

**Vertical Integration PDP Working Group
TRANSCRIPTION
Monday 18 October 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 18 October 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-20101018-en.mp3>

On page:

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

(transcripts and recordings are found on the calendar page)

Participants on the Call:
Contracted Parties House
Registrars Stakeholder Group
Volker Greimann
Paul Diaz

gTLD Registries Stakeholder Group
Ken Stubbs

- Commercial Stakeholders Group
Ron Andruff - CBUC- CBUC
Mikey O'Connor - CBUC- Co-Chair
Kristina Rosette - IPC
Scott Austin - IPC

- Non Commercial Stakeholders Group

...

Individuals
Roberto Gaetano - Individual - Co-Chair
Jothan Frakes
Katrin Ohlmer

ALAC/At Large
Alan Greenberg
Sébastien Bachollet - ALAC
Baudoin Schombe

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

Apologies:

Berry Cobb – CBUC

Avri Doria

Chery Langdon-Orr

Phil Buckingham - Individual

Coordinator: 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.

Glen de Saint Géry: Thank you.

Mikey O'Connor: Why don't we just run through the roll call and everything Glen. I think that's the easiest way to do this.

Glen de Saint Géry: I'll do that for you Mikey.

Good morning, good afternoon, good evening everyone. This is the Vertical Integration call on the 18th of October. And on the call we have Mikey O'Connor, (Ben Wotutami), Baudouin Schombe, Sebastian Bachollet, Roberto Gaetano, Kristina Rosette, Paul Diaz, Ron Andruff, Jothan Frakes, Alan Greenberg and Katrin Ohlmer.

And for staff we have Liz Gasster, Margie Milam and myself Glen de Saint Géry. And may I just remind everyone to say their name before speaking for the transcription and the (recording). Over to you Mikey. And sorry (unintelligible)...

Mikey O'Connor: Thanks Glen.

Glen de Saint Géry: We have apologies from Cheryl Langdon-Orr, Avri Doria, Berry Cobb and Phil Buckingham. Now over to you. Thank you Mikey.

Mikey O'Connor: Okay. And in keeping with the new rules, we're going to mostly be talking about compliance today as it affects our report. So just a quick pause to let people update us if there are any changes to their SOI or their DOI.

And with that, what's up on the screen is the comments. And if you run down to about Page 14 you'll find the comments about compliance. And the thought that I had in the agenda that I pushed out to the list last Friday was that we would talk about these since they are - they apply to the principles in the report rather than the proposals.

I think the proposal comments basically are - we will tend to head right back into the same log jam that we were in when we wrote the interim report. The thought was to see if these comments about the principles, compliance, SRSU, exceptions, et cetera, might move the ball forward a little bit although I think we've got a problem in that we're so far below a quorum that I'm not sure - I guess I need a ruling from folks who know the process better like Margie and Liz.

Can we even proceed with this light a turnout? Because this is really light, you know, basically we're down below 20% of the working group at this point.

Margie Milam: Mikey, it's Margie. I think we can proceed. I guess the question that, you know, to the extent we identify things that - where we can consensus on, we need to probably circulate it to the list to get confirmation next week on it. But I don't think it's small that we can't do work.

Mikey O'Connor: Okay.

Man: I think we'd qualify as a super minority.

Mikey O'Connor: Yeah. We qualify as the diehards. That's for sure. And I think that that's the, you know, I hesitate to bring it up again but a number of us met in

Washington, D.C. last week and heard from Kurt and from Steve Crocker about the Board meeting and it's - and Kristina was there too.

And one thing that we heard pretty loud and clear is that the Board has taken this decision back. And I'm not terribly convinced that the work that we do has any affect. But I'm willing to give it a try. I think that the thing I will do today is keep an eye out for things becoming a surrogate for the larger disagreement and if they do, I think I'll cut them off because, you know, we fought this battle so long that I'm not sure that we can actually move forward much from where we are now. Jothan, go ahead.

Jothan Frakes: Thanks Mike. Was it an indication that what we're doing from here on out is moot and that the Board has it? Did you get any sense that they'll take into consideration what was presented to them?

