Vertical Integration PDP Working Group
TRANSCRIPTION
Monday 13 September 2010 at 19:00 UTC

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http://audio.icann.org/gnso/gnso-vi-pdp-20100913.mp3
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Coordinator: Thank you at this time I'd like to remind all participants today's conference is being recorded. If you have any objections you may disconnect at this time. You may begin.

Glen de Saint Gery: Thank you. Good morning, good afternoon, good evening everyone. This is the Vertical Integration call on Monday, the 13th of September. And on the call we have Mikey O'Connor, Paul Diaz, Barry Cobb, Jothan Frakes, Krista Papac, Roberto Gaetano, Kathy Kleiman, Jean-Christope Vignes, Jon Nevett, Scott Austin, Ron Andruff, Statton Hammock, Alan Greenberg, Jeff Eckhaus, Keith Drazek, Ken Stubbs and Katrin Ohlmer.

And for staff we have Margie Milam, Mike Zupke and myself, Glen de Saint Gery. Thank you very much Mikey and we can call out to Cheryl Langdon-Orr.

Mikey O'Connor: Great, yeah I just saw that Cheryl was coming in so that's good. Welcome all, welcome back from summer holidays. And hope everybody had a great time. Today's agenda is really pretty much one thing and that is to work on our list of harms.

And we've really got two documents to work on. If you've got enough screen landscape it would be good if you could pull up the wiki page about harms in addition to the document that Margie's got on your Adobe Connect screen.

So as the wiki document I posted the link right at the top of the chat. So if you roll the chat all the way up to the top you'll see the link in there. And there are some things in the wiki page that probably aren't in the document that Margie's got...

Margie Milam: Mikey it's Margie, if I can interrupt for a moment?

Mikey O'Connor: Yeah, go ahead.

Margie Milam: Sure, the document I just posted I clipped from the wiki page so it should be identical include the...

Mikey O'Connor: Oh okay.

Margie Milam: ...the revisions from yesterday.

Mikey O'Connor: Okay so that probably answers my question which is whether you got any additions that you've folded into a separate document and it sounds like the answer is no. That a safe bet because on the last call what I offered was that people who were comfortable could edit the wiki page directly or they could send you and me stuff.

And I wasn't sure whether you got any that I hadn't seen. I got some from Eric for example.

Margie Milam: Yeah, no...

Mikey O'Connor: Did you get any others?

Margie Milam: No I didn't do anything.

Mikey O'Connor: Okay. Well cool then the two documents are identical; pick your choice. The - and since this is the wiki page let me fill you all in a little bit on some of the changes from last week just to highlight some things. I'm going to start at the bottom of the document and work towards the top.

The first change that you'll see at the very bottom is that I stapled in my little approach that I had sent to the email list earlier in the week. And so we can circle back and talk about that at some point.

Then rolling up one section - there was a section called Legal Liability for ICANN. And Eric posted several more harms to the list. And I fairly arbitrarily added them to this section. I'm not sure that that's exactly where they should go but that's where they wound up. And we can talk about that.

And then to the other major change from last week is at the beginning of the document. And it comes from Kathy. There was a little talk about it on the list just a minute ago which I haven't quite caught up on. But it talks about the issue of compliance and enforcement.

So those are sort of the three major additions to the list that I remember. And the goal for today - we really have two goals for the call today; one is to sort of see how close we feel we are to having a list that's complete enough that we can at least close it out for the purposes of moving onto trying to analyze the list.

I don't want to absolutely slam the door because in our analysis we may uncover some more things that need to be added to the list. But mostly what I was interested in was kind of pushing us onto the next stage of the work. And so the first part of the call is to just take that sense of the group and see whether we feel like we've got a good enough list to get started.

And then maybe do a little conversation about whether all these things are really in the right place, etcetera, etcetera, just to sort of close out

that conversation that started on the list, for example about Kathy's list, and then move on into a discussion of the analysis of the list and an approach to doing that which is very preliminary at this point.

Anyway that's kind of the agenda that I'm carrying around in my head. And so let's focus first on whether anybody has got things that they feel like we need to add to the list. And again this is just the list of harms without a lot of analysis or commentary.

You know, analysis and commentary is really the next step I think. But I want to make sure that we've got at least a good starting point of the list. And we may also find that there are some duplicates. I think that's another part of the analysis is compressing out some of the duplication on the list because some of these came from different places and for no particular reason they have two copies of the same harm.

So this is mostly (unintelligible) the last call. Any glaring deficiencies in the list at least as a starting point for analysis? And I'll give you a minute to sort of scroll up and down the list and think about that and then we'll move on into sort of pushing these around maybe into different sections and stuff like that.

Scott Austin: Mikey, this is Scott Austin. Is this the document that's titled Harms Caused by Vertical Separation?

Mikey O'Connor: It's the one that's in the middle of the screen on the Adobe Connect. If you're not on Adobe Connect - it doesn't look like you are. Hang on a minute.

Scott Austin: Yeah it's still - my page is still coming up for some reason my computer is going very slowly.

Mikey O'Connor: Oh, well let me just send the link.

Scott Austin: I have the other page up I thought, the harms from social text.

Mikey O'Connor: Yeah that's - it's identical to that page. So if you've got the social text page up you're right there. The one that's in Adobe Connect is the same document.

Scott Austin: Okay thanks.

Mikey O'Connor: You bet. I'm not hearing an overwhelming rush to the barricades for new harms which is great. You know, this has been the result of a lot of work by several people and so we should take a moment to pat ourselves on the back for that and say thanks to all who contributed.

Maybe now's the time to see whether there are ways to rearrange this. I haven't followed up the thread on the list but I noticed that Jeff I think had a comment to Kathy about whether the harms having to do with monitoring and compliance and so forth were correctly placed. So maybe this is the time to sort of kick off that conversation. Brian, go ahead.

Brian Cute: Yeah, if we just go back - I'm sorry...

Mikey O'Connor: That's fine.

((Crosstalk))

Brian Cute: I was looking for - there's a number of different buckets here. One of them is competition harms. I've been going over front-running again lately and, you know, I've suggested many times, you've all heard that that can drive prices up instead of down.

But what also may have been lost from my end was the effect between registrars when a name is taken out of the system and the registrant is basically forced to buy that name through one registrar. So there's a competition harm there as between registrants and (unintelligible) being able to shop around from competitive registrars to get that name.

I'm not sure I see that articulated here. I just wanted to make sure that that was somehow worked in.

Mikey O'Connor: Do you want to take a minute maybe after the call and just draft up a short bullet and figure out a place to put it and send it to me?

Brian Cute: Yeah.

Mikey O'Connor: And I can stick it in.

Brian Cute: Yeah, happy to.

Mikey O'Connor: That's exactly - for the rest of you that's exactly what I was hoping for today is that you actually take a minute right now on the call and sort of run your eye down the list and make sure that harms that are especially of interest to you are included.

And if not - I'm not sure that we actually need to talk about them today but if you could do the same thing that Brian has just volunteered to do and just make sure that you send me a little bullet sort of the same length as all these other bullets I'll happily staple it into the wiki and...

Scott Austin: Mikey this is...

((Crosstalk))

Scott Austin: I'm sorry to interrupt. This is Scott. I just wondered if Brian's comment was - or harm was covered under the availability pricing harms. It may not be as well articulated as he just said it but it seems to me that Bullet Point 1 under availability/pricing harms has in its last couple of phrases a reference to the integrated entity could identify potentially high value names and monetize them through auctions, traffic sites or secondary market sales.

