

**Vertical Integration PDP Working Group
TRANSCRIPTION
Monday 09 August 2010 at 19:00 UTC**

Note: The following is the output of transcribing from an audio recording of Vertical Integration PDP Working Group meeting on Monday 09 August at 1900 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-20100809.mp3>

On page:
<http://gnso.icann.org/calendar/#aug>
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**Participants on the Call:
Contracted Parties House
Registrars Stakeholder Group**

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Jothan Frakes
Statton Hammock
Amadeu Abril
Tim Ruiz
Jean-Christophe Vignes
Paul Diaz
Thomas Barrett
Ruslan Sattarov

gTLD Registries Stakeholder Group

Brian Cute
Jeff Neuman
Ken Stubbs
Keith Drazek

**Non Contracted Parties House
- Commercial Stakeholders Group**

Berry Cob -CBUC
Mikey O'Connor – CBUC- Co-Chair
Ronald N. Andruff – CBUC
Kristina Rosette – IPC
Scott Austin - IPC

- Non-Commercial Stakeholder Group

Avri Doria

Individuals

Roberto Gaetano – Individual - Co-Chair
Phil Buckingham

Katrin Ohlmer
Faisal Shah
Steve Pinkos

ALAC/At Large

Cheryl Langdon-Orr
Sebastien Bachellot
Alan Greenberg
Sivasubramanian Muthusamy
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Staff:

Margie Milam

Liz Gasster
Gisella Gruber-White
Mike Zupke

Apologies:

Marika Konings
Vika Mpisane
Michele Neylon

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

Mikey O'Connor: Thanks Kelly, thanks Gisella and thanks all for joining us today on this vertical integration call.

Scott Austin: Scott Austin.

Mikey O'Connor: And Scott Austin has joined. Hi Scott.

Scott Austin: Hi.

Mikey O'Connor: We're going to have a pretty simple agenda today. We are sort of in the mid-summer slightly less energetic mode. And so the only thing that I've got really except for the continuing discussion of the harms document that's been evolving is an announcement about the new meeting time, the new-old meeting time.

The Doodle poll was pretty conclusive that the old time is better than the new time so we're going to switch back to that and Cheryl I apologize but we'll have a great time talking about 3:00 am jokes...

Cheryl Langdon-Orr: Yeah, yeah, yeah.

Mikey O'Connor: Yes, so there you go. Anyway the only other thing that I have is the continuation of the harms discussion. Is there anything that anybody else would like to add to the agenda before we get going?

Jeff Eckhaus: Mikey it's Jeff Eckhaus. Sorry, I just - quick question so on the timing of the call so it will be one call a week going forward at the old time which was two hours previous to this time; is that correct?

Mikey O'Connor: Yes. And at least for now while we're in our sort of interim mode we'll just have an hour and a half call not a two hour...

Jeff Eckhaus: Okay. Yes if you could just send one - after this call send an email out to the list just letting everyone know that for whatever specified time just so we don't have to - because sometimes it gets a little tough switching schedules back and forth. So just to say...

Mikey O'Connor: Yes.

Jeff Eckhaus: ...hey for the next two weeks or three weeks we'll do it at - I won't say - whatever, you know, the time two hours prior to this.

Mikey O'Connor: Yes. Yes.

Jeff Eckhaus: Thanks.

Mikey O'Connor: Seventeen hundred Zulu. So anyway that's the - that's the only thing I've got. I don't hear anything else so Gisella why don't you call the role and we'll get under way.

Gisella Gruber-White: With pleasure. Good morning, good afternoon, good evening to everyone. On today's vertical integration call on Monday the 9th of August we have Ruslan Sattarov, Siva Muthuswamy, Baudouin Schombe, Cheryl Langdon-Orr, Mike O'Connor, Jean-Christophe Vignes, Roberto Gaetano, Jeff Eckhaus, Avri Doria, Amadeu Abril, Sebastian Bachollet, Berry Cobb, Tim Ruiz, Thomas Barrett, Brian Cute, Jothan Frakes, Paul Diaz, Jeff Neuman, Katrin Ohlmer, Ron Andruff, Statton Hammock, Scott Austin, Ken Stubbs, Steve Pinkos, Faisal Shah.

From staff we have Margie Milam, Glen de Saint Gery, Liz Gasster, Mike Zupke, myself, Gisella Gruber-White. Alan Greenberg will be joining us the second hour and Kristina Rosette will be late on the call. Can I please also please remind everyone to state their name when speaking for transcript purposes. Thank you over to you, Mike. And I'll get rid of that noise.

Mikey?

Cheryl Langdon-Orr: Perhaps the buzz is Mikey?

Coordinator: Well Mike's line is open.

Gisella Gruber-White: (Tilly), can you just please locate the...

Mikey O'Connor: Oh there we go. Mikey had his phone muted, sorry about that. I was so entranced with that sound I got lost in the music. Sorry about that folks.

Ken Stubbs: Sound is gone.

Mikey O'Connor: Yes that's much better. Okay so we've got really two documents now; we've got Jeff's document which is on the screen in front of us and then we've also got one that Scott Austin submitted which I thought was pretty neat.

I don't know that I have a structure for the conversation but maybe just for starters let's spend about 15 minutes on the changes to Jeff's document since that one's up on the screen and then maybe 15 minutes to a half an hour depending on how it goes with Scott walking us through his and then see where the conversation takes us from there.

Jeff Neuman: Hey Mikey this is Jeff Neuman.

Mikey O'Connor: Yes.

((Crosstalk))

Jeff Neuman: ...about Scott, I don't think I've seen that one.

Ken Stubbs: Yes that's the one...

((Crosstalk))

Mikey O'Connor: Scott.

Ken Stubbs: ...as well Mike.

Mikey O'Connor: Oh I'm sorry. I thought it went to the list. Scott, did you just send that one to Roberto and me? I thought that it was copied to the list.

Scott Austin: Yes hi. I don't know, I was told that it went to the list because Kristina emailed me that it did. And frankly it was something that I, you know, had wanted to, you know, discuss with some other folks beforehand but the deadline - the

original deadline that we talked about on that had passed so I wanted to make sure that I got it to everyone for today's call.