Mikey O'Connor: Well a bunch of us were on there. I forgot that Ron was there as well. You know, many of the people on the call were also in that meeting. And so feel free to chime in folks. But the sense that I got was that the Board took the, you know, the intent of the resolution was to take that decision back and make it themselves.

And that, you know, they have our report that clearly they would use that as an input to their decision. But I did not get a sense that they were looking for any more from us. Ron, Kristina.

Kristina Rosette: I would revise that only to say I don't think they're looking for anything more from us for the first round.

Mikey O'Connor: Yeah. Yeah. That's a good revision. I agree with that. Ron is that sort of your take too when you were there?

Ron Andruff: Yeah. I would say so Mikey. The sense that I got when I heard Steve speak was that, you know, there was a wish that we had come back with more

concrete work result for them to deal with. But they recognized the difficulty that we went through and now the monkey is on their back.

And I agree with Kristina. It's a first round issue that they're going to deal with right now. I don't think this is for the longer term but certainly for the first year - first round and then we'll probably have to look at it again to see what happens in the coming rounds.

But there was a question about SRSU that came up and it came under the context of compliance so I'd like - if you don't mind Mikey, I'd just throw that into the works here.

Mikey O'Connor: Sure. Go ahead.

Ron Andruff: That had to do with the fact that at one point there was some discussion about compliance and where do we stand with the new compliance officer to manage all of this. And Kurt mentioned that it wasn't just a new compliance office. In fact that there were two or three job openings in that space and that while they were looking for the top officer, they were also looking for a couple of junior people to be working on the - particularly the new round of top level domain applications.

So one of the comments that he made, Kurt - one of the comments that Kurt made that caught me by surprise was the fact he said, "Well, you know, if you're talking about compliance and you're talking about a company having an ability to be a brand on the Internet, how would we as compliance ever be able to make sure that they are compliant with the things they need to do?"

For example, would we ask for a list of all employees so we could check to see if in fact that they'd given out an email - given out a TLD to someone or given out a domain to someone, would in fact that domain belong to an employee or not? So that was an interesting insight I think into staff's view that SRSU might be a tricky one to deal with from a compliance perspective.

Mikey O'Connor: And Kristina, you were there too. And I think actually part of that was - discussion was during the conversation that we had about strings and brands and stuff. What was your take on that part of the meeting?

Kristina Rosette: I'm just trying to - I don't have my notes in front of me so I'm just going to dig...

Mikey O'Connor: Well I didn't mean to put you on the spot either.

Kristina Rosette: My recollection - I mean I got the sense that they would certainly - I mean it's definitely something that they're concerned about but that if there would be a proposal from that community of potential applicants to the extent that there is one that they would certainly find that helpful.

In other words, if there was any kind of proposal saying, you know, in order to qualify for an SRSU or to maintain eligibility for it, this is the information that would have to be provided to compliance on a, you know, quarterly basis or, you know, I guess you could tie to the registry report.

So I mean I certainly agree with Ron's point but I didn't really view it as a kind of that's the end of the discussion.

Mikey O'Connor: Do you have the sense that it's something that they're really looking to the applicant community more for for that proposal rather than us?

Kristina Rosette: I actually took it to mean that he was looking for the IPC to come up with something. So I would say Choice C, none of the above.

Mikey O'Connor: Yeah.

Kristina Rosette: You know, I don't know that it couldn't come from us. I don't know that it necessarily has to. I mean if it was something that came from some other

segment of the ICANN community and it was something that, excuse me, the working group was willing to support or found acceptable or said, you know, subject to Changes 1, 2, 3 blah, blah, blah, I think that would be perfectly fine.

Mikey O'Connor: Alan, you've been patient. Feel free to chime right in.

Alan Greenberg: You know, the sense I've gotten from talking to a number of board members is that yes, the monkey is on their back to use your expression. Any advice that can come from a knowledgeable group whether it's from this group or the IPC or whatever, that may help them craft something which will be viable and not be full of holes; puts them in a strong position.

So whether it's advice on how do we - you know, what are the guidelines for SRSU or, you know, a clear statement on that community, TLDs may need some sort of ability to sell their own domains or whatever it is. If any group can come to consensus and provide it, they of course will factor in whether it's coming from us as a consensus or one particular vested interest.