Brian Cute: Yeah, Scott, thanks for bringing that up. I think that touches on point of it which is unavailability of names, actually a couple points, unavailability of names and higher instead of lower prices and a third point which is all of this benefiting the registrar instead of the registrant. But I was also focused on the effect on competition between registrars...

Scott Austin: Right okay.

Brian Cute: ...want to just uses the name for itself. So to my eye there's a missing element there but thanks for pointing that out.

Scott Austin: Yeah, no I agree. Like I said I think what you're doing adds another harm that's relevant with a different market.

Mikey O'Connor: And what you might want to do, Brian, is take a look at that one under availability and pricing and chop it into some chunks to tease out the issue that you're raising as well. It might be a way to tackle that. Good catch, Scott.

Brian Cute: Okay.

Mikey O'Connor: Thank you, sir. Jeffrey, I think you're next, go ahead.

Jeff Eckhaus: Yeah, okay thanks. So first I was the one who had started some of the changes to the document. So the one is - I guess there's (unintelligible) and to the group is that - and I wrote it in an email, but I thought I would just explain it on a call which is when I put down the initial harms I had put down - I had sort of paraphrased or summarized the harms that I had read from, you know, what I said I would look through all sorts of source documents and then summarize them and then put them down as the harms.

But then in my document I had actually used the areas where I cited them from and then collected the links as well so that if somebody wanted to read the full document and the whole idea was I didn't want anyone to think I took something out of context.

So at this point we have all three of those on there. And I guess it would be up to the group if they want to leave, you know, my summary - if you want to get rid of that no offense taken - and leave the, you know, the original quotes in there that's fine. And then leave the links

as well. But we basically have the same harms written three times on - well two times plus a link to those original documents.

So that's what my email was about. Hopefully I explained it correctly. And I guess it's up to the group whether they want to leave my summaries or the direct quotes in. And I guess that was - you brought it up Mikey but I just wanted to sort of expand on it a little bit.

Mikey O'Connor: Yeah, I actually did it on purpose because I read your email and your explanation on the phone helped me understand it better. So if I was to look at the document the duplicate that you're talking about is the stuff that says things - that starts at harms from registrar.com comments and ends at the end of the (Sappington) presentation. That's the duplicate.

Jeff Eckhaus: That's a duplicate, correct exactly.

((Crosstalk))

Jeff Eckhaus: Yeah, those are the original ones...

Mikey O'Connor: Okay.

Jeff Eckhaus: ...that I sort of - where I took the source material I guess you could say that I took it from and because as I said I didn't want anyone to think I took it out of the context so I included that on there.

((Crosstalk))

Mikey O'Connor: You know, what I think I'll do is I'll take those and I'll stick them down - and I'll take the links as well and I'll move that whole section down to something like a reference material.

Jeff Eckhaus: Okay do we have an annex to this or, yeah, a reference materials or something like...

Mikey O'Connor: Yeah.

Jeff Eckhaus: ...I guess we could put that into that would be fine.

Mikey O'Connor: Yeah I'll move it to the bottom so that it's clear that it's, you know, I hate to lose it because, you know, I...

Jeff Eckhaus: Oh no I'm not saying get rid of it I just wanted to just explain it and just I thought maybe just some editing on there would help and just to put things in the right order.

Mikey O'Connor: Yeah. Yeah cool okay I get that. I'll take that one as an action. Kathy, go ahead.

Kathy Kleiman: Okay with apologies to everyone I seem to be - being dropped a lot. As I had reviewed the document for the last few weeks I kept being struck by the fact that the issue that we had all focused on so much in Brussels wasn't really encapsulized in it. And maybe I missed it - but the whole compliance and enforcement issue.

And I saw the debate over harms and appreciate it on the email but, you know, call it what you will, an opportunity cost, the lost of time and opportunity and resources it seems to me that all equates to harm.

And so what I did was I just went back to the document that had been prepared for the initial report and took examples of the types of compliance and enforcement that we think would be imposed on ICANN through vertical integration and co-ownership. And I didn't make any of this up; it was all in the document already and that's where it comes from.

Mikey O'Connor: Thanks Kathy.

Kathy Kleiman: And so I just wanted to share that.

Mikey O'Connor: Great. Thanks. Jeff go ahead - I think that's a new hand.

Jeff Eckhaus: Yeah, no that was me; I put it back up. And I was the one who responded to Kathy and to thank her for adding that in. And just the reason why I said maybe this isn't part of this because, you know, having to do additional work or to hire new people or to - for people to be trained I don't necessarily see that as a harm resulting, you know, it's a harm to - I don't know who it would be a harm to.

Maybe it's a benefit; we're employing more people, you know, taking care of unemployment. You know, it's - these are things that I think are just - it could be, you know, additional steps we need to take or they could be hurdles or, you know, I wouldn't say that it's necessarily a harm resulting from the - or a harm resulting from not having VI which I think was - I want to try and keep, you know, I thought maybe we wanted to keep this focus on this document as harms not, you know, putting in results from VI but harms from VI.

So that was my point on it and I just wanted to explain it again because maybe my email didn't come through of what I was thinking.

Mikey O'Connor: Thanks Jeff. Kathy again.

Kathy Kleiman: Actually I'll defer to Richard. I had really very much seen it as a harm - as a concern that something people - something that belongs in this document that people reviewing both sides should really take into account.

Mikey O'Connor: Okay.

Kathy Kleiman: Thanks.

Mikey O'Connor: You bet. Richard, go ahead.

Richard Tindal: Yeah, hey Mikey, thanks. It's to respond to Jeff's point he just made. It's cost I think so compliance is a cost and I think all costs eventually find their way via these to registrars and registrants hands. So at the end of the day I think it's - I think additional compliance is a cost to registrants which I would view as a harm.

Jeff Eckhaus: Can I just respond to that for one sec? So I know I'm probably going to kick up a hornet's nest with this but like, you know, over this week (PIR) announced that they're increasing costs to registrants. I wouldn't say that those are harms now are they harming registrants by raising prices?

I don't know by raising prices, you know, for a certain amount to cover the cost we don't know what those costs are. Maybe it's, you know, a

penny a domain. Maybe it'll make, you know, the situation better for everyone and those, you know, by paying that extra 2 cents it'll reduce fraud or other issues and it would lead to lower, you know, overall costs and damage to the industry as a whole.

So I would say having to increase somebody's price by, you know, even if it is - this is not determined but if everyone's per domain price has to go up by 5 cents or 10 cents doesn't necessarily mean that it's a harm to registrants.

And I wouldn't characterize that and I think that's just - because then we say any time somebody increases prices they're harming registrants which I don't think is the case.

Richard Tindal: Well I think I'd - yeah so - yeah if it's a few pennies, I don't know, maybe it depends on the person if it's a 50 cents or $1. I mean, what we're talking about here is an overall regulatory burden on every TLD so it's not an individual competitive market pricing decision but rather if there's a compliance cost.

And I agree with you if it's nontrivial, if it's a nontrivial compliance cost it seems to me that's going to be pushed to registrants across the board which again I think is - in my opinion that would be a harm.

Mikey O'Connor: Thanks Richard. Cheryl, go ahead.

Cheryl Langdon-Orr: All right thanks. Just picking up on what Jeff raised and Richard was then articulating I just typed in perhaps we could have another subheading which was, you know, harm/consequences to find

some middle ground. But I do think these need to be listed because even non - sorry - let me try that again.