So...

Mikey O'Connor: Oh I know what happened. I think that it got sent to the owner of the list but not to the list. So given that it must not have gone - I just saw the list name in there and presumed that it went to the list but in fact I don't think that it did.

Given that Scott, how do you want to proceed? Do you want to wait or do you want to...

Scott Austin: You know what, I've already been told by Kristina that she really should have reviewed it first so I think I'll go ahead and hold off until...

Mikey O'Connor: Okay.

Scott Austin: ...she's had a chance to do that considering that that was something that was of concern. So...

Mikey O'Connor: Okay.

Scott Austin: But you've seen it and Roberto's seen it.

Mikey O'Connor: I've seen it. Roberto's seen it.

Scott Austin: I mean, I'm more than happy to talk about it. I mean, the purpose was frankly just to fill in a few gaps of what I saw as - well I'll wait until it's my turn.

Mikey O'Connor: Yes. I think given the fact that if Kristina wanted to review it first we should probably let that unfold between the two of you. So with that I think Jeff do you want to walk us through the changes that you - oh Ken - Tim's got his hand up, sorry, go ahead Tim.

Tim Ruiz: No I was just trying to find out what - where Scott's document was but we just went over that so I'll...

Mikey O'Connor: Yes, okay.

((Crosstalk))

Mikey O'Connor: Okay. Sorry about that; I didn't realize that that had happened. Okay Jeff over to you.

Jeff Eckhaus: Sorry actually and it was perfect timing, I thought Tim was chiming in to say that - because most of the changes that I had made to the document - well I won't say changes - I'm not making - just additions would be the right word. Most of the additions that I had added were from ones that Tim had sent me.

He had the list, you know, the traffic sent to me, you know, I had some notes from people saying they were, you know, they liked this project and they were going to send me some things but I had not really received anything concrete from anybody except for Tim was the one who sent it to me.

And he'd also sent this to the (unintelligible) list as well so it wasn't only sent to me. So those are, you know, they're bullet points in here; we can go over it. I don't know if, Tim, if you want to go over those.

Do we want to be - I don't know if we want to do that as a process just in general to go over what those harms that were added were. I guess that's more of a process question. Is that something we want to do or - I don't know Mikey, Roberto, I mean, is that sort of our next step? And then if it is maybe I'll hand it over to Tim to walk through or do we not want to do that? I'm posing that question out there.

Mikey O'Connor: Why don't - have we ever actually stepped through the whole document?

Cheryl Langdon-Orr: No.

Mikey O'Connor: I mean, one way to approach this, Jeff, would be to just walk us through the whole thing because we got started on that but kind of got derailed on the last week's call. Do you want to just sort of...

Jeff Eckhaus: Yes well, you know, the thing is we could do that but I'm not, you know, the author of a lot of these harms. What I did was I said I had picked them up from other areas and from - what I said were letters, comments, documents submitted. So I basically culled these from those sources. I am not, you know, the - I am not the person who wrote these up and said I believe XYZ is going to happen and here's why; I just collected these.

And maybe - I don't know - if I want to hand it over. I see Tim - I think has his hand up; maybe he has a thought about this as well.

Mikey O'Connor: Okay Tim.

Tim Ruiz: Well I was just going to make sure it was clear that because I contributed some harms doesn't necessarily - doesn't mean that I actually like this document which actually I don't and I'm still confused about what we're going to do with it.

My contributions were primarily - made sure things are - do my best to make sure things aren't missed given that I don't know what is ultimately going to happen with the document. So as far as me discussing any part of it beyond that I wouldn't feel comfortable.

Mikey O'Connor: Okay. Ron?

Ron Andruff: Good afternoon. Thanks Mikey. I think this is a - the start on this list is excellent and there's been a lot of contribution to it. I'm looking forward to seeing Scott Austin's document also get included in this.

But one of the thoughts that I had when I read through it was that there is a - there's a substantial amount of work that needs to be done to bring this sort of into apples to apples.

Two things that I would point out, under the rubric Other Harms there are what appear to be five different harms, collusion, unfair marketing, shelf space, you know, and so forth. Those need to be defined as have been all the rest above it.

And then the comments from register, from (Lubson), from PIR, so forth, those should be put into the same kind of format. So what I'm getting at is let's try to get this into an apples to apples comparison so we could start working through it perhaps, that might be a better way to go rather than start picking through it at this point.

Mikey O'Connor: Okay. Let's see, Jeffrey, you're next.

Jeff Eckhaus: Yes, I just wanted to respond to Ron and just say, you know, how that - why that format is. What happened was on the ones - where I had under Other, those collusion between parties, shelf space, those are ones that people on the list had mentioned as harms but there was no - I don't know, either color or explanation around it so I put those in there hoping that, you know, the people who had said that these would be harms as a direct result of vertical integration or they could be exacerbated by vertical integration that they would sort of discuss those or maybe give some explanation on those.

And the parts on the bottom, sorry, where I wrote the harms and the other pieces, those were just areas where I just wanted to say those were the

sources of where I found some of those harms and I just documented them just for sort of just for people to know where these sort of came from.

And so they are summarized in the bullet points above. So they are - we could remove those if we wanted to but those are the actual texts or quotes which I thought it would be nice to include so that people didn't think that, you know, maybe I misinterpreted or if somebody wrote those so they could say no that's not what it says. So I just wanted that to be clear so everything was sort of transparent on that.

Mikey O'Connor: Thanks Jeff. I had a question too. I'll take off my junior co-chair that for a minute. Are these harms from - that result from vertical integration or are these harms both from vertical integration and from vertical separation, Jeff, when you were going through this?

Jeff Eckhaus: Oh sorry, I did not include anything that would be a harm from separation. If people want, you know, I think I had put that through earlier on the list. I figured we could work on this part first on the harms resulting from integration versus separation. But if somebody, you know, I figured I'd tackle that one part if somebody wants to go through on the separation part that would be great.

Mikey O'Connor: I don't know about others on the call, I guess maybe we could get a sense of the group. But at least for me I think it would be nice to have both in there.

