of other things.

Man: All right. Thanks, Kurt.

Kurt Pritz: And Mikey, I, you know, we had an intention to try to get this done on Friday and realized, you know, that 8 o'clock or 9 o'clock Friday night it wasn't going to happen. There's probably this tiny bit of lack of urgency because we knew we had a few more days.

So if you had heard Friday it probably came from the staff saying our goal is to publish it on Friday. So I'm not so sure there was a screw-up anyway.

Okay. Well if it's all right with you guys I'll just listen for awhile.

Man: Mikey, you there?

Mikey O'Connor: Oops, sorry, mute button. Kurt, many, many thanks and we'll take a look at the draft and again really appreciate you joining us.

And with that, Michael, back to you. You've got the floor.

Michael Palage: Okay. I think I try - really covered the main concept. I mean we put back in a 15% there. Personally, you know, we went back and forth. We were originally starting with zero with the board resolution. But - and in the interest of compromise since everybody else seemed to like 15% we figured okay we can throw that in there. But, you know, that's it. I mean...

Mikey O'Connor: Okay. Well folks, any thoughts, concerns, objections, things that could be done to tweak this proposal to be getting closer to something that while you may not like it you could live with because really what our goal is now is to try to get to some language that we could carry forward into Brussels to the council, to the board for feedback?

It's not final because we have some time after Brussels to tune up the super details. But we do have a need to get something pulled together. And I'm looking for thoughts as to how to make this better. Berry, go ahead.

Berry Cobb: Hi. This is Berry. Thank you, Mikey. I'd really just like to pose a question to the group.

With the slight modifications of the (CAM) proposal if we can isolate the competition authority part for just a moment which, you know, I think I personally could support it definitely gives this some legs. But is it a fair statement -- again isolating the competition authority part -- a fair statement that this really much closer aligns four of the proposals? And those fours would be the (CAM), the JN Squared, the PIR updated and affiliates?

I'm sure there are some slight nuances. But overall is it a fair statement that those four are very closely aligned with kind of a master proposal if you will or a single proposal that we could start to consolidate those into one? Thank you.

Mikey O'Connor: I saw Jeff Eckhaus' hand go up. And since he's one of the proposers, are - Jeff, are you responding to Berry's question?

Jeff Eckhaus: Yes. Actually if you don't mind I could actually quickly respond to that is that what I think the difference is - I think they are somewhat getting to an alignment. The difference in the JN2 and the updated (CAM), both of which I actually have been, you know, starting to get behind is that it allows all parties to enter into the mix and has a path forward for them versus the PIR and the affiliates proposals are permanent restrictions on certain parties - on parties to enter in.

So that's, I think, the main difference. But they are starting to coalesce is that - and that's the difference is the JN2 and the (CAM) have a path forward and

a way towards co-ownership and vertical integration and that - while the others do not.

Mikey O'Connor: Thanks Jeff. Anybody else before we take - Alan, you're next in the queue. Does anybody else from any of the other proposals want to respond to Berry's question about the convergence that's going on? Okay. Alan, go ahead.

Alan Greenberg: Yes. It's a comment on the (CAM) proposal. I guess the largest objection I have to it is although we skirted around the discussion a little bit when we had the economists online and perhaps a few other times we haven't defined what the market is. And there was some question about is the market the entire TLD market in the world, is it the gTLD market or is it a market which is far better defined than that.

There are some people who believe that particularly for any new TLDs that are particular - that are successful, they are effectively a monopoly within their own world. Certainly once they're launched and successful they're a monopoly. And until we define what market are we talking about simply handing it over to a team of economists or to competition authorities to make their own judgment on it I don't believe is ICANN taking responsible action for the name space.

Mikey O'Connor: Alan...

Alan Greenberg: If there...

Mikey O'Connor: This is Mikey. What would your - of those choices that you rattled off, what would your favorite flavor be?

Alan Greenberg: My favorite is I believe that there will be names which will effectively be monopolies and names that are - from a competition point of view once they're established will not be a generic TLD that is equivalent to everyone

else. And therefore it's the denominator in the percentage that's the issue. You know, 60% of a market varies heavily depending on what market you're talking about and...

Mikey O'Connor: Could...

Alan Greenberg: Okay.

Mikey O'Connor: Could you conceive of a way to drive that kind of concept into some language that could be inserted into one of these proposals?

Alan Greenberg: Well I think it's more than inserted in the proposal. I think it's ICANN has to decide that that is indeed the definition that we're using.

I'm not an economist. Whether I could with a couple of other people's help come up with some words, perhaps. But I'm highlighting the focus...

Michael Palage: So...

Alan Greenberg: That's simply saying economists will decide - whether they're government ones or not will decide on whether there is competition or not depends on what the scope of the overall market is. And there's not agreement among us.

Michael Palage: So can I respond to that, Mikey?

Mikey O'Connor: Yes. Go ahead, Michael.

Michael Palage: Thanks Mikey.

Mike O'Connor: Mike Palage is talking.

Michael Palage: So -- yes, Mike Palage here -- so Alan, I wholeheartedly agree with you that ICANN needs to do some more work in this area. And it's my understanding

that as part of the collateral material that will be released in connection with the upcoming Brussels meeting that there will be sort of Part 1 of an updated economists' study that ICANN has retained another set of people to do more studies. And I think they're looking at this broader market analysis or market question.