Even trivial (unintelligible) are hard to define when you look at different business models; what's trivial for one may not be to another. And pounds to peanuts because I'm in a metaphoric mood it will certainly get passed on and not necessarily just at cost to registrants.

So we probably be seeing them as serious considerations not just large harms as significant as some of the others listed. And so, yeah, I'd still like it somehow (unintelligible) I do see what Jeff is saying. But it is a cost of compliance.

Mikey O'Connor: Thanks Cheryl. Kathy, go ahead.

Kathy Kleiman: Okay let's see I should be off mute.

Mikey O'Connor: Yeah, you are.

Kathy Kleiman: It's more than just the cost issue. There's the complexity issue. And I tried to spell it out maybe without hitting everyone over the head with it but the idea that there may be say under data audits that we're looking at something that will need to be cutting edge in its field and global in its scope and reach and that may not be possible right now.

We've discussed at great length the data audit concern that going into someone's business and trying to kind of sort out registries and registrars and doing these data securities we've spent, you know, many hours on it.

And so in brief trying to present that argument here that there are levels of complexity, levels of novelty, whether we can actually go ahead and kind of accomplish the type of compliance monitoring we'd want to is an open question.

And hence if we couldn't there's an implied harm that we wouldn't be able to do to provide the assurance as an ICANN community; the assurances that we'd want to is a harm in itself. So I think there's both the tangible and the intangible here as we look at the - not just the cost but again the intangible costs of the compliance.

Mikey O'Connor: Thanks Kathy. Ken.

Ken Stubbs: Yeah Mikey I'm assuming I'm off mute.

Mikey O'Connor: Yeah, you're good.

Ken Stubbs: I guess from a practical standpoint in the overall mandate that ICANN has for security and stability compliance plays a function in ensuring that mandate is met. We all know that there is a cost to the compliance function. The principal function that we have as part of the ICANN community is to ensure that the compliance functions are managed effectively and efficiently.

So it really boils down to determining exactly which issues here fall within the ICANN mandates, number one, and most importantly ensuring that ICANN manages this compliance function in an effective manner. And with that if it's done effectively and efficiently the costs will be minimized and the community benefits on that basis. Just my 2 cents. Thanks Mike.

Mikey O'Connor: Thanks Ken. So it seems to me that there is - I was kind of taken with some of the re-labeling ideas; some of these are impacts or have consequences which gets me to the difference between the problem and the implementation which in a way is what Ken is getting at.

Is the - I would - Scott if you're close to your mute button get yourself off mute because I've got a question for you. In your experience - in the sort of world of harms and stuff like that - are all of these things harms or are some of these the implementation costs associated with mitigating the harms?

And if so do you have any handy sorts of Damocles that we could use to separate the two? Maybe he put himself on mute instead of taking himself off mute. Maybe I just totally baffled him with that question. Anybody else got a, I mean, you know, it's clear that we're onto something here; the question in my mind is mostly one of where to put it in the document.

And maybe the thing is that we split some of these into chunks and some of them go in the harms chunk and some go in another chunk of the document that I think falls in our analysis section which has to do with things like some of the scale questions like, you know, what's the impact of this harm? What's the cost of mitigating it? What are the consequences of not mitigating it?

Is that a useful line of inquiry or am I off lost in my Wisconsin weeds here again? Any thoughts there? Because I think that, you know, as I roll back and look at what Kathy added certainly some of this is more of an implementation issue it seems to me than a harm per se.

And part of the reason I say that is because one of the big points of agreement in our first round was the notion that compliance is important, that it needs to be done well and that the harms will, you know, the big disagreement is which comes first, the chicken or the egg? The compliance or the environment and I think that was one of the big disagreements.

But our big agreement area was one of the need that compliance be effective in monitoring this stuff. I'm sort of filling - good, a hand. Jeff, go ahead.

Jeff Eckhaus: Yeah, thanks. And I think I just wanted to add in that I don't - just to be clear I didn't disagree with anything, you know, Kathy or anybody else says; I agree those are issues. But I thought if we wanted to think about issues I think we could - I thought we would maybe put them under considerations or issues that could result from there.

That was just my thought if we wanted to change some of the categorization of the document. That's a suggestion but, you know, I didn't disagree; I just wanted to say because I see some of the items on the chat and what was coming forward with that. I don't disagree with those are issues to be, you know, considered and that they are concerns and that all of these, you know, might happen. Not disagreeing with any of that.

I just said we might want to put that under a consideration of what could happen but different than a direct harm from there. But, you know, I'm just throwing that out there and it was more to the group for discussion rather than, you know, let's just put it into the document

wholesale like let's discuss it as I think we should do for every piece that gets added. So that was my thought and my suggestion was may categorization of the harms, that might be another way to do this.

Mikey O'Connor: Yeah that's true; that could be our analysis approach.

Jeff Eckhaus: And the other thing is I want to agree with Roberto's comment is that I think that we might be making it more complicated than it is. It was just a suggestion and not necessarily something I think that we needed to spend, you know, a while discussing. So that was another thing I - it was a suggest of mine not something that I think is, you know, worth discussing for much longer. Thanks.

Mikey O'Connor: Okay thanks Jeff. Scott and then Roberto.

Scott Austin: Yeah I agree with Roberto's comment also. My thought is that inevitably in - anytime that there's a change there's going to be a compliance requirement and that there's going to be associated costs. And I guess the only thing that might be added to what Kathy has put in is difficulty and complexity of monitoring and associated costs.

But what I don't know is under the status quo how much compliance and monitoring is there now by ICANN to ensure that some kind of creeping vertical integration hasn't occurred. And I've never heard anyone - I don't think we've actually addressed that.

And so I guess my question would be what would be the difference in costs between monitoring in a, you know, vertically separated world versus a vertically integrated world? I think that's what we're trying to reach.

Mikey O'Connor: Yeah that's a good question. Roberto go ahead.

Roberto Gaetano: What - my comment about making the matter more complicated than it is was not referred to any specific proposal or comment that has been brought before this evening.

I'm just thinking that we have a wide number of unknowns here. We have not - for instance we have not done a complete economical status or that we don't have a - exactly the model of what are the harms or what are the potential harms and so on.

We don't know, I mean, there are a lot of people who know the market here but maybe people have different views on what way the market will evolve with the introduction - with the potentially massive introduction of new TLDs.

So there are really many unknown here. And we have a board that is having a (unintelligible) later in this month that will be discussing this items. And I wonder whether we shouldn't instead of trying to make the perfect document with all the possible harms and all the possible implications discussed down at every detail whether we shouldn't go a bit by iterations.

And say okay this is an initial list. Then let's discuss where they do apply and roughly whether the feeling of the working group is that they are very relevant, little relevant or irrelevant at all in terms of whether the market is vertically integrated or separated and have this set.

And then say okay this is the starting, this is what we thought. Then here what the board comes with in terms of their thinking about the future of this working group and the future of this whole discussion and then maybe go to a refinement.

Maybe go to a refinement if we are encouraged to go to a refinement if then the reaction from the council or from the board is guys you are on the wrong track; there's no point in spending cycles for providing a more perfect analogies and more perfect document than is needed.

So in other words I'm thinking okay we went through the holidays, the slow period and so on; now we have a reasonably crafted document. Do we really need to go to further detail or should we just make a general discussion on it point by point on whether we are going in the good direction or we have forgotten something that is essential. And if not just go out with the first draft.