Amadeu Abril: Sorry, Mikey, this is Amadeu.

Mikey O'Connor: Hi Amadeu, go ahead.

Amadeu Abril: Sorry but I have - I have discovered that the (unintelligible) version of the Adobe Connect has no hand raising facilities so I have to use voice. Just one question regarding that. I don't think that, you know, doing a section for the harms of vertical separation makes that sense.

For the fact that you may have policies to prevent or limit vertical integration; you won't have policies to prevent or limit vertical separation. So in any case you may have missed opportunities in vertical separation but nobody is saying that vertical separation or such should be limited for reason or anything like that. So listing the harms of that I think this could be quite nonsense.

Mikey O'Connor: I guess - this is Mikey still with his content hat on rather than co-chair. But the reason that I thought it might be useful is because so much of our conversation has revolved around that. And it might be helpful for folks who are following on behind this or reading our stuff to hear both sides.

I don't have a real strong opinion on that although several folks that aren't in the working group asked me about that and I - when it was raised with me I thought it was a good question. So that's part of the reason I brought it up.

Ken, is your hand up?

Ken Stubbs: Yes it is.

Mikey O'Connor: There you go, go ahead.

Ken Stubbs: Yes I just had to take it off mute. There is a couple of - at the bottom there, there are excerpts from correspondence between I believe (unintelligible) and PIR and (unintelligible). I think it would be a good idea before anything like - included in the document that you might (unintelligible) with the people who wrote those letters whether they would want a document like that excerpted.

I hope you can understand why but the comments that were made by those parties may have been made in a specific context that was covered by the document and may not necessarily - I'm not saying they are or they aren't I can't speak for PIR, I can't even speak for affiliates. I didn't write that letter.

I'm just saying from a practical standpoint I think it would be a good idea to get permission to use those excerpts as such.

I don't think there's anything wrong with using advocacies but I think at the same point in time it's clear that a context may very well have something to do with anything like that.

Jeff Eckhaus: Mikey it's Jeff, sorry, can I just respond to that for one second?

Mikey O'Connor: Sure, go ahead.

Jeff Eckhaus: Okay. Two things, one is I don't believe we would need that because, one, these were all public documents that I pulled from public sources, they weren't correspondence to me. Some of them were from (circle ID), some - they're all posted on the ICANN Web site.

So - and two is that was the reason why I had put down the section where I quoted from - and the links to the actual article so that anybody could read it, could see what the full context was and to say that just I didn't want to be accused of cutting and pasting or snipping words out or anything along those lines.

So I really - I think that to say we need permission is a little bit tough because these are documents that people sent out into the public atmosphere. It's pulled from their registry/registrar whatever it is vertical, you know, separation Web site that has been put up. So these are all public and out there. So I think that's a little - personally I think that's a little reaching but that's just my opinion on that.

Ken Stubbs: Just a quick response. Jeff, I wasn't criticizing you I was just making a comment about how that information should be displayed that's all. I understand that you have references and links at the bottom I just was...

Jeff Eckhaus: Oh no I didn't take it as a criticism, don't worry.

((Crosstalk))

Ken Stubbs: ...might be something that you might want to ask because they may - it's very easy to excerpt from a document and there are - you could take specific items out of a document that could be taken out of context without the specific references to where those items related. And that's all I'm saying, you know, take it for what it's worth.

Mikey O'Connor: Thanks Ken. Avri.

Avri Doria: Yes, I just wanted to chime in with a very strong agreement with Jeff and a lot of discomfort at Ken's suggestion. I think once somebody puts their words out in public their words are out in public. They should expect them to be quoted, to be synthesized.

I think the fact that a document gets referenced to them, perhaps includes a note saying if you want to read the full context go read the full argument. But I think there's absolutely no reason to have to go around getting permission to quote the comments that people have already made public.

Ken Stubbs: I didn't specifically say that...

((Crosstalk))

Ken Stubbs: ...Avri. I'm sorry you're uncomfortable. What I - the point I was trying to make was that when you excerpt something from an article, a document, a speech or anything like that...

Avri Doria: I understand perfectly.

((Crosstalk))

Ken Stubbs: ...sometimes it is - I - the suggestion that you made at the end was I think a very good one and that is that instead of just saying comments from affiliate's letter to (PDT) it would be much better to say that the following were excerpts from a letter that was written from - to them with a specific subject would be nice to explain what the subject of the letter was. That's not taking it too far, okay?

Avri Doria: Yes.

((Crosstalk))

Avri Doria: I apologies for...

((Crosstalk))

Mikey O'Connor: Ken, Ken, hang on a minute Ken.

Avri Doria: I apologize for interrupting you but I hadn't finished.

Mikey O'Connor: Right but let Avri finish, that's part of what we do here. Thanks.

Avri Doria: So and - but thank you. I wasn't recommending that he add that; I was recommending that perhaps in one footnote somewhere someone can say go read the source if you really want to read the source. I wasn't indicating that one needed to write why they had sent the letter and what its purpose.

I think the words are out there to be quoted as long as they're not being misquote and people can always bring up and say you misquoted me; that's a different issue.

But I think when people make public comments, you know, I know I've said things that I hate to see quoted but we make them, they're quotable and one

does not need permission; one only needs permission when it's a private communication that hasn't been made public. Thank you.

Mikey O'Connor: Thanks Avri. Maybe the way to handle this is just go to sort of good - sort of quoting and footnoting format of the document.

Jeff Neuman: Hey, hey Mikey can I jump in on that?

Mikey O'Connor: Sure, go ahead.

Jeff Neuman: This is Jeff Neuman. My hand is up next anyway. What I was going to suggest is since - if we're talking about the Hal Lubsen letter which is actually from three registries, we have those people as members of this group so it doesn't hurt to go back to them and just say hey does this capture what you were trying to and if not can you please edit it?

I mean, this is supposed to be a working group that works together; there's no reason we have to quote existing documents if those people will come forward and just take it on themselves to make sure it reflects what their point was. I'm kind of lost to why we're having this yelling match or argument or debate. Let's just go to the people.