So as far as does ICANN need to do more work, yes. I don't think they have undertaken that market analysis looking at both the Gs and the Cs and the entire market. So I am in full agreement with you there.

You will also notice in the (CAM) proposal that one of the things that we propose as part of the outreach in ascertaining the relevant questions and data points is to - basically for ICANN to interact with the GAC and for the GAC to go back to those competition authorities within those respective countries to perhaps solicit input and feedback because at the end of the day it really is the competition authorities because independent of what ICANN does, if a competition authority feels that commerce is being conducted in its economy or in its jurisdiction that is having an adverse impact they will take action.

So this is one of the reasons why we thought it was important to throw the biggest net out as possible to get these data points so that in constructing a framework for ICANN economists or the standing committee to make its initial determination they would have the best set of data points out there as opposed to only a subset that might lead to perhaps false negatives or false positives.

Alan Greenberg: Mikey, can I get a response?

Mikey O'Connor: Sure, go ahead. And then I've...

Alan Greenberg: Okay.

Mikey O'Connor: Got an idea for you.

Alan Greenberg: Yes, two quick points. Like many of the discussions over the last week this is part of a mosaic. It's - and to say we need to discuss these things is true. But to say we need to discuss it after we've agreed that this is the right proposal I can't - I could not support. I think it's one of the critical things whether it makes this a viable proposal or not.

And Number 2 you say competition authorities will act if they decide it's necessary but they act only in one direction. They will act to stop something if they feel there's a harm. If their inclination as indicated by my first comment is too liberal an approach they are not going to take any action.

So that's correct. And that is...

Man: Yes.

Alan Greenberg: That is the concept here is if there is no harm, right, they will take no action and if they take no action the proposal will go forward?

Mikey O'Connor: But their definition of harm may be different depending on what they view the size of the market is.

Alan Greenberg: Exactly. And that was the issue.

Mikey O'Connor: Hang on guys.

Alan Greenberg: Okay.

Mikey O'Connor: Here's my thought. And I'm going to cast myself back into the other policymaking realm that I sit in.

It doesn't sound like there's tremendous disagreement necessarily here. What there is is the need for some language so that we've got something in front of us that we can then hammer on. And so - and I think Cheryl may have brought that same point up in the chat.

Brian Cute: Mikey, this is Brian. I'm not online. Can I get my hand up for a clarifying...

Mikey O'Connor: Oh sure. Go ahead. Jump right in, Brian. Sorry. I didn't realize you...

Brian Cute: Okay.

Mikey O'Connor: Weren't on the (unintelligible).

Brian Cute: Thank you. Michael, I know that you're - you've looked at this very closely and you know this material as well as anybody on the phone here. The original proposal I believe one of the reasons and impulses for a referral mechanism to DOJ or (CG Competition) or any of the antitrust authorities was that ICANN really isn't the best - well if ICANN is to engage in defining markets, engage in calculating market share to taking action based on those analyses it's putting itself into some questionable water and potentially setting itself up for losses from impacted parties, from scrutiny from governments who feel they're trying to expand their role into competition matters.

So if I read that right then my question with the modified proposal is: when you say standing committee can you put a little meat on that because what I'm trying to sort out is where is the decision - where is the analysis made? And it sounds like with this outside group - are they literally going to be outside consultants or might they be part of a standing committee and then part of the ICANN structure? And I think there's a difference there.

Whatever their conclusions or analyses are, would a natural course be that ICANN then accepts and takes action on those? And would that open ICANN

to any of the concerns that you guys are trying to address in your first version? I hope all that was clear.

Michael Palage: I think so. And so let me step back a couple levels in answering that. Earlier - last month I specifically asked ICANN for documentation in how they conduct an analysis of the current funnel.

So right now there are 15 gTLD contracts that have language in there saying that when a new registry - when a registry proposes a new service ICANN will conduct a preliminary competition analysis. So what we were looking at is well what is ICANN really doing there.

Now ICANN has posted information on how they evaluate market and this, that and the other thing. They provide the initial sort of quick look analysis that they do. And at the bottom of that document there was a little asterisk that says ICANN will sometimes contract with outside legal counsel in making these determinations.

So we kind of looked at what was already in place. And we kind of felt uncomfortable that ICANN staff as well as its outside legal counsel that may be intentionally defending itself in an antitrust litigation might be making the preliminary determinations.

So what we were looking for with the standing committee was to I think insulate the organization from that and make this a truly independent sort of standing committee. I, you know, really don't want ICANN staff on it or, you know, sort of any cross-pollination (sic).

And that kind of happens right now in the security and stability. In the RSTEP standing panel there are some people from SSAC and some other people that are cross-pollinated. We think it would be best to have this truly, if you will, isolated.

Now as far as the powers that they would have, we - and Milton was very concerned about this. He did not want them making any determinations as to there was a violation of this or that but that there was the potential sort of that there were some concerns that really needed to be looked at.

And the idea here was instead - from an effective standpoint if ICANN was just throwing 400 requests out to competition authorities there was a fear that this may overwhelm them and may fall through the cracks. So the idea of putting this sort of speed bump here was to truly identify the much more problematic concerns and make sure that those got to the appropriate people. So that was the intent here.

And again as far as coming up with the criteria that this independent panel would use part of that mosaic that Alan talks about was interaction with the GAC to - so that they would reach out to their competition authorities to make sure that we were dealing with the appropriate metrics.