Mikey O'Connor: I think that's a great idea. I think we're pretty close to the essential list, you know, maybe with the addition of Brian's. But, you know, this does feel like we've certainly given a lot of opportunity for people to add stuff to the list and that it is time to sort of move on.

And is your thought, Roberto, to try to stratify the list a little bit before the board meeting and then pass that along to the board? I was sort of drifting along not working to that deadline. So...

Roberto Gaetano: Not necessarily pass it officially. But, you know, if we have - if we have - also because I don't want to start another discussion on, you know, of the type that we had before.

But if we have some work that is in progress and it's on the wiki that is accessible by people of the board, I mean, without giving them the result officially they can, if they want, have a look at that and take that into account for the discussion or not depending on, you know. So just as a data point and let to them the discussion.

Definitely I was not thinking about an official document to be released officially.

Mikey O'Connor: Okay, breathe a huge sigh of relief. Brian, go ahead. Oh wait a minute, I'm sorry, I've got this out of order; my eyes fooled me. Jeff I guess you're first unless yours is left up from before.

Jeff Eckhaus: Oh sorry, left up from before. I'll lower it.

Mikey O'Connor: Okay thanks. Brian.

Brian Cute: Yeah I have a couple reactions. I mean obviously the board can look at anything we're doing at any time and some board members have been tracking our work in real time and that's always welcome.

I would have some deep concerns though about a board member looking at this list in this condition and trying to take away from this list and go toward a decision on vertical integration.

You know, first of all it's just a list; it doesn't have analysis or context. We haven't really tested these ideas to see whether they're valid or not in different contexts.

And the group has put forward proposals; there are some concrete well defined proposals of different shapes and sizes and different approaches. And these issues, you know, don't really make sense on this piece of paper unless you start looking at what the board might do.

And depending on what they might do could, you know, have an affect on some of the points here as becoming more relevant or becoming less relevant. I just think it would be extremely premature and perhaps misleading or, you know, uninformed for a board member to look at this document and then, you know, go immediately to the task of making a decision on what the vertical integration or vertical separation framework is going to be. I just think it would be - it's not close to fully formed in that regard.

Mikey O'Connor: Roberto, you want to come back to Brian on that?

Roberto Gaetano: No just a quick thing. Yes I agree. I would be also afraid if they based their decision on this draft document. But based on my experience the board doesn't deliberate at the retreat. So there's going to be - they're going to debate the issue but there's going to be no decision at the retreat. So, you know, I'm not afraid of this. But I agree with Brian, yeah.

Mikey O'Connor: Okay.

Roberto Gaetano: And in any case some people - some board members are, I mean, when I contacted them just to have an idea of whether we were on track or not I discovered that people were following what we were - some people are following what we are doing anyway so.

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

Ken Stubbs: Yeah I think we're better off leaving it where it is right now on the wiki. And that is I think if we want to spend a significant more time elaborating on each one of these things and measuring the impact and so forth then that's one thing. But right now it in many ways is still half-baked, you know, it's the argument that either side could take. One side's going to say the list for is half-baked or the list against.

So I think from a practical standpoint we would be naïve to think that the board and the staff isn't spending time looking at the wiki. I'd have the same experience that Roberto has. There are directors who have a much stronger interest in this than other directors.

And I guess from a practical standpoint the deliberation process I'm certain will include asking questions to the staff about how to manage compliance regardless of what the board perceives as harms. There will also be discussions about the benefits as well as the potential, you know, on both ways.

So I think from a practical standpoint it belongs where it is in the wiki as part of the process. And I'm sure staff and the board will use it as a reference and so forth. But I think taking it any further basically puts us in a position that we would have - with significant more meat on the bones to put it into the report at this point. Thanks.

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

Cheryl Langdon-Orr: Thanks. Just following up from what Ken just said and Roberto. Perhaps with knowledge of the audience on the wiki and it

might be comforting to shift some of what's been in this current document up to the beginning. In other words (unintelligible) pop in a little preamble on state of play and what our intentions are on this, that we recognize it as a very much initial work in progress but something that does need to be addressed.

The original draft by and putting the three references and then perhaps the one approach to analyzing the harms paragraph and (don't) points sort of at the top might give better context for the casual reader. Okay well if Mike's disconnected I was about to type am I disconnected.

Roberto Gaetano: So let me get in and as the co-chair. Ken, is your hand up from before or is it a new...

Ken Stubbs: Oh no I'm sorry, Roberto, I got cut off on the call and I didn't - got distracted. I'll take my hand down right now. Thanks.

Roberto Gaetano: That's okay. Then I have Scott.

Scott Austin: Yeah, I would just second what Cheryl said but in addition if you look at one of the things that I talked about earlier and apparently I hadn't just scrolled down far enough into the document. There is a reference to ICANN costs and trickle down costs.

It may be not nearly as robust as what it needs to be and it could include some of the items of references to enforcement that Kathy has, you know, very in a detailed manner articulated up at the beginning.

But I would agree that there needs to be a preamble and there needs to be something to put it into context and perhaps what we have at the

end or some of the discussion that's at the end of the document
assuming this entire thing that is the analysis approaches would be a
good candidate.

Roberto Gaetano: Thank you. I see that Mike is back. So Mikey are you taking over?

Mikey O'Connor: Yeah, I can take over. Sorry about that. I got so excited about Cheryl's
idea that instead of hitting unmute I hit - turn off the phone.

((Crosstalk))

Cheryl Langdon-Orr: ...Mikey, go on, we all know that.

((Crosstalk))

Ken Stubbs: ...turn off the phone for a minute there.

Mikey O'Connor: Okay. Anyway so I'm tracking with Scott's comments. And Ron - Ken is
that a new one or an old one?

Ken Stubbs: Yes it's a new one, Mike.

Mikey O'Connor: Okay go ahead Ken.

Ken Stubbs: Yeah, politically I don't know how to do this but I think what we need -
we also need to suggest somewhere in here that we get more
transparency on ICANN moving forward in compliance.

It's kind of like we brought the subject up, somebody reacted to it, all of
a sudden the entire compliance department went dark, I'm sorry, that's

just a fact. And we don't know where we are or where we're going or anything like this.

There is no compliance plan where I think there is a certain amount of clarity in the process at this point in time. But, you know, granted we're bringing in our concerns about harms but, you know, I'm sorry, they can't - ICANN cannot be totally in the dark about concerns and also about issues that will pop up.

So I'm hoping that somewhere maybe even in the preamble of this thing. We express some - and it's not a criticism but rather they're looking for advice moving forward; I think it's important that the board get clarity from the staff as to how they plan on moving forward on this.

Because there are two approaches that could be taken; we've discussed them before. There's a reactive approach or a proactive approach or a blend of both. And I think the community is owed some sort of an explanation as to what kind of philosophy in the future ICANN is going to be using in compliance. I think it gives more clarity to the entire process. Thanks Mike.

Mikey O'Connor: Thanks Ken. You know, as you were talking it occurs to me that, you know, maybe what we do is we treat Kathy's addition as - essentially bump it up one level in terms of the outline.

And rather than trying to sandwich it in under the harms put it on a peer with that and then stick that preamble that you just rattled off, Ken, in as sort of a point in this whole section since clearly, you know, we're all pretty - we have all got pretty strong opinions about

compliance and the direction and capability and so on. So I might take a stab at that on the wiki unless somebody goes crazy on there.

Ron, go ahead.

Ron Andruff: Thanks Mikey. I just wanted...