I think Jeff Eckhaus tried to do his best to - and did a good job in documenting what he believes the issues were by pointing to public sources. Those people are members of this group, just have them check it; have them look at it. If it's not what they meant then have them rewrite it.

You know, we're not - this is not like, you know, once you said something on the record you're never able to change it and explain what you meant. So that's my recommendation.

Mikey O'Connor: Gee I think...

Ken Stubbs: This wasn't being - isn't being characterized as a yell match; it was a suggestion and that's all it was. There was no animosity implied at all in the comments that I made.

Mikey O'Connor: Okay.

Jeff Neuman: So does that sound like a suggestion unless Brian's on the cute, I'm on the group. It should be incumbent upon us that wrote those letters to review how it's being summarized and if we don't agree with it we'll change it.

Ken Stubbs: And I think that's a good way of putting it Jeff, too, I think it's an excellent suggestion.

Mikey O'Connor: Good deal. Okay. Dang it's too bad that - I was sort of counting on Scott's document at this point. One of the reasons that I...

((Crosstalk))

Jeff Eckhaus: Mikey this is Jeff again...

Mikey O'Connor: Yes.

Jeff Eckhaus: ...I'm sorry. Avri has indicated disagreement so can we find out why she disagrees with what was just said?

Mikey O'Connor: Oh sure. Avri go ahead. Oh you may be muted, Avri or something.

Coordinator: Avri, your line is open.

Avri Doria: Oh sorry I had gone mute for a bit because I had to take another phone call so I don't know if I was on (unintelligible).

Mikey O'Connor: Oh. So...

((Crosstalk))

Avri Doria: ...disagreeing with, I mean, I think if people want to put in new stuff great. But I think we're making much to do about nothing. Those reviews that were quoted, I mean, I suppose if somebody reads it and says, no, no, no, no that's not what I meant to say then great say something else. But...

Mikey O'Connor: Yes. I think - I think we've sort of gotten to a reasonable spot which is no we don't need to necessarily ask permission to quote things when they're out in the public world. But at the same time we're all - almost everybody in the working group is connected in one way or another to some of these documents and we should just edit these to make sure that they're right.

So, kind of a little flex here. And, you know, Jeff seems to be pretty open to new ideas and changes so, you know, it's not feeling terribly stuck in that regard. So I think sort of take all of this, Jeff, and sort of work it into the process going forward and we'll be fine.

Jeff Neuman: Jeff I have my agree sign up so...

Mikey O'Connor: Okay. Where do folks want to take this from here? It doesn't seem to me feasible to get this - well I don't know maybe I shouldn't say it that way. You know, we face sort of an editing deadline. The public comment period will be closing this week on Thursday, the 12th. And Margie's under a fair amount of pressure - Margie and the rest of the staff are under a fair amount of pressure to summarize those pretty quickly.

Basically I think that summary needs to be done in time for our call next Monday just so we can take a quick look at it and file off any rough edges. And so effectively next Monday is our last working call before our revisions go into this document.

And given that there seems to me to be a fair amount of work yet to do on this document I'm not sure that we want to try and drive it into the draft but I'm presuming for the group I guess when I say that.

Part of the reason I say it is because Scott's document is pretty substantive and I think our discussion would benefit a lot from seeing it. And it looks like we won't be able to get to that until next week given the review cycle. So I guess I'd like to spend a few minutes talking about that.

Ken, I assume your hand is left up from before so I'm going to go to Tim but if you want to comment on this you can too. Tim go ahead.

Tim Ruiz: Yes I guess this is what I was asking last week was, you know, what the purpose of the document is. Now you just said it's going to be put into the report and I'm wondering how...

Mikey O'Connor: No I didn't.

Tim Ruiz: ...or in what shape or why...

Mikey O'Connor: I didn't. I didn't.

Tim Ruiz: Well, I mean, you implied that that was a potential. So - but here's what I just - going back to this about, you know, the discussion between, you know, what Avri was suggestion in regards to the edits, etcetera for the document I think a lot of it all depends on, again, what the point of the document is.

If it's simply a report then, you know, the quotes, etcetera, what Avri says makes sense. If it's a working document that has a further purpose that we've agreed to then I think what Jeff Neuman suggested makes sense. So I think that may be part of the problem is that I don't think it's clear to a number of us what exactly we're doing with this document or where it's going.

So I would just some clarification in that way or at least an agreement among the group so that we have some sort of direction for this document.

Mikey O'Connor: Yes that's fair enough. Let me comment on that and then I'll take Sebastian and Scott. Part of the vagueness is due to a fair amount of uncertainty at least in my mind as to where our process is headed. And a lot of that is due to a fair amount of uncertainty as to what the board's going to do.

And so partly what's going on is I'm sort of - I'm not in my usual tyrannical work plan process mode right now because I don't really know what our future holds until the board retreat is done. Let me paint a couple of possible futures for us. This is all speculation; I have no information whatsoever about what the board's going to do or not.

But let's take one example; one example would be the board decides what they're going to do about vertical integration at the board retreat, probably not formally because they generally don't do formal resolutions but essentially they decide. And that seems to me to be - that that would then lead us to a completely different set of actions than if they don't.

Another intangible or imponderable is whether there's going to be another version of the DAG which changes the timing of a lot of stuff. So we get into this sort of difficulty in terms of predicting what our future is going to be. And so what I've decided at least in my own mind to do is sort of wait until that all unfolds.

And then presuming that we have time, that's a huge assumption, but I'm going to make it anyway, then I think that what this represents is the beginning of essentially a problem statement that says here's the problem that we're trying to solve, here's the list of the harms that might result from vertical integration. I'd still lobby for another list of harms on vertical separation to get everything on the table.

And we start actually doing an analysis of the problem that we're trying to solve, the various solutions that might be available etcetera, etcetera. Now that kind - and hopefully arrive at a consensus view as to what the best way to solve those problems are or is.

That's going to take a lot of time and a lot of research and a lot of analysis and a lot of thinking. And I don't want to preclude the possibility of us doing by that essentially ruling this document either, you know, not allowed or out of order or I don't know, something.