But it's a difficult problem and if there can be - if there's something that can be done to make the life easy - make their life easier and more certain of working, I don't think they're going to reject it.

Mikey O'Connor: Thanks Alan. (Ken), go ahead.

(Ken): Thanks Mike. I'm going to take my hand down because Ron answered my question in the chat. I apologize.

Mikey O'Connor: Oh. Okay. Well I guess, you know, where I'm coming from on this - oh, Kristina, are you back in the queue again.

Kristina Rosette: I mean I am. And I don't want to change the subject. I guess I'm wondering - I'm looking at this from a bigger picture. I have now asked ICANN staff twice, point blank, when are we going to have a new compliance director, when are

we going to have new staff. And I can't get a definitive answer. It - to the best of my knowledge, there has been no date certain set by which somebody has to be hired which means could be this year, could be next year.

I'm just wondering whether it would a better use of our time as a group that unless and until there actually is some information to suggest that a director of compliance is going to be hired in the near future or has been hired that maybe our time is better spent working on one of the other three principles.

Mikey O'Connor: Yeah. I mean where I'm headed is I'm not sure that our time is well spent working on anything. You know, I think that effectively we're done and we got told that one more time last week in D.C. and that we ought to just wrap it up. But I'm perfectly willing to keep plugging away.

But, you know, we're getting to the point where the working group is voting with its feet. We're down to a diehard hardcore crowd that I appreciate a lot but I'm not sure that we're really functioning as a working group anymore. We're almost functioning more like pallbearers and that it might be better to just acknowledge the situation and call it a day. But I'm - I don't want to make that choice for you. Alan, go ahead.

Alan Greenberg: Yeah. I was just going to comment on the question earlier of how is compliance supposed to find, you know, examples of an SRSU - TLD that gives out domains to the wrong people. I think we've said from the beginning that compliance partly has to be set with good rules and good disclosure and then some of the things are not going to be discovered by compliance. It's going to be an issue of whistleblowers or third parties reporting perceived problems.

And that's a fine part of compliance. I don't think compliance has to have a plan to detect everything themselves. Just an understanding of what is allowed and what is not and then good disclosure on the part of the TLD.

Mikey O'Connor: Let's see. (Ken), go ahead.

(Ken): Yeah. I'm going to put myself in the shoes of the ICANN directors for the moment. I'd be hard pressed to do anything creative in terms of expanding the new TLDs without any clear path as to how the staff plans on managing compliance.

I think that would border on being almost irresponsible as a director to, you know, to get very creative there. And frankly I'll be honest with you, I don't really think ICANN even has a clue yet as to how they want to manage compliance in the future.

They have been shaken up so much in the last few months with staff changes and with everything going on that I think they've lost - and, you know, I'm sorry. This is just my - I'm speaking solely as an individual. I don't want anybody attributing this any other place.

That is honestly think that they need to sit down and develop a clear roadmap and they need to develop some confidence by the community in their ability to deal with these issues moving forward because right now the perception is, you know, hamsters running around in a cage without any - it's just - it's sad.

It really is because I mean you're talking about an organization that has a budget well in excess of \$50 million. And I'm still trying to figure out what in God's green earth they have been doing with this issue, which is the one thread that weaves through everything.

You know, even - and I'm sure Alan, everybody's had talks with directors. Kristina the same situation. It's not like the directors aren't aware of it. And Margie's commenting on hamster saying that they're scurrying all over the place with - it's kind of like saddling up and riding off in all directions.

So, you know, and that's not a reflection on the staff but rather reflection on the people who have the responsibility to provide the roadmaps for the staff and the plans for the staff to use as they move forward in implementation. Yeah.

Mikey O'Connor: Okay. Roberto, go ahead.

Roberto Gaetano: Yeah. I'm also typing something at the time; a message that I would like to send to the list. I think that we are now in this situation. The Board would have liked to have a consensus position so that would have been more comfortable for them to come to a decision.

This is not the case so they have realized that now they have to make a decision of their own. However, there's still in my opinion the work of the working group has not been irrelevant in the sense that it will be considered and use those as material in order to make a decision. That's the first point.

The second point. There's not much more that we can do. I interpret the lack of participation in this telephone call as another step in the trend that we have had that after having the peak this summer has slowly indicated a lower interest, lower participation.