Mikey O'Connor: Oh Ron, hang on just a second. Somebody who just spoke, maybe Scott or Ken, somebody's unmuted and the breathing is pretty intense so if you could mute again that would be good. Go ahead Ron.

Ron Andruff: Thanks. I wanted just to make a note - we're talking about in fact two lists. We have a list of harms that could happen with vertical integration and a list of harms that happens without vertical integration.

So if we're talking about, you know, cleaning up this document we might want to break those into very clear demarcations because where I - the reason I - my thought on this was Scott's comment about the cost of harms. And in fact the cost of harms are noted in the second section, the second list so that's the harms arising from not vertically integrating.

And there are - those could well be costs on both sides of that equation - on both lists. So I just wanted to bring that up while we're doing this sort of cleanup of this document we should be bringing that cost element into a neutral space probably because I'm sure that cost will have effect on either way. Thank you.

Mikey O'Connor: Yeah and in fact a fair - there's a fair amount of crossover between that cost to ICANN section and the complexity of monitoring section. So let

me take an action to sort of combine those as well because you're right it's not just on one side or the other it's both sides.

Ken go ahead. Unless it's left up from before. Is your hand up from before Ken? Yeah it is.

Ken Stubbs: Yeah, sorry.

Mikey O'Connor: No worries. So this last little bit has been kind of a tidy up the document part of the conversation. And unless anybody has a terrible problem with what we've been saying I'll go ahead and do those things because I think they're all good ideas. And try to push that out probably not today but tomorrow for sure to get that into another draft that's worth - a better shape.

Let's now segue into sort of the third part of the agenda because I think that was a really good conversation about the state of the list now and what needs to be done to take it to the next stage and I'll take the action to fix that.

The last thing that I'm really interested in is a conversation - if you roll all the way down to the bottom of the document that little starter kit that I put together of questions to ask about each harm. I sort of made those up based on partly the conversation on last week's call but also just sort of followed by nose from there.

And I was - so there's no way - I'm going to do the Jeff Eckhaus thing here, there's no editorial pride; it's not right; it's completely open season, you know, I would love to get people's reactions to this if it's close, if it's not. You know, I'd like to just spend a few minutes on sort

of the meta issue of - presuming we have a tidy list of harms which I think we will have a pretty tidy page after this next iteration.

Is this the right way to break it down and figure out what we need to know about the harms? Are there questions that are missing from this list? Are they badly framed? You know, I don't want to just have a completely unreviewed list that I sort of sprayed out in an email be our defining light necessarily. Kathy, go ahead .

Kathy Kleiman: Mikey I look at - I appreciate your doing this and these are good questions. It seems to involve a layer and a level of analysis we haven't gotten into on a lot of these harms. It would seem to be the next step if we were spending another four or six weeks on this issue.

The question I'm hearing from, you know, the question I might do next is which harms relate to which proposals. That might be another way to look at it. But this involves - these are great questions but they seem to involve a whole layer of research and investigation analysis that we haven't gotten into, don't have the study for.

I wouldn't even be sure kind of how to begin to approach most of these questions without a lot of information and time.

Mikey O'Connor: Well that does raise the - that's the sort of giant unspoken question which is what is our future. And to a certain extent what I was doing with this is I was presuming that as a result of the board retreat we are not going to get delivered a crazy deadline. And that we are sort of turning into a regular paced PDP.

If we get delivered a crazy deadline then I think all of this stuff has to get reassessed. And so what I was listing off there was sort of in a perfect world if we had the time we needed to do the analysis what would we - what questions would we ask of these harms.

But not trying to sandwich it into an extreme overdrive timeframe. Because, you know, I agree these are hard questions; they're really interesting questions I think.

Kathy Kleiman: They are.

Mikey O'Connor: And...

Kathy Kleiman: They are hard.

Mikey O'Connor: One of the things that I have hoped for in either these or some kind of questions is that maybe in answering them we can find some points of agreement that can lead us out of - lead us towards some sort of consensus view. So, you know, I do agree they're interesting.

Jeffrey, go ahead.

Jeff Eckhaus: Okay so I kind of, you know, I've - I have kind of a similar concern here as Kathy does on these. And I think part of it is - I think it is the next layer but I think it's going to be, you know, some very, you know, some answers to the questions are going to be tough.

And I thinking like with my first thought I was thinking some of the examples of the harms on the list. And some of those that have, you

know, things that have occurred in the past in a vertically separated environment like for example domain front-running and domain tasting.

Those were two items that happened, you know, in the past who was involved, you know, we can go through it. But, you know, I think there's going to be issues because, you know, to this day I know - I'm not going to say myself - but there were a lot of people who said they didn't see domain tasting as a harm, you know, so even just in a vertically separate.

So these are things that - I think we can go through some of them and say - on the main issues and say these were what people saw. And I think the big argument here is that some people are saying like I'll use - let's say front-running because Brian brought that up as an example in the past.

We all recognize that that happens in the past, front-running did happen in the past. What some people are saying is that it will be a worse situation if there is vertical integration or, you know, for tasting it will be, you know, it'll be cheaper which, you know, there's no, you know, the math behind it makes total sense about it saying okay it will be cheaper to the - if a vertically integrated company is allowed to sell its own TLD if it wants to do domain tasting there's not doubt the math is correct that it would be cheaper to them.

So then the point is saying will they do it. And that is something that we're saying it would be, you know, that's sort of the issues I don't think we can get to. So I think we could analyze this but I think it would - I don't know if these might be the proper questions. And maybe we could think of some other questions through them.

But I don't know if that's also the right next step. I'll just - I know I just let out a sort of verbal mish-mash there but, you know, I'm sorry but I think some - we could analyze some of the things but then the end of the day is will people do them which is a big, you know, question of, you know, of the harms.

I think this can happen; it will be cheaper but will companies do domain-tasting within a vertically integrated environment? That's sort of the next question maybe. And that I don't think we could ever answer going forward.

Mikey O'Connor: Is there a surrogate for that question because I agree it's pretty tough to answer the will they do it question. But is there another way -I mean, this is exactly the kind of conversation I was hoping we would have which is what questions do we need to add to this list and maybe which questions do we need to take off, so that we've got a good structure for a conversation. Because I agree with you that if we, you know, if we have badly framed questions we might just spin our wheels. And I don't want to do that; we clearly don't have the time or the resources.

Jeff Eckhaus: Yeah and Mikey it's Jeff. I agree with you. I don't want to shy away from this discussion. I just think we might need to sort of reframe it maybe - or maybe somebody might say you know what this isn't the right path to go down and they could convince myself, you, the group otherwise, you know, but I think we might...

Mikey O'Connor: Yeah.

Jeff Eckhaus: ...need to change some of it around. But I'll be quiet now and leave the - go next to I guess Jothan: sorry to take away your calling out duties.

Mikey O'Connor: Okay thank you Jeffrey. I think we're on the right track though. Let's keep this going. Jothan, you're next.

Jothan Frakes: Sure. And thanks. I think I pulled out of what Jeff was saying that we're looking at could this - could domain tasting happen in a vertically integrated environment? You know, I don't think I necessarily know the answer to that but I think we may not be factoring in what search engines and user behavior would balance that out with new TLDs.

But the thing that I wanted to just verbalize was a comment I made in the chat which was, you know, looking at these bullet points these are great questions, Mikey. I'd say there might be a couple more. But I was wondering if we might word them so that it could be answered in a binary fashion so that we could poll or do some sort of measurement of them and apply them to each of the questions.