At the same time I'm a little bit uncomfortable, I think, Tim, as you are, of putting it in the interim report in its current form because no matter what it seems to me we've got a lot of conversation to have about this including - concluding the conversation that you're proposing which is how are we actually going to use this.

And it's going to be really hard to make that choice until we sort of know what's happening. So that's kind of a long-winded way of saying that I...

Amadeu Abril: Mikey?

Mikey O'Connor: Yes and now I'll go back to the queue.

Amadeu Abril: Can you put Amadeu on the queue?

Mikey O'Connor: Sure, thanks Amadeu. I'll put you in after Scott. So Sebastian, go ahead.

Sebastian Bachollet: Thank you. Can you hear me?

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

Sebastian Bachollet: Okay thank you. I wanted to suggest that as we just received the Scott document and it seems to be quite comprehensive and quite long maybe we

can just a short summary of this document and (unintelligible) because if we have nothing (unintelligible) except in the crystal ball we'll have fun time but then that we will go (unintelligible).

Mikey O'Connor: Thanks Sebastian. I think you were on a cell phone so it was a little bit garbled. But let me summarize what I think I heard and you can correct me if I'm wrong. Did Scott's document hit the list?

Sebastian Bachollet: Yes.

Mikey O'Connor: Oh good. Okay. Well then in that case I would love to have Scott sort of - let's sort of finish up this little bit of discussion and then we'll throw the ball to Scott and let him maybe walk us through some of the high points in his document. I agree it's pretty long and it took me several readings to really digest it; I don't really feel like I have completely yet.

But it is quite substantive and I think would be very helpful. So Scott I see your hand is the only one in the queue. Let me go to Amadeu first and then we'll circle back around to you. Amadeu go ahead.

Amadeu Abril: Okay. I am on mute? Yes.

Mikey O'Connor: You're fine.

Amadeu Abril: A couple of questions regarding your previous, you know, conservation on what are we doing. First you seem to imply that we need to wait for the board to do something so we know where we are. I think it's the reverse. We shouldn't wait anything at all; we are supposed to provide (all this) advice.

We might provide something that's useful or, you know, work in progress or we need more time or whatever but I don't think we are, you know, waiting more for anything; quite the contrary. The council and the board are waiting for our input.

Second thing regarding what we do with the harms document if anything, regardless of what we do they probably will be an annex to the report or whatever. I think that everybody that has proposed or will propose measures regarding how to deal with the vertical integration should just explain how their measures address the different harms.

And it might be, you know, it's not addressed because this is not realistic or, you know, there is not need to take care of that. But at least I think - I think it could be a very good exercise to see how each of the different measures each one is proposing tries to address one, all or many of them because I think that most of them are just addressing some specific parts and not all and at the end - and that's (unintelligible) our proposal there is rule for combining many of the measures because they are addressing different parts of the picture.

Mikey O'Connor: Thanks Amadeu. Let me take the two pieces in different chunks. Part of the reason that I'm waiting is because if we, I mean, the difficulties that we've experienced as a working group are in many respects due to the amount of time that we've had to work.

And before I lay out our future in terms of how we work I want to kind of know how much time we've got. If the board turns around and says no we're still waiting for you but we only have six more weeks that's a different planning situation than either no we've already made the decision so any work that you're doing will really be aimed at the next round of gTLDs or the opposite which is no you actually have quite a bit of time because there are other issues that are also unresolved which means that we have another DAG revision to go through.

And given that it's summer - late summer, holiday season - and given how hard we worked...

((Crosstalk))

Mikey O'Connor: ...I'm pretty reluctant to flog us all through a really aggressive schedule right now especially when we'll know towards the end of September really what the situation we find ourselves in to be. So that's - it's not for lack of wanting to do it, it's just a planning thing if nothing else.

In terms of the which measures address which harms, you know, I think that's part of the planning that we need to do is - and I think this is at the core of Tim's point which is we do need sort of an orderly series of steps that we can go through that we can predict and we can understand what's coming so that everybody sort of knows what the shape of the analysis is going to be.

And I think that's a great suggestion but one of many. I mean, I wouldn't want to just limit the analysis to that. I have a bunch of ideas but again those ideas really depend on how much time we've got. And so I'm not pushing real hard right now partly because it's vacation time and partly because we're basically at the deadline for the interim report so I'm postponing a lot of stuff.

Roberto, go ahead.

Roberto Gaetano: Yes thank you. A couple of things that I wanted to say were in similar directions that Amadeu took. I think that we are not in - it's a mischaracterization to say that now we all wait for what the board will say in September at the retreat.

It is very important, it can change the way we proceed. But right now this is a working group that has been established by the council until the council doesn't tell us please stop. We continue working. It doesn't make sense to lose time although I agree that we need a little bit of vacation, breathing time and so on.

But if in the meantime we can go on and go further why not? So I think that in any case the board - the moment that they have to take a decision on vertical integration or not the questions that they will ask themselves is what are the consequences of vertical integration.

So I think that by doing the list of harms and by elaborating what are the - yes, the consequences - potential consequences of vertical integration we are clarifying things that can be - in a way that can be useful for the discussion at the board.

It cannot be part of the interim report on time for the discussion on the board but it's still something that sooner or later somebody has to do. So I think that we should taking it easy because it's vacation and we needed the rest but we should proceed on the harms and see how, you know, how those harms can influence the decision.

And there was another thing but I have forgotten so I'll stop it here.

Mikey O'Connor: If you remember just break right back in. Okay well with that I think what I want to do is turn to Scott because I think it would be useful to see his document - Margie have you been able to pick that off the list and can you push it up to the Adobe room so that folks can have it in front of them when Scott's walking us through it?

Margie Milam: Sure, just give me a second I'll convert it now.

Mikey O'Connor: Yes it needs to be transmogrified into Adobe Connect's friendly format.

Roberto Gaetano: In the meantime I have remembered what I wanted to say.

Mikey O'Connor: Oh good, go ahead.