Does that answer your question?

Brian Cute: That helps a lot. Thanks for clarifying.

Mikey O'Connor: I think what I'd like to do is draw this little piece of what I think is very useful and constructive conversation to a close by doling out an action item to somebody or somebodies to craft a paragraph that at least captures the issue. I think it's perfectly all right for us to have language in our hopefully proposal to Brussels that says that there are some narrowly-defined areas that need more work but that if these - if the broad strokes of our proposal are acceptable then we would go back to work after Brussels and finish those off.

And I'm wondering if this is of that nature and if so, if somebody would be willing to step up and sort of chair a little subgroup to draft a paragraph or two that could be put in front of the folks on the list because I don't think that we're going to get all the way to the very end of every issue before Brussels.

But if we can paint a picture of a broad outline of a path I think that that is a good response to the request that the board has made and that is apparently going to be in the DAG that we can show them that we're getting there, that we have the broad strokes of an approach and we have some things yet to work out.

I'm not hearing any objection to that. I'm also not seeing any volunteers. Michael, since you're on the hot seat could you take the action to at least maybe you, Milton and Avri when you listen to the MP3 see if you could come up with a chunk of language that could get inserted into your proposal that would address that issue?

Michael Palage: What - okay. I'll go back and I'll listen to the MP3 recording. But what is the specific issue, the - as far as the competition authorities or...

Mikey O'Connor: Well the underlying concern that I think Alan kicked us off with what's the definition of the market, you know, how broadly-defined is it. You know? Could it be as narrow as a single TLD? Could it be all gTLDs? Could it be all TLDs? And, you know, to paraphrase his concern he's uncomfortable putting his thumbprint on something until we at least have a sense of what we're talking about there.

Michael Palage: Yes. I mean I'll go back and I'll talk with Avri and Milton. Whether we find agreement among ourselves, I don't know if that's possible. At times the consensus building process among the three of us at times is interesting to say the least. So I'll go back and I will see if we're in agreement on, you know, how the market's - is defined.

Again I think, you know, our approach has been - everything that we've done with the original MMA proposal as well as the (CAM) proposal is to provide some flexibility so that when the final mosaic comes into place there's that ability to fit in. So again to address I think Alan's concerns, this is not a proposal where we're necessarily advocating a solution. We're just saying

that this is a construct that may fit into place when the final pieces come together.

So I think that may be a little different because again this is a proposal not really advanced by a group that is proposing to offer a net gTLD or anything like it. This is really not a provider-central proposal. This is more an overlay that we think could fit when certain other pieces come into play.

So I'll - I - I'll talk to Avri and Milton about that and try to get back to you. Okay?

Mikey O'Connor: Well and Michael, I'm not sure that you necessarily have to arrive at a choice between those options. I think the language could just describe the issue and describe a mechanism whereby it could be addressed but not necessarily, you know, in keeping with your overlay notion maybe if there's a good mechanism to make choices about that because I can imagine a situation where it varies from one circumstance to another. And just like the proposal of a - an external committee, a standing committee is a mechanism but not necessarily a predeterminer of outcomes maybe there's a mechanism that could be described to address that issue and the sort of series of issues that fell out of it. Anyway...

Michael Palage: All right...

((Crosstalk))

Mikey O'Connor: And see if you can come up with anything. I think it would help us a good deal if you could.

Michael Palage: Oh, will do.

Mikey O'Connor: Let's see. Oh I'm finally catching up on the chat. I'm unable to cover anything because I haven't been reading it. Cheryl, go ahead.

Cheryl Langdon-Orr: Mikey, sorry about that. That's why I put my hand up.

Mikey O'Connor: Yes. Thank you.

Cheryl Langdon-Orr: I just think it's pretty important particularly when you're running with so many people not online.

Mikey O'Connor: Yes.

Cheryl Langdon-Orr: So...

Mikey O'Connor: Yes.

Cheryl Langdon-Orr: Some are just on the telephone bridge. If we're referring to things that are going onto chat to punctuate occasionally and just cover for everyone and, of course, the record on the MP3 of what is happening in the chat could be a very good idea. So while you get up to speed on that because that's kind of your job, Mr. Chairman...

Mikey O'Connor: Oh, okay.

Cheryl Langdon-Orr: I just want to make sure that those of us who may not be sitting in front of a screen reading this thrill-packed and exciting chat and tête-à-tête that's going on, Jonathan (Alton) Frakes also said he would be happy to volunteer to participate in this sub-team activity...

Mikey O'Connor: Oh, great.

Cheryl Langdon-Orr: And that of course we've also been looking at - we've been using words like measurements, working hypothesis, you know, agreed as (unintelligible) definitions, those sorts of things need to be brought into the conversation. And perhaps you also need to call for any of the people who are just on the

audio bridge to make some specific contributions. And now I will take my croaky voice and put it away.

Mikey O'Connor: Oh, your poor voice. Well thank you for that. And I - it is hard to summarize this chat. The term paperclip gets in there in an unusual way. I guess I'm not supposed to summarize.

Man: Not all parts need summarizing.

Mikey O'Connor: I see. Let's see. So anyway, Jonathan, maybe you and Michael Palage can touch bases on some of that drafting.

And I'm hopelessly over my - I will strive to read the chat a little bit more although the paperclip thread sort of threw me off and I didn't come back after that. I'm sorry. So if there's any major points...