I'm a big proponent of us delivering something with some measurement and context as what we deliver. That was all I needed to say. Thank you.

Mikey O'Connor: I like that idea. Of course, you know, you know me and polls; I love polls. I would be more than happy to crank those into binary questions and build a poll around them. One of the advantages to that is that it's fairly quick and it's broad.

We could bring a lot of people's opinions in really quickly and find areas of disagreement and then really zero in on those to get to the

root of some of those. So I'd accept that as an approach for sure. Brian, go ahead.

Brian Cute: Yeah I'd just like to pick up a couple of points from Jeff. It's an interesting framing, you know, and I certainly understand from a logical and conceptual standpoint that if we frame questions this way and say well we can't ever say if something will happen then we should shy away from that.

But things did happen; front-running did happen - well allegedly happened. There was a lawsuit; it was settled. Tasting did happen. And while some people may have considered it wasn't a harm the ICANN community sure did.

And the community built a mechanism, an AGP mechanism, to minimize, refund as a result, to stop what it viewed as a harmful practice. So, you know, theoretically can we say well the question is framed but no one knows for sure so maybe we should shy away from that?

Another way of saying that is burying your head in the sand. And another thing I would say is a test of that is I'd like to ask anybody on this phone call if they knew 100% vertical integration was going to happen tomorrow would you put your hard money on the table and bet that those types of practices would not happen?

Mikey O'Connor: Okay dokey. Cheryl.

Cheryl Langdon-Orr: Thanks. And the perfect segue, thank you Brian, considering we actually haven't been talking to each for over a week, this is kind of scary.

Mikey O'Connor: I was wondering why Brian was back on calls with me. Okay, now I know.

Cheryl Langdon-Orr: You know, hiding in a hole with my fingers in my ears humming loudly saying don't talk to me. Anyway I'm out now.

The - to get back to something that you've me heard all say or type, some months ago now, this is where we get into the realms of risk assess as opposed to just yes and no answers.

And we possibly don't need to say more than that. There's a whole bunch of ways and a whole bunch of formats to do risk assessment on any question posed. Certainly the questions probably need some reframing and reformatting and I'm happy - believe it or not I am happy to do polling on them.

But that said we still need to be aware particularly based on the experiences that we've had on creating inventive ways - that wonderful world of ICANN - that we do perhaps need to realize it's risk assessment and perhaps (unintelligible) risk assessment on some things might be the only way to manage it.

Just the same as, you know, you put scaffolding up if it's a particular height in a building, you know, it's law you have to over a particular height but it's not do it below that height. You know, we might need just a little more on that. Thanks.

Mikey O'Connor: So don't go off mute yet, Cheryl, because I've got a follow up question for you. And that is - I mean, this in a way is back to the reactive/proactive dimensions of what Ken was talking about. And it seems to me that if, you know, if you presumed, you know, wave a magic wand and effective risk assessment is in place; forget all of the messy details of how. Does that capability reduce the need for any statement on ownership at all?

Cheryl Langdon-Orr: Oh my knee-jerk reaction - and it is exactly that - it's a reflect reaction is it does not.

Mikey O'Connor: Okay.

Cheryl Langdon-Orr: Have I thought...

((Crosstalk))

Cheryl Langdon-Orr: ...that? No I haven't. My reflex was oh no it doesn't.

Mikey O'Connor: Well, you know, I think everybody, you know, including me - and that was sort of my knee-jerk reaction, that's the reason I threw it out there. But I think it's, you know, at this stage in our conversation this is a good time to sort of step back and ask the basic questions again.

You know, why is vertical integration or separation an issue? It's because of things that will happen. And we're working on it.

((Crosstalk))

Cheryl Langdon-Orr: Risk.

Mikey O'Connor: Risk, right. And if we can get a handle on the risks and we can get a handle on consequences then I - that's the reason I blurted that question out.

((Crosstalk))

Mikey O'Connor: So, you know, I just put that out there as kind of - a thing to kind - I'm sorry I'm stepping on your Cheryl because of all the latency. I'll let you talk now.

Cheryl Langdon-Orr: That's all right.

Mikey O'Connor: Sorry, go ahead.

((Crosstalk))

Cheryl Langdon-Orr: ...Mikey, you can try.

((Crosstalk))

Cheryl Langdon-Orr: Just talking back across you which I was guilty of so I apologize about that. That heads us into some pathways and opportunities not into - not making a statement.

Mikey O'Connor: Right, right. And, you know, it's those opportunities that I'm sort of hunting for in all of this conversation.

Cheryl Langdon-Orr: Yes.

Mikey O'Connor: So thanks, thanks for that. Alan go ahead.

Alan Greenberg: Yeah, as the last few people have been talking it's dawned on me - and maybe it goes along with you saying stepping back - it's dawned on me what the task is we're actually looking at here.

We're looking at a long list of harms which is doubtful incomplete - or no doubt incomplete because we're not likely as innovative as the people who are going to make fortunes in some of this.

And we're trying to match it against what is effectively a continuum of possible integration or separation solutions because we don't know what's going to come out. So we're matching - we have a matrix with a lot of items on each of the two axis. And the concept of doing, you know, binary questions to say is there a harm in a particular case is an awful lot of binary questions there.

If we were doing this, you know, in a - let's say a corporate sense - when we're trying to design the right answer we could propose a particular implementation and then look at the list of harms as a sanity check to see is this solution prone to it or not.

We're not in the - we don't have the ability to do that and we have too many possible selections to do it all in parallel again given the time. So I think the best we're going to be able to do is go through the list of harms and, you know, almost say yes these are attractive ones which may well be something that someone is going to attempt to do.

And these are ones that the ultimate vertical integration separation solution has to address. You know, we're not assigning probability that they will happen but the probability is that they're going to be attractive enough to make people look at them carefully.

And I don't think we're going to come any closer than that. I'm not sure exactly how we do what I just suggested. But I think that's almost the direction we want to go in of characterizing the potential harms as something which are interesting or theoretically possible but no one's likely to bother doing them. I'm not sure that makes a lot of sense but I...

Mikey O'Connor: Well...

Alan Greenberg: ...I tried to phrase it...

((Crosstalk))

Mikey O'Connor: How about going back to Kathy's suggestion which was rather than structuring the analysis purely around the harms what if we tidied this list up and then ran the list up against the proposals and used the proposals...

Alan Greenberg: I think that's more...

((Crosstalk))

Alan Greenberg: ...likely be able to do and get agreement on.

Mikey O'Connor: I mean, that at least gives us one side of your matrix frozen and we'd have to do it like however many times the proposals are. But it at least cuts down the number of independent variables a little bit.

Alan Greenberg: I'm not sure the answer is on the question I was asking that is are these attractive harms enough to make people want to try to do them changes all that much. I may be wrong but...

Mikey O'Connor: I suppose another way to handle that would be to add that is it attractive question mark to the list of questions and let people think about that.

Alan Greenberg: I keep on going back to the fact that most of the harms that have happened in the past were not predicted two or three years earlier.

Mikey O'Connor: Right.

((Crosstalk))

Mikey O'Connor: But, you know, again our charter is to figure out the structure of the industry. And there is this, I mean, there was actually a reason why I framed all of these questions in the past tense and I did it on purpose; that was actually something I wanted to ask you folks and in fact now I'll do it.