Roberto Gaetano: It's a quick thing as is related to the issue that Ken has raised. I think it - we have to be extremely careful in the moment that we put the references to things that other people have posted or said even if they are public. But I think that eventually we have to put all these comments together as Jeff has done but we have to homogenize them; we have to come out with not with - with the list of Hal Lubsen or whoever but of - with the final product will be a list that the working group by consensus thinks is the list of possible harms.

So at that point in time the how it came - how a specific item came into the list might lose importance because even if - I don't know we have picked it from Hal Lubsen letter and then maybe Hal has changed his mind or we have misquoted.

But this working group agrees that that item is a harm it will remain in the list independently of what the origin was. So I think that we are not going to take this and just publish it verbatim but I think that now the discussion starts on the different items on list whether they are harms or not, whether the working group thinks they are harms or not and how can we hedge the risk, what are the possible fixes and so on and so forth.

Mikey O'Connor: Thanks Roberto. I guess we'll go to Ken and Jeff and then to Scott. Ken go ahead.

Ken Stubbs: Mikey I'm going to defer because I'm very anxious to listen to what Scott has to say and I'll -if there's time at the end I'll make a quick comment in support of something you said earlier.

Mikey O'Connor: Okay thanks Ken. Jeff, how about you?

Jeff Eckhaus: Yes thanks. I just wanted to say that thanks for - Roberto, that was part of the plan when I put this together is for the group and for the discussion of - or, you know, what are these harms? Are they valid? Are they not? How do they come about?

And I think the first part was the collection of the harms and I think, you know, I don't know if it's a vacation or a slow down or fatigue but I haven't really received many updates so I'm not going to officially say anything is closed; I will make sure that there is no closure of the list or anything like that.

But I think maybe once - my thought is once Scott presents his maybe we could sort of combine these and start working on the next steps with still room for any additions of harms that people want to put together. That's just a suggestion that I have.

Mikey O'Connor: Sounds good. And with that I'm going to kick it over to Scott. But Scott as - just an observation since I've had a couple extra days to read this as I read your document, and correct me if I'm wrong, I read this as sort of a taxonomy of harms.

And one of the things I thought might be interesting is to essentially use the taxonomy that you're describing and Jeff's list to sort of categorize the various harms as to what kinds they are. And use the two lists together to sort of buttress each other. And with that over to you.

Scott Austin: Thanks Mikey. Yes and I think that's an excellent idea. I think that the - first of all I see Kristina is on so I need to start with an apologia. I did not have an opportunity to give this to her before the IPC met; I apologize Kristina. I hope you'll take it for what this is; this was not vetted by IPC. It is not intended essentially to be - and I apologize to the group for putting the CCs on there because they did not get a chance to review it beforehand.

Having said that and I, you know, hesitate to start with an apologia for a piece that I worked a lot - long and hard on and it was just me. I know some people look at a lawyer and think that if you're a partner you had some poor associate grind away on this; this was me.

I spent the time because for all the hours that all of us have put in and I have great respect for the people on this list I just kept feeling that we needed some at least one area that has not been fulfilled to me is a framework. That is that a lot of these harms have been viewed in a vacuum.

And to me as I said in my prefatory note here that society establishes laws in response to harms both social and economic. And that's really the reason for doing this; it's not try and create a treatise, it's much too shallow for that especially on something as complex as antitrust.

But by the same token it is to go a bit beyond merely just making a list of things that - of actions. It is an attempt at a framework or to provide some background on laws that are out there that deal with harms in an anticompetitive context to see what has been done and that's really all that it is.

Now I've tried to take my own stab in several areas under the quote, new economy, of applying that framework against some of the things that we're trying to do essentially as a lawyer of 26 years trying to extend the law to a new series of facts. It may have failed miserably, I don't know. But that's what I put out to this group for them to decide.

I give the background because - and again within the short period of time, you know, what you can do in 24-48 hours in analyzing some of these things I just relied on a few sources but I think they were good sources and I think they are by established and reputable attorneys and I think the cases there are some of the baseline cases.

And really that was the approach especially on things like market power and market, you know, abuse that Jeff specifically said in his that he had, you know, intentionally omitted. And I just think that an awful lot of what we've been looking at with the issue of vertical integration, that is with registrars and

registries coming together, and again my purpose here - there's no hidden agenda; I'm not out to forward the - any particular cause.

And I'm certainly not out to harm any particular cause most importantly IPC that I am here at the pleasure of. And I don't forget that. So I have, you know, the materials that are there are there to basically walk through some of the existing laws and specifically the laws - and if I was going to get into a full in depth discussion of all of these laws it would take more than anyone on this list would probably care to read.

But it is to give some basis and some guidelines. And with that, you know, I would just say that it speaks for itself to the extent of the various sections of the Sherman Act, you know, attempting to acquire monopolization is in Section 2.

Section 1 is essentially dealing with agreements but it also includes vertical agreements and whether or not that would include agreements between registrars and registries all has to do with, you know, yes they're in a complementary relationship to one another but would there be something - how do we assess a market in all of this?

And one of the things that I got at in there - and I guess we can just go through some of the paragraphs if that's what you'd like to do Mikey.

Mikey O'Connor: I think what we might want to do is give folks a chance to read this. I - as I said it took me a good long time to read it. If you would bear with me I had one sort of framing question for you.

And that is on Page 1 in your first non-italicized paragraph you say, "For purposes of this analysis harms are generally defined as those actions which would negatively impact the ability of a consumer to have fair access to obtain an unrestricted, i.e. non-generic top-level domain or at second level

domains at a reasonable cost in an efficient market that maintains competitive pricing."

I don't think we want to have this debate now on the call but that's a really interesting question which is what's a harm? You went ahead and defined it.

Scott Austin: Well I did that for exactly the reason you're putting it to, to see if it would generate acceptance or dismissal and if so, you know, what basis. Because, you know, we're creating a list of harms but really what is the parameter of what gets on the list and what doesn't?

Mikey O'Connor: Yes so that's just one little tiny example of why I think this is worthy of folks' time to read and I think will generate a lot of discussion. Tim go ahead.