Cheryl Langdon-Orr: I...

Mikey O'Connor: That come up in this chat...

Cheryl Langdon-Orr: If I - Cheryl here. Let - Cheryl here. Just while I'm - and I am game to stop suffering soon so that'll help you all stop suffering as well.

We've - the (unintelligible) and the confusion that anyone listening to it will be fascinated with the paperclip reference. So I think we need to close these loops. Stop being such a tease, Mr. Chairman.

The interaction that was going on in the chat regarding paperclip, etcetera, was all about how one can be necessarily in a planning and prospective stage, maybe unaware of harm or way a harm can happen. One of the chatters suggested of course, you know, you could do harm to someone with a paperclip but does that mean a paperclip is inherently harmful. And that was the tone of the conversation.

So it really comes back to matters of some established definitions, some working hypotheses, some what does market mean and it isn't quite so (unintelligible) and confusing as - I think one of the lines -- to quote Jonathan -- if I'm going to do a summation for you, Mr. Chairman, is suggesting that he was saying well perhaps we're looking for asbestos as opposed to paperclips. So from that type of concept I think what you're hearing from the chat space is a very high desire and need to establish some - something that is - and some great terms or at least a working hypothesis.

Mikey O'Connor: So...

Cheryl Langdon-Orr: Thank you.

Mikey O'Connor: Thanks, Cheryl. I apologize for being so lame. I have never been able to keep up with the chat in these meetings. So I'm not a good summarizer.

But it does seem to me that this is good feedback for all proposer - proposal writers and advocates and that it would be useful if you could - you proposal advocates could include those working hypotheses in your proposal. And I think it might also be useful to sort of come up with a list of the words that have caused us the most trouble. Berry, I'm going to put you on the spot for a minute so I'm giving you advance warning so you can take yourself off mute. But in the pile of stuff that went around earlier it's my recollection that we came up with a list of terms that needed defining. And maybe what we ought to do is publish that list to the working group list as sort of a tip sheet for proposal advocates.

Man: Mike is Margie on the call because I thought we already did this.

Mikey O'Connor: Margie's not on the call. It's just me. That's part of the reason that everything's so lame today is because I'm kind of out here on my own.

But I think you're right. I think we did do this before. And I'm just trying to track down the definitive list because there was a lot of work done during the chartering process. And there was a list of terms to be defined.

And I think that the list that Margie had was somewhat shorter than the list that Berry was working off of. That's part of the reason that I sort of put him on the spot.

Berry Cobb: Mikey, this is Berry.

Mikey O'Connor: Go ahead.

Berry Cobb: So just to clarify, the drafting team only really started out defining three terms as what - cross-ownership, vertical integration and I believe one other term. And then that got sidelined.

I think what Margie put together was more a list of acronyms and not so much necessarily a full definition list. And then thirdly is in our attempt at a sub-team for the analysis portion I appended a list of terms that don't have definitions for them. And so I'll publish that list out to the list and...

Mikey O'Connor: Yes.

Berry Cobb: Then we can chop on that.

Mikey O'Connor: That is the one I was thinking of, Berry. Thank you, sir. That - it's that longer list that you developed that I was thinking would be good. And this could be sort of a tip sheet for folks who are doing proposals.

We're drawing sort of to the end of the time for the (CAM) proposal. And I would like to switch over to the one that Brian has sent if that's all right with folks. Speak now or I'll make the (CAM) proposal go away.

All right, so I'm going to make that one go away and share a different document. This one is here.

Man: While you're typing can I ask a...

Mikey O'Connor: Sure. Go ahead, Ken.

Ken Stubbs: Question? I'm sitting here looking at the screen. And the entire workspace only occupies half of my screen. Is that because you've limited the size of the workspace as to what will display on the user's screen or is there some button somewhere on the screen that I need to go to to enlarge it? I am sorry, folks, for taking time here.

Alan Greenberg: Ken, if you change the size of the window the useful part within it changes in a seemingly random and not completely controllable way. But sometimes it gets better.

Ken Stubbs: Thank you.

Mikey O'Connor: I think -- this is Mikey -- I will chime in right behind Alan. I've fiddled around with this at times when nobody was on the chat - on the Adobe Connect with me just to sort of see how it behaves.

And I think that what's going on is sort of a compromise between people - the needs of people with big screens and the needs of people with small screens. And so...

Ken Stubbs: Yes. I know it sounds crazy. But I begin to feel like poor (Amadeo) did about ten years ago, those of you who knew him then -- where you had to put the screen about 2 inches from your eyes to be able to read even the chat part. So hopefully somewhere down the road they're going to make it a little easier on us. Thanks Mike.

Mikey O'Connor: Yes. You bet. Okay.

The proposal that Brian emailed the list just before the call -- Ken did for Brian -- is now on the screen. Brian, do you want to do as Mike did and just take us through sort of the highlights of the changes? Or shall I just throw it open to the group for questions? How do you want to go?

Brian Cote: I'm happy to walk through it a little bit, Mikey. And I - people have just received it so they may have not had a chance to read it. And I'll spend a bit of time to walk through it and identify the changes.