And in fact, that is justified by the fact that the feeling that is pretty widespread in my opinion is that we cannot achieve within reasonably short amount of time much more than what we have done with the interim report for Phase 1.

This said, I think that we need to have some sort of conclusion. So I was typing down a few points that I think that are coming up from the working group and also this weekend I've read through again our material and also the comments.

And I think that there's a picture that comes out that is pretty strikingly clear that first of all the issue of compliance as we have been discussing in this - or that you acknowledged. So everybody agrees on the fact that compliance is necessary. Otherwise there's no way - there's no point in setting rules if we cannot enforce them and that was the result that we had already in process.

Second, there's no consensus either on the vertical separation or on vertical integration. And there's no way we can get the consensus along these lines or along the percentages of ownership - cross ownership of these kind of things.

However, there is the consideration that in certain cases it can be cultural TLDs, it can be brand TLDs. I don't want to say single registrant, single user because that evokes the senses. But there are some cases in which the vertical separation is more harmful than useful. And vertical integration should be permitted.

At this point in time I don't think that we have identified all the possible cases. And we have not identified the precise set of rules, safeguards against gaming and so on. But this is a message that I think that we can - that we can give that was embedded in our report but I wonder whether this is something that we could - if there is a half a page or something that we can circulate and get a sort of consensus in order to get the closure along these lines.

And clearly say that at this point in time there's not much more that we can do. And open the discussion on a Phase 2 if we think that - if the Council will think that it could be useful that we continue - that we continue working. But at that point by making clear what the new charter is and so on and so forth. That's basically it from my part.

Mikey O'Connor: And this is why I love MP3 recordings because I think actually that statement we could extract the half page from that pretty much verbatim with just minor

editing. I think that's precisely where we're at. And the fact that the diehards are still on the call is, you know, to be commended.

But I think that's really where we're at. I don't think that we can get much deeper into most of those issues because currently some of the points that (Ken) is raising we don't really know the framework in many cases and in other respects if we get too much deeper, we almost invariably trigger a landmine around which we don't have consensus.

But I think at the level that you described it Roberto we do or at least very close to it. And that probably what we ought to do is, you know, I'd be happy to listen to the MP3 when it comes back and sort of take a stab at a draft around that framework and circulate it to the list and then use that as the cover memo to wrap this one up and essentially advocate that we turn the interim report into a final report without changes.

I really think that almost every discussion of the comments becomes a surrogate for the underlying disagreement in the group and that all we do is replay the bidding that we've already been through without really standing much of a chance at all of actually moving the ball forward from where we got in the interim report.

So I take that as a proposal and throw that out to the rest of you and see if there's any sort of vehement disagreement. And if not, then I think what I ought to do is listen to the MP3 and write that up and get it on the list and we should try and agree to that next time and wrap it up, you know, Phase 1. Throw it back to the Council for consideration about Phase 2 and charter and all that stuff. Alan.

Alan Greenberg: I have no objection to doing what - or trying to write up what Robert said. I think that would be a good way forward. I'm getting a little confused though. Every second meeting we have we seem to be going a different direction.

Mikey O'Connor: And we keep getting new information Alan. I mean one of the things that happened last week was the conversation with Steve Crocker and Kurt Pritz in Washington. And for me that really drove home an earlier position that I had which was this one's done. We should quit beating this dead horse. Quit dragging this working group through this pain over and over again. And that was a position I held a couple of weeks ago. I got talked out of it on the call. But I'm back there.

Alan Greenberg: Well, as I said last time, that's a fine decision. It should be taken by the group...

Mikey O'Connor: Right. And so what we would do is...

Alan Greenberg: Because I believe we are effectively saying if we do that, this will not restart with a separate Phase 2. I just can't find that scenario in something that will likely unfold in the near future. And as I said, it's a fine decision for the group to make but I think it should be made in some level of consensus.

Mikey O'Connor: Well I think it has to go to the list. I mean this group can't come to consensus on the time of day, never mind a decision like that. So at some point we either frame it as a negative and then say ah, well, we couldn't come to consensus on the negative and so that's the way forward. Or we simply acknowledge the fact that we're done.