Tim Ruiz: Yes I haven't had a chance to other than just peruse it here while we've been on the call. But I think that, you know, what is the market I think is a very important question because if we're talking about, you know, the market as within a single TLD obviously that's a completely different picture than, you know, the market of domain names as a whole.

So I think that's an important question too and I hope that's something we can explore a little bit more as we go down this road of harms.

Mikey O'Connor: Yes I agree. Brian go ahead.

Brian Cote: Okay thanks Mikey and, yes, thanks Scott for putting this together. You know, this is - clearly you're touching on very important areas of this overall discussion. And to that point that Mikey called out about the potential harms to consumers having fair access now from a legal perspective there are a couple of different lenses you can look at - this question through that is what is harm.

And harm can be to competition and competition harms can be defined as impacting consumers primarily or impacting competitors or both. And it really depends on the jurisdiction you're analyzing the question from as well because there are some jurisdictions around the planet that put greater emphasis on harm to the consumer.

And there are some that put a greater emphasis on harm to competition as between the factors in the marketplace because competition between (actors) in the marketplace can create benefits for consumers. So there are two different lenses there. It can vary - the emphasis can vary in terms of what jurisdiction you're in.

I don't think there's been any disagreement on this team that the benefit for the consumers, you know, in terms of lower prices and availability to competitively provided and broader pool of domain names is where we're going to put our emphasis but there are different lenses and it doesn't mean the other areas are not important in and of themselves too because they themselves can impact the benefit from consumers that will run or not run from vertical integration.

Mikey O'Connor: Thanks Brian. Ken go ahead.

Ken Stubbs: Yes Mike. Sadly or what's so sad about an exercise like this is if you're on the board of directors of ICANN and you receive all of this documentation what's the first thing you're likely to do? You're liable to go to your counsel or to your outside counsel and say okay fine you tell me is what they are saying - does it make sense? Does it apply to us? You know, you're looking outside for specific direction.

It would have - I feel at least been more helpful for us if we could have had the legal staff or the outside counsel at ICANN frame some of this for us so we could stay in a context that really gave us the opportunity of maximizing our time and energies because the one thing that I worry about is you throw

all this stuff up to the board, they take it to their outside counsel and says this stuff is crap; it's worthless. Here's what the story is.

You know, and you've got to assume that the board is going to be listening in the long run to Jones Day or whoever - to JJ who probably will consult with Jones Day. So it would have been nice because what we're doing is to some extent a form of speculation.

And that's why I supported what you said, Mike, earlier about kind of waiting to see where the board was going with this because I think we're at a point where we almost need more specific direction. And, you know, we're just going off and deciding now what we think is important and maybe what we need to do is to hear from somebody who's the decision maker who says all right we're at a point now here's what we think is important. So thanks.

Mikey O'Connor: Yes this - this gets me, you know, back into my planning mode. And I was thinking about this. You know, if I was still with the big consulting firm that's precisely what I would do; I would run around and check with a bunch of people to get that framework in advance.

And I think if we've got the time that's what I'll do. But I also agree with Roberto's point which is there's, you know, we're under way; we need to keep going; we can't just stop. And I think that we're digging into some pretty fruitful material here with Jeff's document and now Scott's framing document.

And I think that no matter what happens in terms of the board decision at the end of next month that what we're doing right now is useful in some form or another. I don't have a good answer for Tim yet as to what the ultimate use of this will be. But I still think that it's useful to have this conversation and continue to educate ourselves about it even though we may not, you know, have all those answers until some time from now.

Brian is your hand up from before?

Tim Ruiz: Hey Mikey can someone respond to the request to join the Adobe room?

Mikey O'Connor: Oh I've lost all my staff folks, sorry. Yes hold on a minute...

((Crosstalk))

Tim Ruiz: ...trying to do it and couldn't get back in.

Mikey O'Connor: Yes, yes. I've been clicking - I'm clicking like crazy. Suddenly all this - it looks like a bunch of people must have gotten booted off of the Adobe room because...

((Crosstalk))

Mikey O'Connor: ...my partner in crime, Mike Zupke, has been booted out of the room and so I wasn't covering that, sorry about that folks.

Okay let me raise another one of my little questions. This is one that's deeper in the document and, Scott, I may not be able to find it real quick. But there's the whole question of the law surrounding participants - and oh God, I don't know what it is. It's basically competitors making rules and the care that needs to be taken that we don't transgress that part of the law.

Scott Austin: Yes, Mikey, I think you're talking about the standard setting which is pretty much...

Mikey O'Connor: Yes, standard setting that's...

Scott Austin: ...toward the end. And I think that the big issue there - and again, I mean, I did not create this to make people fearful, I basically created it to say that there are these laws out there that already exist and here's a short brief sampling.

And with regard to the standard setting I think the issue there is if something is created that is specifically giving an edge to someone intentionally then that can be an issue. And I think that that's sort of been in the back of some people's mind. Not that they're doing that but that there's a concern over that and at least it could be something that, you know, why we're doing what we're doing.

I don't think we fall into that because I don't think we're necessarily creating something that preempts one technology over another or necessarily one applicant over the other. I mean, the board has set the costs and the timing and those sorts of things. But yet within that there may be standards that distinguish one from another.

And I just - I wanted to at least address it because I think it is obviously a type of harm that's been addressed by the law.

Amadeu Abril: Scott, this is Amadeu. I think you would agree that this is a general consideration for nearly everything that ICANN does at the policy level not just this complete working group.

Mikey O'Connor: Yes and I think that - this is Mikey again. I think the useful thing - you all from the industry are probably pretty well advised on all of this but, you know, we should maybe take a look at what we're doing and make sure that what we are doing is copasetic from that - that was just another one that jumped out of the document for me.

Jeff you've been very patient, go ahead.

Jeff Eckhaus: Thank you. So just my point on that and on that - I actually wanted to just comment on that is - well two things. One is on what you had just said and, you know, that's something that I had, you know, just obviously personally that I had issued in my comment to the DAG 4 of that issue.

But I personally - and I see it - I see it myself as an issue but I don't think that that is something that I think this group should bring up. I think it would just be a - I won't say a detriment but I think it would - that specific issue on the standards piece is something that this group won't solve and I don't think it's what we're tasked with.