You know, do we want to speculate on harms and include that speculation in our analysis or do we only want to address harms that have already happened? And before our knee-jerk reactions kick in let me offer that that's another hard question.

One of the - and so I fairly arbitrarily decided that it was an easier analysis to frame these questions in the past tense rather than trying to posit harms in the future that, you know, we wouldn't be able to do much except describe them. But that was just my take. Ron, go ahead.

Ron Andruff: Thanks Mikey. I've been just participating on the written list so for those who haven't seen it I've been asking the question why are we not taking the question of harms out to the larger ICANN community?

I posted something on this late in the summer so - on the list but I assume a lot of people were away and never saw it. But the question was why don't we create a wiki and invite all of the community by just putting a message out to the communities and through the constituencies as a wiki. And they can come and list their - the harms that they've experienced or the harms that they've, you know, that they're privy to.

And in that we could at least get a more comprehensive list of harms. Everyone on this group and on the list are agreeing that the list that we've created so far gives us some sense but it's not comprehensive. And so we're basically dealing with a very small portion of what the harms could possibly be or harms that people have experienced. And I'm just suggesting that if we're going to go further and try to bring this list of harms into some meaningful position where we can really draw some experiences from that and enable us to set some kind of policy going forward then we might want to consider a broader list of harms.

So Roberto had asked - it's not a question of should we go to the community but how would we do it. I'd suggested we just create a wiki or even on our wiki and invite people to come and add information to

that wiki so at least we have a much more clear list and with that clear list then we could start to define more tightly whether or not they have impact on the vertical separation or not. Thanks.

Mikey O'Connor: Thanks Ron. I'm watching the chat conversation unfold too. And I'm not ruling it out but I think what I'd like to do is sort of declare victory on the list and at least get started on some kind of analysis while we think about - is somebody else trying to speak? Am I missing somebody there?

Anyway I agree with Jothan; we would probably get a fair amount of noise from that. And I'd have to think about how we thinned that out. But, Jeff, go ahead.

Jeff Eckhaus: Okay. It's actually - maybe is a chance for me to come full circle to my point in the beginning about when I was just discussing on, you know, the references of who said what and those issues. I'm just going to throw this out there but maybe, you know, on the analysis of harms the people who contributed those harms where I found them, you know, that - those documents, maybe it'd be worth - I don't know it's just a suggestion - maybe those people would - could kick off some of the, you know, in the document or the analysis of the harms or why they believed so.

It's just a suggestion. Maybe that would be - since we have it all on the document who it was maybe those people can kick off some of the analysis. And maybe we could say hey, this analysis isn't working and we can kill it. But maybe it's worth a shot. I don't know, that's my suggestion on that.

Mikey O'Connor: Well I love that. Actually I was going to get to that in a second which is if we could hammer that list of questions into shape - and I think what I'll do is listen and - listen to the MP3 and take a crack at that.

The next step is okay how do we divide up all this work? There's no way that we can answer that list of questions as a group on the phone harm by harm. And so, you know, I was sort of headed in the same direction which is it would be nice if we could divide up the pile and let people go off and take a first try and that and then assemble the results as a way to sort of quickly get a lot of analysis done.

And so it seems to me that people should probably start thinking about which of these harms they would like to analyze, whatever the framework turns out to be. I mean, we haven't quite got it nailed down yet but presuming a framework then some, you know, then we've got a bunch of work to get done.

And one way to get a lot of that done at least in first draft very quickly is to divide them up. Ken, go ahead.

Ken Stubbs: Yeah, first of all my suggestion would be to take what you just said and put it on paper, get it out, get a thread started on it. And you might find some approaches that make sense.

The other thing is from a practical standpoint you're putting the burden back on people who are not necessarily members of the group because a lot of those contributions came from public sources from correspondence. So I think it's a matter first of all of getting a buy-in from these people and trying to develop some sort of an approach.

But let's be realistic, this isn't something that's going to get done in the next two or three weeks.

Mikey O'Connor: No.

Ken Stubbs: It's going to take time. If you - you're saying...

Mikey O'Connor: Yeah.

Ken Stubbs: ...I want you to do it and I want you to do it now I'm going to tell you to go pound sand. So I think - no I'm just being reasonable about this. But...

Mikey O'Connor: Yeah, no, no.

Ken Stubbs: ...look at the references in the list and that's what I'm talking about, you know. And I think from a practical standpoint...

Mikey O'Connor: No, I misspoke Ken. I didn't mean to go back to the original sources. I meant divide it up amongst us not amongst the original sources. And then if it turns out that we have some harms that are on the list that nobody either feels comfortable analyzing or agrees with then we can sort of deal with those and maybe ask people as a favor to come in. But my thought was not to ask people outside the working group to do this.

Ken Stubbs: Okay. I understand what you're saying I just think we need to be prepared for a spirited interplay because up until now, you know, a lot of people...

Mikey O'Connor: Yeah.

Ken Stubbs: ...have submitted stuff on the basis of things that have happened in the past but at the same point in time it's a matter of projecting based on past behavior with the assumption that there's no incentive for people to behave differently than they have in the past.

Pardon the expression for those who feel this is not a good term to use because I'm offending someone religiously but we're not - we can't expect people to suddenly find Jesus for the next round of the TLDs; it just isn't going to happen. Behavior is going to remain consistent and we have to project in some cases actions on the basis of past behavior.

And even though that behavior may have been different in that it was an approach to a specific process whether it was front-running, whether it was the add-deletes, whatever it may be, the assumption is that creativity is still there and the desire to profit in ways that may involve taking advantage of other people is still there. Thanks.

Mikey O'Connor: Thanks Ken. Well, you know, in a way we're getting into this delightful spot where everything is starting to get connected to everything which actually I think is good because this folds back to your earlier point about enforcement and the reactive/proactive side of that. And at some point we may have to make some simplifying assumptions about that and, you know, do our best.

We're drawing close to the end of the hour. There's still some pretty spirited conversation going on in the chat. Jeff, go ahead.

Jeff Eckhaus: Sorry, this is totally not unrelated but I know you alluded to this before and I - you might not want to answer this but do we have sort of a roadmap or timeframe on, you know, next steps, things like that? Maybe...

Mikey O'Connor: We have...

Jeff Eckhaus: I know you alluded to it and, you know, what's next and what's going on. Maybe if we could recap it. I for one am a little unsure. So - and now that I believe we have sort of a lot of more people back that summer is over that we could just, you know, give an idea - just to have an idea as to timeline and what will be happening next if possible?

Mikey O'Connor: So the - let me summarize where at least I'm at and then Roberto can come in right behind me. Basically we're in a condition of some uncertainty right now because we need to sort of hear what the board says and does at their retreat.

And so what I elected to do was pick a subject which I thought we needed to do no matter what which was this harms activity and do work like what we're doing right now which I think we will need to do no matter what while we await our future.

And our future is pretty indeterminate. I've got - I should actually start writing down the future scenarios and do a pool but I haven't done that. So let me throw the notion out that until we get to the end of the board retreat our work plan - the detailed tasks, steps, deliverables, is pretty up in the air.

And rather than try and invent one I decided to just pick a task that I thought would be useful no matter what our future held and that's what we're doing basically until the end of the board retreat.

At the end of the board retreat it'll get a lot clearer where we're headed and what our goals should be. And then right after that Roberto and I will have come up with a scheme as to how we proceed. But for now we're just doing things that we know will be useful no matter what and waiting a couple of weeks for that retreat to get done.