The proposal - and I don't have it onscreen in front of me so if I go off course and it's not matching up I'm sure you'll let me know instantly. The fundamental elements of the proposal are it would allow for cross-ownership between a registry operator and a registrar up to 15%. So a registry operator could own up to 15% of a registrar and vice versa. Likewise it would allow cross-ownership between a backend registry services provider and a registrar up to 15% in both directions.

We also have Recommendation 19 noted in there which requires registries to use ICANN-accredited registrars. And we have importantly some definitions of affiliates and control which actually to be - to give credit where credit's due as taken from Jeff Neuman's definitional suite which essentially are there that if you're going to have ownership tax obviously you don't want to have workarounds, backdoors, corporate structures that can otherwise subvert the mechanism that's being in place. And so the definition of affiliate and control - - and really control is the key word -- are part of the proposal to serve that purpose.

But one of the changes from the last iteration is that the more we looked - and there's a number of signatories to the document but the more we looked at the proposed exceptions -- and, you know, affiliates have put some forward in its earliest iteration -- the less convinced we were that any of the

exceptions had really been developed enough that they were ripe enough that the rules of the road for the respective exception were clear enough for an applicant and for enforcement purposes for ICANN. So we felt at this time and looking at the grid that these more minimal points are the ones that seem clearest, that seem closest to having agreement. And that's one of the motivations for the proposal as its structured.

I'm just going to make three points and then I'll open it to questions with regards to motivation. We think, Number 1, allowing for cross-ownership up to 15% does allow for investment between registries and registrars, backend providers and registrars. Investment is important particularly in and around having funding, financing, shareholders who can back your proposal as an applicant or your operations or registrar is important. So that's one motivation.

The second motivation is one that we've been speaking to for a long time now. And I'll be honest. I've kept any discussion from us about the policy against access to registry data by a registrar out of our prior conversations for - in the interest of getting negotiations going and getting consensus. But it really is one of our solid motivations that by having ownership caps to prevent the co-mingling of registry data with registrars is very important policy that needs to be continued.

But an underlying assumption of vertical integration from a competition law perspective - one of the underlying assumptions is that the efficiencies gained and some of the costs that are eliminated by allowing vertical integration will flow to the benefit of the consumer. And while we have made these arguments in the past from a consumer protection perspective there is a competition tie-in here because if there is access to registry data or data that shows more broadly all registrars doing lookups of domain names which domain names are looked up more frequently you will see prices built up in the marketplace as a result.

So there is a competition founding in our motivation which is augmented by all of the arguments we've made about consumer protection and how names can be made unavailable, more valuable names can be more efficiently identified with access to registry data and prices will go up, names will be taken off the market for the benefit of the integrated company. So that's motivation Number 2.

And just more recently in having conversations, looking at JN Squared, looking at Jeff Eckhaus' proposal we really strongly believe that if you're going to allow integration on the back end, we've said from Day 1, the back end represents access to registry data. That's a fact.

We don't believe that the enforcement will or capability of ICANN is sufficient when you have 100 creds or more that are controlled by an entity, a multitude of resellers. You can have a prohibition of selling in the TLDs for the registrar. You can have a promise from the registrar to not do that. But the ability to police and enforce is critical at the end of the day and we are very, very certain that the ability to enforce just won't be there.

The creativity, the gaming, is just too - the track is such that, you know, the registrar can really come up with some creative ways to provision their services or a number of different channels. And ICANN just isn't up to the job of enforcing that.

So those are the three motivations behind the proposal. I know I've gone on a bit long but wanted to be fulsome there. And I'm happy to take questions.

Mikey O'Connor: Thanks a lot, Brian. Before I open it up to the floor a question for you. And really this is aimed at all proposal advocates. And that is: can you see a way where or do you see any barriers to integrating your proposal with the (CAM) proposal? Do those mesh? Are there points that are just completely incompatible? What's your sense of that? I realize it's tough since you're in the car and you haven't been able...

Brian Cate: Yes. The - yes, I'm sorry about the noise. The honest answer is I'd like to look through (CAM) proposal point by point before I answer that.

I'm sure there's areas where there meshing, Mikey. But before I...

Mikey O'Connor: Yes.

Brian Cate: Went on the record and said specifically X, Y or Z I'd have to go through it. I'm happy to, you know, come back with that on the next call if you'd like to put that...

Mikey O'Connor: Okay.

Brian Cate: For Thursday.

Mikey O'Connor: Okay. Concerns, questions, objections for Brian from the group? Yes. I'm not being overwhelmed. Alan?

Alan Greenberg: I don't have one of those. But I'll have one of the reasons that some of what Brian said strikes a chord with me. And that is the inability of ICANN especially in the future that we're looking at with perhaps many TLDs to enforce and to monitor.

And the issue of resellers I think is critical. My understanding is several of the registrars have something like 30,000 resellers. We're not just talking about hundreds.

And how one can monitor that is not at all clear. Resellers in fact can deal with multiple registrars. You can be a reseller for several registrars at the same time. It becomes a very complex process. And I don't think ICANN has the ability, the will or the staff to really try to enforce things at that level.

So I'm not saying there aren't alternatives. But that does strike a chord.

Mikey O'Connor: Thanks Alan. Any - Jeffrey's got his hand up. Go ahead, Jeff Eckhaus.

Jeff Eckhaus: Thanks. I just needed to get off mute. Just one thing I wanted to point out. I always - I think I sent this in a previous email a week or two ago is just to be clear that as of right now even with 15% ownership and the current contracts that we have that a registry at this point even can purchase as many names as they want in their own TLD as long as they go through an ICANN-accredited registrar. So that is allowed right now.