I mean this is one of the problems with consensus decision making that we've documented now over the last four or five calls. And I think it's time to use a colloquial expression put a bullet in it, call it a day.

Mikey O'Connor: (Ken) and then Margie.

(Ken): Yeah. I'm going to give my - put Margie in the queue ahead of me and then I'll come in please.

Mikey O'Connor: Okay. Margie. Go ahead.

Margie Milam: Sure. I think, and this is just an observation, what you said Mikey and what Roberto said seem to be two different things. And what you said Mikey was basically turn the revised initial report into the final report and be done with it. But I thought Roberto said was to look at the principles that were in the revised report and see whether there is consensus on it.

And so the final report would be different than the revised report because it would say - instead of saying, you know, we are moving towards consensus on these principles, it would actually say we have consensus on these principles whatever they are. You know, the few items that we are able to achieve consensus on.

And then at last there's something the Board, you know, could conceivably look at even though it may not necessarily affect the model they choose. That it'll, you know, would have some - we would hope would have some influence on how they structure the first round. And so I just thought and I heard two different approaches and I just wanted to clarify that.

Mikey O'Connor: We will get to that in a second. Now (Ken)'s turn.

(Ken): Yeah. Well first of all I want to respond to what Margie said. Yeah - can you hear me all right Mike?

Mikey O'Connor: Yeah.

(Ken): I want to respond to what Margie said. I would be very concerned about a situation like that because there could be reading between the lines; also going back and trying to decide what principles we had consensus on would probably - could probably be rather a unique experience to begin with.

I think we're really at a point in time I have to agree with your interpretation Mikey. I think we're really at a point in time where we need to make it clear that we've gone essentially as far as we can go. And I don't think that it's necessary for us to try to create something for the Board out of some sort of a cloth that's been pretty well traveled on - trumped on over the last let's say eight to ten weeks.

I understand what you're trying to say but I think if we could have done that earlier, we would have. It sounds almost like a - I won't say a desperation move to try to craft something here. And I just don't frankly think it will work.

And the reason I put the note quick poll please is you have 10, 12 people on the call. It might be an idea to find out how the ten people feel. We can use checkmarks or Xes at least to find out whether or not people agree with the approach that you're proposing.

And I see Roberto's on after me so maybe we - I can get more clarification by what - from what he specifically was talking about there. Thanks Mike.

Mikey O'Connor: Thanks (Ken). Roberto, go ahead.

Roberto Gaetano: Yes I wanted to clarify the issues of the principles. Yes, Margie is correct. I'm still thinking in terms of having exploring whether we have consensus on some of the principles. However, as I said, I went through the whole material over this last weekend.

And to be honest, besides the few points so the fact that we have - that we need compliance, the recommendation that we have compliance in place to enforce the rules. The fact that we acknowledge that we need to have a specific different treatment for small niche TLDs, cultural, communities or brands.

Besides that, I don't think that there's much on which we - it's reasonable to achieve consensus within a reasonable time. So I think that yes, in principle I would love to have a discussion on the principles. But sorry for the pun. But I don't think that besides - personally that besides those two, three points that I have listed there's much more we can achieve.

For sure there is no proposal that is - that has any chance to get any substantial majority. There is, you know, the situation is such that opinions are so diversified that we have to - we have to acknowledge that the points that on which we can have consensus are very limited. And so we list them in a bullet point list and it won't go over half a page.

Mikey O'Connor: Yeah. And I think that even some of the points that you listed Roberto we don't have consensus on. You know, when we get down into the exceptions, I think the point of consensus within the group is that some exceptions are probably needed.

But when you get to the types of exceptions, SUSU brand, niche, community, whatever - I floated a paragraph like that on the list several weeks ago and got shot out of the saddle pretty good. So I think even getting below that super broad level it's very difficult to imagine consensus at this stage.

And I think we just need to wrap it up. Get that very short statement done and, you know, I'm happy to take a crack at a draft, push it back and forth with Roberto a couple of times and then push it out to the list but not much beyond that.

Roberto Gaetano: Mikey, what I'm saying is that I'm aware that if we get into the single registrants, single user issue we are not having consensus. But I think that the group is open on the fact that there can be exceptions to mitigate the harm of a full separation.