So I would say it can get into a very long discussion and I think that would sort of derail us so I would hope that we can not discuss that issue on this call because I don't think we're going to solve it and it's not our jobs to solve that. But I do thank Scott for pointing that out.

And just second piece what I was waiting for earlier is to say that I would not want us to say let's wait for the board or council or anybody to give us direction or anything else on this going forward just because I think they have been extremely consistent in telling us they are not going to give us any direction.

So I don't think that would change. And I think they've put it in our hands and I think we should keep it in our hands and not wait for that because we'll be waiting for a long time. That's all.

Mikey O'Connor: The waiting for (Gadeau) comes back. Okay Brian go ahead.

Brian Cute: Yes, just to pick up the point that Jeff and Scott just made with regard to the standard setting. And I am nobody - I am not the lawyer for (Philius), I'm not the lawyer for anybody on this call. I don't think that it would behoove us to have a conversation about that topic as Jeff suggested.

Just to note that there are some classic baseline things when competitors are sitting around a table if there are discussions that could result in carving up markets, you know, you guys take South America, you guys take North

America. If competitors start talking about how to set prices those are all extraordinarily dangerous conversations.

And the bottom line is that each one of us in this group should have the benefit of counsel and should be making independent decisions about any conversation and whether we should remove ourself from this group in a noisy way if those lines are every crossed. But any discussion about this beyond that I don't think is going to be productive.

Mikey O'Connor: Thanks for that Brian. And those of you who have capable general counsels if you could give your naked co-chair a heads up if we ever approach that line that would be really helpful because I don't have good counsel at my back.

And, you know, I think that's probably right that we probably don't want to make a focal point out of this for our report. But at the same time I would hate to have our work invalidated if we accidentally strayed across that line.

Okay...

Scott Austin: Mikey that is something that was referenced to what Brian just alluded to. On Page 3 it talks about the whole issue of price fixing and carving up territories, etcetera.

Mikey O'Connor: Yes.

Scott Austin: But that's certainly not been a focal point of this group. The whole issues have really been very philosophical and I think that you'd have to be extremely concrete in order to cross any of those lines.

Mikey O'Connor: Cool. I think maybe that's a - sort of a good spot to draw the line under this. As I said it took me a good long time to get though this document and think about it.

And Scott, unless there are some other highlights that you want to point out to us I think it might be good to let folks digest it and then maybe you and Jeff could put your heads together over the week and see if you could start categorizing the harms that are on his list with the taxonomy that you've built here and see if we can start to put these into some sort of piles.

Scott Austin: Sure.

Mikey O'Connor: And then have a conversation about sort of that blended result next week.

((Crosstalk))

Jeff Eckhaus: Mikey it's Jeff, one before - yes, I think that is a good idea but I would want to give everyone on the list including myself because I have not had a chance to really read through and to read through Scott's framework and his piece because I wouldn't want to - because if there, you know, I'm not, you know, there might be issues to other things so before we start that listing or work on it I'd like to see if that's a framework that people are okay with because we would need to decide that before we started using it as the framework.

Mikey O'Connor: That's fine.

((Crosstalk))

Jeff Eckhaus: Yes. So that's the only thing I just wanted to comment on.

Mikey O'Connor: Yes, no that's fine. I think if it turns out - maybe we could have a fairly lively conversation on the list. I know people have missed the fact that we've really dramatically dropped the email flow down to a mere 50 a week; maybe this would be a way to get us back up to our norm.

Maybe we could have a conversation about Scott's framework over the next few days. And if it's close enough the two of you could get started. And if

there seems to be a serious set of issues arising we could just wait. And I'll let the two of you sort of make that call.

Jeff Eckhaus: Okay thanks.

Mikey O'Connor: Because if it's generally agreeable with folks then, you know, we could sort of get the jump on it. But if there are key issues there then we can try and resolve those on the call next week.

Brian is your hand up new or is that left over? I haven't been paying attention to the queue. Oh that's left over, okay. I think that's it for the call. Oh, Scott, I guess I never let you answer the question, are there a few things that you wanted to highlight before I cut this off or do you want to leave it the way it is now? Scott's on mute or gone.

Coordinator: Is it Scott Austin?

Mikey O'Connor: Scott have you...

Amadeu Abril: He's taking advice from his lawyer.

Mikey O'Connor: Oh poor Scott if he's listening and hearing all...

Scott Austin: I haven't heard all that yet.

Mikey O'Connor: There he is. Okay.

Scott Austin: I'm sorry I had to - I had - someone came in my office and I had to address it. What did I miss?

Mikey O'Connor: Oh okay. Well the only thing I was - before I wrapped up the call I just wanted to see if there were any special highlights that you wanted to pick out of your document. Mostly what I was going to suggest is that we all read it very hard

this week and then discuss it pretty intensely on the list. And if it's a framework that's acceptable we can start merging between you and Jeff. And if there are big issues that we need to resolve we'll resolve those first.

But I wanted to give you a chance if there was - I kind of cut you off in your introduction. And I didn't know if there were any special things that you wanted to highlight that I cut you off before...

Scott Austin: No I...

Mikey O'Connor: ...got a chance to.

Scott Austin: Yes, no and I appreciate that. I think that without people having an opportunity and as I said, again, I gave my disclaimer at the beginning. I think the issue frankly is that there's a fabric of existing law out there and I was just - and that's there regardless of what we decide or how we want to characterize what we're doing it's there. And in some ways that gives a foundation or a backdrop regardless of what we do.

In other ways it may be helpful to see what has gone before and to see if some of that may be - may apply to the final policy that we want to generate. And that's all it's for.

Mikey O'Connor: Cool. Okay I think that's it folks. It's a quarter after the hour. I don't feel any slavish need to drag us all the way to the bottom of the hour. So with that I'll bid you all adieu. We can go wait for (Gadeau) in our respected places and see you in a week. Have a great summery week. I hope holidays are in everybody's future. And we'll see you at the old time, next Monday for an hour and a half and I'll send a note to that effect to the group.

Thanks all. See you soon.

END