So I just want to be clear that - for people think that oh this will prevent it and this will happen, right now a registry can purchase as many names as they want. And they can do that in their own TLD as long as they go through an ICANN-accredited registrar.

So that is in the current contracts. And we haven't seen any of these harms that happen by people using registry data to purchase the domains in their own TLD.

This has been allowed for years. And we haven't seen any of these, you know, potential harms or gaming that people are concerned about.

So I wanted to be clear because people are saying oh these things can happen in the future but I want to point out what's happened in the past few years since these contracts have been around that this gaming, these bad things, haven't occurred. So I'm - just want to point, you know, to be sure say hey, this is a proven history of what's happened in the past versus, you know, assumptions of there's going to be all bad actors in the future. So I just (unintelligible) on that.

Mikey O'Connor: Thanks Jeff. Ken Stubbs, go ahead.

Ken Stubbs: Yes, Mikey, just one real quick comment. There were comments made over the last two or three weeks about why should we have to worry about this, we could get ICANN to prepare a Draconian contract, put sanctions on anybody that commits these breaches to the extent that they could be forced out of business, forced to divest.

In the past there have been issues that ICANN's had to deal with where they've had this option available to them. And I've had long talks over the years with many of the ICANN staffers. And they say, you know, the idea of enforcing a death penalty is just so onerous.

So I mean you can sign on to whatever you want to sign on, make any promise you want to make. But in the past it's just - it goes back to what Alan said about the ability to enforce. It's just incredibly difficult. And I suppose you could say that the people who are being creative have tremendous minds that have been able to be incredibly creative. And it's difficult when you're dealing with potentially hundreds of registries to do this. So I mean that's just my own personal position then.

Mikey O'Connor: Thanks Ken. Any other comments for Brian on the new version of the proposal that he posted to the list? I'm going to give it a little bit more time for people to stick their hands up and then, you know, we've sort of naturally swung over towards harms. And so this might be a good moment to sort of switch over to that little list of mine but I don't want to cut Brian's time short either.

Okay. I'm going to give you all a short vacation while I save a document as a PDF because I just realized to do that for this last one, get it up there in the workspace and then we'll swing over to the (unintelligible). Okay. There we go. There in a minute.

This is a document that I sent to the list literally a half an hour before the meeting. And I apologize for that. But I sort of wanted to visit with Roberto about it before I published it. It should be up there now for you.

All I did -- I want to lay down all the standard Mikey disclaimers on this -- is on our call last Thursday we had a conversation about the need to sort of zero in on the harms, etcetera. And several folks said well there are lists out there. And I just couldn't find it.

And so I went ahead and read a bunch of the background documents for our working group that are out on the wiki. And all I did was wherever I came across somebody mentioning a harm I just wrote it down. And then I made them into piles. And so I mostly just wanted to walk you quickly through this document so that - and get your eyes on it so that if I've missed any major ones that are on your mind that we can either talk about them now or you can just email me on the list with additional ones.

The thought that Roberto brought up in his comment on the list was that we treat this not unlike the way you would treat a risk assessment and the process being first you identify the risks, then you identify how bad they are and how likely they are to happen and then you figure out ways that you can reduce or mitigate the risk of those things happening. And this is really just the first piece of that. It's making sure that we've got a comprehensive list.

And so with that let me just roll through this real quickly. The first part for me was splitting it into - some people listed harms from continuing separation and some people listed harms from integrating. And so I tried to put them in those two piles.

And then what I did was I tried to clump them. So the first clump was sort of a clump of reduced innovation and choice and features and so on. Another clump is pricing and protecting the market. And the last clump in the separation harms was service quality or the possibility of registry failure.

And then in the second half there's a fair amount of duplications. And the reason there's duplication is because different people put the harm in a different context.

So there were a whole bunch of harms that had to do with discrimination by the now-integrated registrar/registry. And I put those in a pile.

Then there's essentially a series of sort of abusive behaviors I guess. I don't want to put words in people's mouths but the whole blob there about insider trading, domain tasting, front-running. And the oversight issue came in in that context, the stuff we were just talking about, Ken's point.

And then finally the last little bit was, you know, the pricing kinds of harms, the - again a different group of people said that reduced innovation and product variety would be a possibility with integrated. That's some of the duplication from the top. And then last was some industry consolidation concern.

And then I started making a list of predictors of harms. But I, you know, I really - I didn't get very far on that.

And so that's my little list. If people could, you know, I don't necessarily want to spend time on the call editing but if folks could critique this on the list I am - this is - doesn't even have a version number on it it's so draft. And then we can flesh this out a bit and carry on the conversation.

Okay. We've got two folks in the queue: Ken first and then Jeff Eckhaus.  
Ken?

Ken Stubbs: Yes. Thanks Mikey. First of all I'm - I hope you won't be offended but I'm going to treat this as how I see it and that is just a compendium of things that

have popped up that you put on a piece of paper because I can't necessarily agree with it.

I don't want this list to have too much credibility until it's been thoroughly vetted. But as anybody who's going to tell me that over the last 12 or 13 years that we haven't had innovation in the DNS with the system that pretty well had this separation is in my opinion blowing a lot of smoke. So to tell me that all of a sudden we have to make radical changes in the system in order to be able to give people the ability to innovate, you know, anybody wants to make that argument and tell me needs to tell me what would you do to innovate that would be different under one structure versus the other one.