So I think that on the principles that we'll have exceptions. I think that we can have consensus. The problem is that we don't have consensus if we try to detail - in too much detail the cases. Then we are going to spend months and we are not getting consensus.

But we need to convey to the Board the message that okay, we acknowledge that the status quo is the vertical separation. However, we invite the Board to consider that in specific cases. There's going to be benefit for instance for brands, for small community TLDs, the nice and so on and so forth.

It could be considered to have vertical - to allow vertical integration with a set of rules that the Board has to set and provided that then we have a strong compliance to enforce these rules and to dissuade gaming.

Mikey O'Connor: Yeah. I think that's right. I think that's precisely it. And the only caution that I would have is I'm not sure that I'd even delineate the examples of the exceptions because I think as soon as that goes into the sentence it draws fire from the group that it implies an endorsement of each and every one of those and that - we don't have that. (Ken), go ahead.

(Ken): Yeah. Rather than interrupt you there, I was going to say and that's where the concern about reading between the lines comes. I am concerned that the Board may be so desperate for direction that there could be some very creative interpretation of what we say. And somehow it could get to us that the end to some sort of a consensus that would give the Board direction.

So I just think we have to be very, very careful at this point in time. You know, talking to Board members, that's what I hear, you know. I'm said - they're not - at this point in time there were quite a few that were just not ready to make that decision but rather were looking for direction. And I don't know how they're going to work it out amongst themselves at this point in time.

But I think they have to realize that like it or not, the ball's back in their court. And it doesn't mean that the community failed. It means that the community was unable to deal with the issue in a manner which allowed to come to consensus primarily because of the differing business models and business motivations or eleemosynary motivations that were involved in this process up until now.

Mikey O'Connor: Yeah. And to the point of - I mean Kristina, Ron, all of you who were at that meeting, I mean it was pretty clear at least to me and the conversation we had last Monday or Tuesday in D.C. that, you know, the Board knows that it's taking the decision back. They did that consciously.

So they're not doing it by accident. They really intended to send a clear date and a deadline that was pretty aggressive and then take the decision back. So yeah. It's true they're not happy about it. And nobody's happy about this one.

I think that where we're at is let's hang it up for today. Let me take a stab with Roberto at coming up with that half page. Margie, to your point, I don't think we dive deep into the initial report. I think we essentially leave it as it is because we labored so hard on that report that to change even single words strikes fear into my heart.

What I'd rather do is transmogrify it into a final report and put a cover memo on a letter of transmittal on the front that's the document that we're working on right now and leave it be. Because I think opening up the report for further discussion and slash analysis open this up to the point that Roberto made which is we could go months and not get any further along. (Ken), is that a new hand or an old one? Can't tell.

Scott Austin: Mikey, this is Scott Austin. Just want to let you know I made it on and...

Mikey O'Connor: Oh good.

Scott Austin: ...I moved over. So I wanted to check in. Thanks.

(Ken): Yeah, Mike, we don't have a precedent that allows for motions in these meetings. But (unintelligible).

Mikey O'Connor: Oh (Ken), before you do that, we need to get you on a phone that's not breaking up quite so bad. It's as though you've your old phone back.

(Ken): (I'll call back).

Mikey O'Connor: Okay. So I think that - now we're having a discussion about sort of the next phase in the chat between Jothan and others. I guess Berry was talking about it at the last time.

I think that in this draft we also talk about Phase 2. And we point out that we haven't fulfilled the charter that was originally laid out for us and we stand ready to do that but that it needs to go back to the Council for affirmation that this is the way to proceed because Kristina your - I don't know if that was a rhetorical question but the answer is no, we haven't quite a number of the things that are in our charter because it got preempted by the Phase 1 panic attack that we zipped off on.

So there's quite a lot of analysis called for. There are a whole list of things that have not been done. And to Alan's point that the odds of it restarting are very slim, I'm not sure I buy that. I think that's not necessarily the way things will go on the Council. I'm not on the Council but I don't think it's a forgone conclusion that it's over. I just think that we need to wrap up Phase 1 and...

Alan Greenberg: Mikey, I didn't say it's a certainty. I gave my opinion.