Jeff Eckhaus: Mikey, it's Jeff; can I just respond to that just a question is...

Mikey O'Connor: Sure.

Jeff Eckhaus: ...hopefully if you got - because this is not - I'm not the ICANN, you know, policy rules person so I may get this mixed up. But I don't believe that it's an official board meeting so I don't think that there will be a standard, you know, resolutions or something released from it.

So I don't know if we can count on something coming out of it. So maybe we could request it or I don't know what we're allowed to do or not. I don't want to get into that whole hornet's nest again about requesting things of the board or things like that.

But I'm not sure that we can count on a document resolution or something coming out right after that retreat. Or maybe I'm wrong about that, maybe Roberto or somebody else who's more fluent could answer that for me.

Mikey O'Connor: Well Jeff let me take a stab at it then Roberto can too. But I think it's probable that we will not get a resolution out of the board because as Roberto said earlier they don't generally do resolutions. But I think what will come out of it is a sense of what's going on and which direction they're planning to take.

And it's from that sense that we can draw our direction even though it's not necessarily formal. You know, one of the big questions in my mind is how fast we have to do whatever we need to do. And until I've got the answer to that I've been really reluctant to put us back into that sort of hyper-frenzy mode that we were in because I didn't know whether we would need to.

But I think after the board retreat is done we'll have a much clearer sense of that. Alan, Ken, are you guys commenting on this topic? If you are go ahead Alan.

Alan Greenberg: Yeah.

Mikey O'Connor: Go ahead.

Alan Greenberg: Well I asked the question that Jeff just picked up on a number of other people. My sense is we're not going to get anything out of this. And if your expectation is that this group needs some sense of the board or whatever I would run that by whoever the contacts are on the board ahead of time because I think if nature takes its course we will not get that. And...

Mikey O'Connor: Roberto and I are working that.

Alan Greenberg: Okay.

Mikey O'Connor: But I'm pretty confident that we will have a sense of where we're going to be going.

Alan Greenberg: I mean, the critical thing out of this board meeting or out of this retreat is are we indeed on schedule and is there an expectation that a final Applicant Guidebook will be issued around about the end of the year.

Mikey O'Connor: Right.

Alan Greenberg: Because that's the crucial question. If that is indeed going forward we don't have a lot of time left.

Mikey O'Connor: Well, yeah, you're precisely on the issue that I got.

((Crosstalk))

Alan Greenberg: ...is not going forward whatever the new timeline is the relevant issue.

Mikey O'Connor: Right. And that's precisely why I've been delaying coming up with a plan because if we have X weeks to get something done that necessitates a different plan than if we have X months. And rather than try and guess what that's going to be I decided to wait until after the board retreat.

Ken and then Roberto.

Ken Stubbs: Yeah thanks Mikey. Is there a board member on this call or if the board was monitoring this call, my statement to them would go something like

this: Hey guys, we've had between 40 and 60 people that have busted their asses - and I mean that seriously - for the last three months to try to give you at least to help frame this process for you guys; to give you as much information that you could get to help you try to arrive at some sort of a plan that is consistent with what you feel are the best interests of the community and ICANN and so forth.

If you sat on your thumbs and didn't say anything after this you'd really be letting us down. We're not necessarily looking for an exact direction or some sort of extreme clarity but I think the board needs to be able to respond in one way or another with some sort of a report other than Veni, Vidi, Vici.

You know, I think from a practical standpoint it's - they have a stewardship to the community. And I think this is something that really seriously needs to be done. I think it can be framed in such a way as to not create unrealistic expectations on the part of some of the members of the community either potential applicants or something like this. But at the same point in time we need to know whether or not there was any clarity that came out of this retreat, you know.

I think it's almost a matter of some form of transparency. They don't need to arrive at a formal action but they do need to provide more clarity as to where we go from here and what directions they're looking for from the community after this meeting. But, you know, I'd be really disappointed if they couldn't get somewhere, you know, because they've been pushing us real hard so it's our turn to put them - more heat to the fire - heat there.

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

Roberto Gaetano: First of all in just commenting on Ken's comment, I think that what the board would like to see is a clear consensus from the community that the board has just to endorse and that's it. So that would be the perfect solution. This is not going to happen.

Whatever is getting closer to this is that - is going to be their fall-back solution. So if we come with points that are points of consensus that is going to be orienting the board's decision.

But I'm saying this because I think that if we have a sort of expectation that the board will make some decision or will come to a certain point during the retreat and they will tell us so that we can orient the discussion we are wrong.

So I don't think that we are going to have a formal report from the board because that's not what happens at the retreat. There's no solution but there's also no report. What will come out will be one single line that says the issues of the new gTLDs has been discussed. Boom.

So nevertheless it is important that because we - and I sense this in the discussions - we have some sort of expectation that something magic is happening at the retreat that will change what we are doing or is giving a new directions or whatever.

That might happen but I don't think that this is the very likely outcome. However what will happen is that some - that the board members will be discussing and people will start making up their minds. And also will have opinions on the material that we have produced so far.

So first of all there are, to the best of my knowledge there are no board members on this call, but the MP3 and the transcription will be available. But there are people, there are board directors at least two that I can remember of that are - subscribe to the working group mailing list that are member of servers on the working group.

And I think that we can contact - we can ask those board members or I can also ask other people what, you know, what is the orientation of the board even if it's not a formal document. We can have a little bit more of information.

But what we are going to get for sure is the fact that past the retreat there's not going to be the question mark that we have now; oh what is going to happen at the retreat? And that is maybe blocking our going forward because what we might be going in the wrong direction.

So after the retreat is over I think that we'll have the road clear. And it's just upon us in which that action we are going to continue.

Mikey O'Connor: Thanks Roberto. Alan go ahead. I think you get the last word, we're a little bit over time so just to brief that would be good.

Alan Greenberg: Yeah, I'll be very quick. I was going to say something related to what Roberto said. I'm certainly not expecting a formal statement or decision. On the other hand the version 4 of the Applicant Guidebook did make it clear that should this working group not come to closure and not make a recommendation the board can address, which we haven't, that the board would rethink its position and make a decision.

And to the extent that any - that the range of options is narrowed down, any knowing that would be useful in our further deliberations post-retreat. You know, not that they're going to tell us the secret magic handshake, but any information of, you know, of the overall direction they're going to be going on, you know, a minor perturbation of the Nairobi proposal or of the Applicant Guidebook 4 or whatever, would help us accept that reality and give whatever guidance we need to the details.

So I don't know whether that's possible or practical but to the extent that there are any directions that come out of the retreat they would be useful to us. And I think that message we need to give them.

Mikey O'Connor: Thanks Alan. I'm going to wrap us up; we're a little late today, I apologize for that. Thanks all. I've - I'll listen to the MP3 and drive a bunch of the thoughts that you all had today into the document. And we'll reconvene in a week. Have a great day or evening as the case may be.

Alan Greenberg: Or many more conference calls.

Mikey O'Connor: Oh no, no. That's anonymous.

Alan Greenberg: Some of us have another few hours.

Mikey O'Connor: Oh you lucky kids. I don't; I'm all done. See you, gang.

Man: Good night.

((Crosstalk))

Mikey O'Connor: (Tonya), if you want to stop the recording that's fine, we're all done and thanks for your help.

Coordinator: You're welcome. Have a great day, okay?

Mikey O'Connor: Okay take care.

Coordinator: You too, bye.

Mikey O'Connor: Margie, Glen, thanks a million for all the help. See you soon.

END