I'm sorry. People don't just suddenly get smart or get dumb depending on the ownership percentage or the relationship there. That's just my own personal opinion there.

Mikey O'Connor: You never have to worry about offending me about stuff that I write because, you know, I have no editorial pride at all. It - basically I went through just all those documents that are sitting on the wiki. And wherever anybody said something I wrote it down. So there you go.

Jeffrey, go ahead.

Jeff Eckhaus: Yes. Can you hear me?

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

Jeff Eckhaus: Okay. So, you know, I'm sort of - it's funny. I was - I'm sort of in agreement with Ken as well saying, you know, that we have to sort of vet these out because a lot of these are, you know, they're - I think, you know, they are potential harms. But I think I'll go, you know, the same thing with I think it was Michele said hey, you know, should we outlaw paper clips because, you know, somebody could die from it so it's a potential harm (unintelligible), you

know, so I think some of these that are in here, they do need to be vetted out and be thought up of because some of them are occurred anyways.

Then like domain tasting happened, that's on the list. That had nothing to do with co-ownership. Front-running, that was another thing that had nothing to do with co-ownership. And I'm not even sure that occurred. But that, you know, that...

Mikey O'Connor: Right.

Jeff Eckhaus: Those sorts of things are not symptoms of, you know, directly related to co-ownership or vertical integration. So I really want to be clear about that and things like access to data, like, you know, DNS lookup data or NXDOMAINs. I - you can - registries go out and sell that now. I mean they're saying oh but the co-owned registrar will have that. But you can go out and buy it right now.

So I just wanted to be clear what are the differences, you know, the - of course everything is a potential harm. So I want to say, you know, I think these need to be vetted out versus putting them down just on this list because I agree, innovation, if we don't have co-ownership does it mean there'll be no innovation. I don't believe so.

But - so I think we just need to sort of vet these out a little bit more. But I do like the idea of having this list and to start going through it. And then we could say okay, what can we do to mitigate these harms and to enhance the benefits because as we all know we're not going to reduce every single harm and we're not going to bring through every single benefit with a decision we make here.

Mikey O'Connor: Right. And again to emphasize, there's really a step in the middle. First there's the list of them all. And we're, you know, we've got to start at that. Then there...

Brian Cute: This is Brian.

Mikey O'Connor: Then there's as you say the vetting that says, you know, A, are these real, B, how likely are they to happen, C, how big is the impact. And once that's done then we can start to talk about the need to mitigate, how to mitigate and all that.

But in order to get started you need a list. And then it could well be that some of the things on the list are just plain gone. And I think that it's useful to document that.

Alan, you're next.

Alan Greenberg: Yes. I guess at some level I object to the concept of the list. And I'll tell you why.

If you look at the list of harms right now we have ones that are listed in any book - any economy textbook of the classic harms that come in the market and a bunch of very, very specific domain ones that have already happened. I don't think we are really good at identifying what I mentioned in the chat is really innovation.

If you look at something which I'm not claiming it's a harm but it was a change in the marketplace and that is the registrar's changing of registration agreements to be able to take over an auction or sell a domain instead of deleting it which suddenly popped up in 2004 I believe. -- no one had thought about it before -- and completely changed the aftermarket, the market for resale of domains.

And whether it's a harm or not one can have a nice discussion about. But it's completely changed the dynamics. And we're not really good about identifying those and certainly not about identifying whether they're harms or not until way after the fact.

So I think the onus to a large extent is on evidence or indication that something is not likely to cause harms as opposed to try to identify the extensive list of harms that one might be able to come up with. And what I'm proposing isn't a failsafe project either but I think is more reasonable than trying to have the exhaustive list of harms.

Mikey O'Connor: All right.

Man: (Unintelligible).

Mikey O'Connor: Ron, you're next. Yes. Go ahead.

Ron Andruff: I think Brian's trying to get in.

Mikey O'Connor: Oh Brian? Yes.

Brian Cote: Go right ahead, Ron. I'll follow. That's fine.

Ron Andruff: Okay. So then if I understand I'll go forward and then -- this is Ron -- and then I'll be followed by Brian, right?

I actually come in on the other side of what Alan just said. And that - my - I would suggest we continue to build this list. In the meantime I saw that Jeffrey Neuman had sent through a bunch of links. So we can go through those.

The idea here is build an - in my view an exhaustive list of harms. We can color-code them. I think Jeff Eckhaus is on to something. Let's not confuse the, you know, let's separate the wheat from the chaff here.

And - but I think that having an exhaustive list of harms is a valuable thing in any case. So why don't we color-code those that are not VI or co-ownership

issues? So it means that we'll be looking at one color that was all VI/co-ownership issues that we can bring to the table, we can conceive of. And at the same time anything that's historic, that's been out there, that has been a harm, we put that in a different color so it's quite clear where that one belongs but at least it's an exhaustive list of harms as far as we can see them.

And then we'll be able to weigh the evidence at the end of the day, how many - what the harms are looking like out there versus what's the benefit that it's going to bring. At least we can address the issue of harms as opposed to having this thing hanging out there like a cloud that nobody wants to look at specifically. Thank you.

Mikey O'Connor: Okay, Ron. Brian, you're next.