Mikey O'Connor: Yeah. Anyway I think we need to throw it back to them. And again I would pose that we work that into that draft that Roberto and I come up with and

hammer it out on the list and then take it up again on the next call. Margie, go ahead.

Margie Milam: Sure. Yeah, I mean Mikey, I really have a problem with the approach of doing a transmittal letter. We're in a PDP. And the way to deal with PDPs is issuing a report - a final report. If it turns out that we don't have consensus, fine; I don't have an issue with that. But a transmittal letter to me like we're doing something that's not really contemplated.

So and then the other thing which is the thing I know the group hasn't wanted to address (unintelligible) is to evaluate the public comments and determine whether it affects our, you know, or the group's consensus levels. And so at a minimum the final report needs to include the summary of the public comments and any statement even if it's a blanket statement that, you know, the group's unable to reach consensus, you know, appreciate the comments.

Just something, you know, to address the transparency and the, you know, and the accountability because, you know, a lot of people spent a lot of time putting in comments on vertical integration and at a minimum we need to find some way to address it.

So I know it's not a popular statement that I'm making but that's the reality of the PDP process. And somehow that needs to be done. And then just to address Kristina's point, there's a lot of things that the charter initially covered that (unintelligible) you recall but the PDP was meant to address not just this - not new TLDs but existing ones as well. That is what the charter specifies.

And so to the extent that you want to look at the broader and not just new gTLDs but the (unintelligible), that is what's within the charter and there's a lot of work there that needs to be done or a recommendation back to the Council that the charter needs (unintelligible) if that (is going) to be done.

So I'm just, you know, unfortunately that's the way the PDP group was set up and we do have a fair amount of additional amount of work to do that's beyond the first phase of the new gTLD program.

Mikey O'Connor: (Ken)'s back on the line. So let me let (Ken) chime in and then I'll respond to that Margie. (Ken), go ahead.

(Ken): Yeah. I respect Margie's desire to try to stay in a specific process as outlined in the bylaws or outlined in ICANN's mandate for the GNSO. So I think maybe what we have to try to do is let Margie go ahead and try to recap the public comments.

I see no problem with the transmittal letter you're talking about but rather taking the words in the transmittal letter and crafting it into some sort of a report. You know, if it has to go in a specific part of the report, that's fine. You still have something you're trying to say. You're just going to have to say it in something other than a transmittal letter.

As far as the additional mandates or the additional items that were outlined in the scope of the charter, I don't think that there was any obligation at this point in time to fulfill all of the terms of the charter but rather the charter allows the group to stay open to deal with those specific issues.

In the future that is a decision I think that needs to be made at the Council level. And I don't think we need to go back to the Council to tell the Council that we haven't addressed this. It's quite aware - they're quite aware of that. But rather frankly I think you have the ability for enhanced communication between the Chairman of the Council and the Chairman of the working group.

And if I was Chuck I'd be posting that correspondence between you and Roberto and he to the Council so that the Council has enough background. And my guess is that you'll find some sort of a motion or action out of one of the constituencies in the Council to deal with those issues. I see that as the

most practical way of handling that aspect of it. That's just my two cents worth.

Mikey O'Connor: Thanks (Ken). I'm noting Kristina's comment disagreeing with that. Let me try and hit a lot of these points. In terms of transmittal letter versus page in the report, I don't really have an issue. We could certainly put it in the front of the report instead of in a transmittal letter.

In terms of comments - public comments, I think that the comments certainly need to go into the report. They need to be summarized and they need to be acknowledged. But I think it also needs to be acknowledged that this group - I think the phrase you used Margie was whether this - these comments changed the nature of the consensus that the group came to. And I think we just need a statement close by that that says we didn't arrive at consensus on this and thus we much appreciate these comments but they didn't get us any closer.

In terms of Phase 2, Phase 2 is really the original charter. Phase 2 hasn't been started because right after the original charter got written, we dropped Phase 1 in to respond to the kind of crisis that the Board presented us. And so as a result, the way that it strikes me is that we haven't started on our charter never mind finished. And the question I think that we need to take back to the Council is A, is that charter now moot; and if it's not, you know, get a decision on that.