Brian Cute: Yes. I'd just like to make a couple points. And I'm not necessarily commenting on the validity of this list one way or the other.

So I - there were a couple points that Jeff Eckhaus made, you know, we look at front-running and we say that had nothing to do with cross-ownership but coming in as that was one registrar allegedly engaging in that practice. If that registrar had access to registry data the efficiency and the scope of the front-running which it would have been an order of magnitude greater. And that's the point that we've been trying to make throughout.

And secondly if there are registries out there offering all of their lookup data on the market that doesn't mean they should be. And that doesn't mean it's consistent with ICANN policy.

I think in general probably there is some value in us trying to continue to flesh out this list. But I would have reservation about pointing to it as a concrete addition to the analysis. Maybe it can be just for informational purposes. Thank you.

Mikey O'Connor: Thanks Brian. Michael Palage?

Michael Palage: Yes. Thank you. Ron, I have - you've been I think rather critical on the list and in other for regarding some of the actions of Tralliance and I believe their one affiliate company who went through an ICANN-accredited registrar and registered over 100,000 names. You've been critical of that as well as some people within the IPC so you're not alone there.

My question to you there and this maybe ties back into Jeff's question is: let's just say that is a harm; is the restriction of up to 15% going to stop that harm? I don't see that being the case because what happened there is Tralliance actually used an affiliate reseller. It didn't even use its own registrar to engage in that activity.

So I'm just trying to again assess when we're trying to come down with harms what harms are truly associated with a co-ownership or vertical integration?

Ron Andruff: This is Ron. Thanks for the question, Mike. I think the answer to the question is let's do the analysis. It's - there's nothing I can tell you today that's going to solve this. But I think if we spend our time focusing on it, write up everything we can possibly conceive of then we will get a sense of it.

At the end of the day the biggest issue here going forward is how ICANN maintains its integrity in a world of hundreds of new top-level domains. And the only way that's going to happen is through some mechanisms that will be in the hands of compliance to force the bad actors to get out of the game and make sure that the good actors are following the right path.

So this is where it begins and ends for me. And I think that anything, whether it's 15% or 50% or 100%, that number's going to be determined by a group mind and ultimately we'll, you know, that's what consensus is all about.

But the bigger issue is how do we make sure that the - that we're addressing this going forward because right now ICANN is 11 years old. That means all of the guys who've been gaming the system have got 11 years experience, the real gamers, the guys who've been out there from the beginning milking the cow as much as they can. So if in fact they've got this creative spirit then we're about to open up the doors, we have to look at the other side and say how that - how is that equation going to be balanced.

So that's where I'm coming from. In terms of identifying as many possible ideas that we can think about and - as gaming possibilities would be a good exercise for this group.

Michael Palage: But I guess my question is, Ron, it's not a 15, it's not a 20. The gaming that you've talked about occurred with zero cross-ownership because it occurred through a reseller. I think this was the point Jeff was trying to make is okay, if we really want to - if we're about protecting harms it's - I think it's much more important or much broader than cross-ownership and vertical integration. It's - and this is something Alan and myself - I think this was in the whole (Pendar) group would be the role of resellers, right?

So if in fact we're talk - if we want to really protect registrants and look at the tie - entire ecosystem it's much more broader than just co-ownership and vertical integration. And this goes to Ken Stubbs' point of oh, if we're worried about compliance, you know, there's no way we're going to be able to sit there and handle the hundreds of thousands of resellers that are in the ecosystem.

So again I just want to make sure that, you know, if we're really tackling the issues we're not just making red herrings out of certain aspects of it and hanging a tag on it as though this is a vertical integration because again the harms that you previously cited -- it happened in Tralliance -- has nothing to do with vertical integration or co-ownership. It happened through a reseller.

Ron Andruff: This is Ron. And just one quick rebuttal if I might, Mike.

Mikey O'Connor: Yes. And then I think we got to draw this to a close. But go ahead, Ron.

Ron Andruff: (Unintelligible) say that all we're trying to do is to draw out in this dialogue - I agree with you Mike that the 15% issue is not the issue. The question was about harm. The question was asked about what are all these harms that we keep on talking about. So then I said let's start to address harms.

Now that - you can call that one not relevant and that's fine. But all I am saying is that there's a - the key for us right now is to make sure that we find a formula that allows as much innovation but with the appropriate protection mechanisms in place. Thank you.

Mikey O'Connor: Thanks Ron. Thanks Mike. Thanks all. This sounds like maybe another drafting opportunity for proposal advocates. This was a pretty tasty discussion in which I heard actually a fair amount of agreement.

And sort of the way that I described to Michael the last time, maybe some language that provides a mechanism, not necessarily to address any specific harm because we probably won't have the time to actually develop that between now and Brussels but a mechanism whereby something can happen if one is identified would be a useful thing to have in this proposal.

And so that's the way I'm going to wrap that one up. I don't want to take any more debate because we're out of time.

Thanks, all, for the call today. I think actually we covered a fair amount of ground. For those of you working on proposals I commend you as always and keep working, keep converging, keep talking.

Thursday's call is likely to be pretty lively. We're going to have a lot of information that we don't have now like the specific language from the DAG. And so I look forward to seeing you all then.

And with that I'm going to draw this call to a close. Thanks again.

Man: Thanks Mikey.

Woman: Thank you.

Man: Thanks Mikey.

END