If the charter is not moot, which I expect is the case. I expect that there's, you know, there still is work to be done; then the other question is when should we start. And one possibility is right away; another possibility would be to wait until the impact - well first until the board decision is known and then second, you know, you could also wait until first round applications have been submitted to see what kinds of impacts happened and what we could learn.

But again, I don't think that anybody is proposing that the charter has been completed at this stage of the game. The question is what to do next. Alan, go ahead.

Alan Greenberg: Yeah. I guess I wanted to disagree with one thing you just said. You said that we dropped Phase 1 in and worked on that and we didn't work on the charter. In fact we didn't do that. We dropped Phase 2 in. Because from the point of view of most of the participants over the early summer months when there was the most work going on people were - most people were talking about this is the long-term solution. We don't just want a Phase 1 solution.

And I think that's where we fell down to be, you know, from personal opinion. It wasn't that we, you know, the last sprint because of a Board ultimatum was Phase 1 again. But the bulk of our talk actually was in fact from the perspective of many of the participants in Phase 2 the long-term solution which everyone - which people wanted to be in place from the first round. So and, you know, I think that's one of the areas that's gone - that went - got us to go astray. Thank you.

Mikey O'Connor: Could be. But this is where we find ourselves.

Alan Greenberg: Oh I wasn't disagreeing I'm just saying...

Mikey O'Connor: I mean, you know, the fact...

((Crosstalk))

Mikey O'Connor: ...we've done Phase 2 then I'm going to say hot damn let's shut this baby down.

Alan Greenberg: Well we didn't but we were working towards that direction for some of the time.

Mikey O'Connor: (Ken), are you - is that a new hand or left over?

(Ken): Yes it is. I just wanted to respond to Kristina. I agree with her. I don't think it's our discretion to pick and choose what charter task we accomplish. But I can say this and that is we can inform the GNSO or the Council what charter tasks we have been able to accomplish and ask them if they want to re-clarify the charter or re-charter the working group to deal with the perception of how we would best move forward in some sort of synchronous with the ICANN process on TLD expansion as well as dealing with contract renewals for existing TLDs in the future.

I think that might very well be something the council really needs to take a close look at. Because there is a lot of concern about how you get clarity on current contractual relationships with ICANN. I mean the contracts stand on their own but at the same point in time clearly in the future ICANN may very well decide that it may try to do something different with the existing - with the incumbents. And how do we deal with that other than what is outlined in the current contracts, you know?

Mikey O'Connor: Yeah. And the (unintelligible) just to clarify the term that I would use on this report is Phase 1 final report, not working group final report to acknowledge that fact that we've got two phases to our work. But we do need to make this report that we've got out there that's an interim one - a final one just to wrap it up.

You know, we - this is like night of the living dead; the zombies coming out of the backyard. I mean we've got to stop this thing. This is like, you know, it could go on forever otherwise. And so I think we really need to say this is the end of this phase and draw a line under it, taming zombies. There's a challenge.

Okay. So that's where I find myself. Just to restate what I would like to try to do is take a listen to the MP3, come up with that page, figure out where it

goes in the report; probably in front of the executive summary or something like that. Acknowledge Margie's point about we need to get the comments in because the comments were to the initial report.

So we need to get the summary in and I think we need another paragraph that introduces them and sets them in context and says look they don't really - they don't really change the lack of consensus. There was no stroke of lightning that immediately got us to consensus and bridged the gaps and then a discussion of the next steps.

So and I think that's where I would like to leave it. I'd really to set the goal of getting that done, you know, the draft done fairly quickly, a discussion on the list and wrap it up next week on the call just to get this thing tied off with a bow.

I'm not sure we can hit that date but within a week or two so that we're not dragging people along an hour at a time week after week not really moving the ball much and then get it back to the Council. So that's my plan and I'm sticking with it unless you yell at me. So Roberto do you have anything to add on top of that before I sign us off?

Roberto Gaetano: No. No.

Mikey O'Connor: Okay. Well thanks gang. That's the plan and look for a draft on the list probably in a day or two. I've got surgery coming up tomorrow but, you know, later in the week we'll have something out if we can get this finished off. And that's it for me. Anything for anybody else? Going once, going twice. Okay. See you in a week. Thanks gang.

((Crosstalk))

Man: Thanks Mikey.

END