

**Vertical Integration PDP Working Group  
TRANSCRIPTION  
Monday 20 September 2010 at 17:00 UTC**

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<http://audio.icann.org/gnso/gnso-vi-pdp-20100920.mp3>

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**- Commercial Stakeholders Group**

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Mikey O'Connor: Thanks (Lori). Thanks Glen. I think we should probably highlight the agenda which is mostly working on the revised version of the wiki. So while we're going through the roll call and all follow that link that I posted out to the Adobe area for that and then we'll visit at the end a bit about Roberto sent a note to the list right before the meeting, we'll talk a little bit about the logistics.

But this is the - I ran through that because we need to update our - let's see it's not a statement of interest it's an...

Glen DeSaintgery:Declaration of interest.

Mikey O'Connor: Declaration - I was trying to come up with the D-word. Thanks Glen. So if you have any updates to your statement of interest because of the agenda that we're discussing today please indicate that after we finish the roll call. Glen why don't you do the roll call?

Glen DeSaintgery:I'll do that for you Mikey. Good morning, good afternoon, good evening everyone. This is the 20th of September, the Vertical Integration call. On the call we have Richard Tindal, Katrin Ohlmer, Jon Nevelt, Roberto Gaetano, Alan Greenberg, Keith Drazek, Berry Cobb, Scott Austin, Avri Doria, Kristina

Rosette, Paul Diaz, Sebastian Bachollet, Krista Papac, Jothan Frakes, Jeff Eckhaus, Ruslan Sattarov, Mikey O'Connor.

And we have apologies from Siva. We have apologies I think from Cheryl - we can't get through to her - and from Caroline Greer. And I think Baudoin Schombe as well because I see that we can't get through to him. Mikey over to you. But may I also ask people to say their name when they speak for transcription purposes. Thank you, Mikey, over to you.

Mikey O'Connor: Thanks Glen. And thanks all for joining the call. Today what I'd really like to do is take another pass through the wiki page. I did a fairly substantial edit to it last week trying to incorporate a lot of the things that we said on the call. And so I really want to go through those changes and see what you think.

So don't look at the one that's in the Adobe Connect; take a look at the version that's in the wiki page that I posted. It's right at the top of the chat so if the chat is rolled off the screen the link is right at the very beginning.

Margie Milam: Mikey?

Mikey O'Connor: Yes, Margie, go ahead.

Margie Milam: This is Margie. I uploaded what you did last week. Did you change it over the weekend?

Mikey O'Connor: Oh, God, you're - I just - I'm sputtering. No I didn't change it over the weekend. So...

Margie Milam: That should be right.

Mikey O'Connor: That's a big never mind. Either place is the same. And I apologize, Margie, I didn't even think that you would have done that; sorry about that. So either

place is fine because they're the same. I'm just scanning down them and same to me.

So the - I'm going to start at the top this time. One of the things that we said on last week's call was to write a little bit of a preamble. And I did, I put it in the background section right at the top. And I'm not terribly pleased with the way those sentences came out so I might try and untangle them a bit in my next pass.

But the idea that I was trying to get across was sort of the set the stage for the reader paragraph. That was one of the things that we thought was a good idea on the last call. And I was really trying to emphasize how early this is and how unreviewed it is. So - that we've got plenty of room to revise it.

Then the next thing that I did was I pulled the analysis approach section which was at the end up to the beginning - that was another idea that came out on the call last time - to give people a sense of sort of what's coming. And then what I also did - and this is where we get into some substantive changes - is I added a number of things.

I left Mikey's first try there - those were the questions I came up with. But then possible components of analysis section is essentially summarizing a lot of points that were raised on the call. And so I wanted to draw your attention to those because at some point I think what we need to do is start thinning this down and deciding which ones we were going to try and answer.

We had a pretty lively discussion about how to do this. And I decided I wasn't comfortable choosing based on that. So all I did here was pull out the possibles and made a list out of them.

And then in the analysis approach area again I started just picking concepts out of the call and I included Ron's go down to the community and ask them

with either a wiki or a poll or something like that along with some of the other stuff.

And then I decided that this was also probably a reasonable spot to put another chunk of our conversation which was once we've analyzed all this and actually made recommendations how could we describe the implementation approach.

And that was because there were a couple of pretty good conversations on the call about the notion of essentially auditing and compliance as the primary approach or maybe there's an approach that includes an ongoing risk assessment or maybe, you know, that was a pretty sparse conversation so I mostly captured it as a topic and a couple of starting points.

Then the harms - possible harms arising from vertical integration section I took out the duplicate stuff that Jeff had pointed out to us. And I threw that all away to the end of the document so that I think now we've de-duplicated. I didn't do anything within the list except to take out those sections so we probably need to take a look at this and see if it's gotten rid of the duplicates or not.

And then I did the same thing for the possible harms arising from separation. There wasn't really a chunk that I could remove. And then the next big chunk that I added and formatted was ICANN-related harms and impacts on ICANN. And based on the call I moved Kathy's difficulty, complexity and cost of monitoring compliance chunk down to the bottom of that along with some of the other costs and impacts on ICANN.

So I decided that was enough of an edit that it was probably worth just dragging you all through it to see whether I did anything really, really wrong and get that identified so that I could fix it. And then sort of go over the next step which I think once we are comfortable with the way this reads is to start

dividing up - well deciding how we're going to do this, you know, finalizing how we're going to do this analysis and then dividing up the work.

So that's sort of where things stand. I think what I'd like to do is sort of stay at the 60,000-foot level; that would be probably 20,000-meter level, and just see if there are broad reactions to the document. And then I'd like to dive into the analysis approach area and really see if we can hammer something together.

But before we do that are there any thoughts about the thing as it stands right now that people would like to share? Jothan, go ahead.

Jothan Frakes: Hi, can you hear me?

Mikey O'Connor: Yes.

Jothan Frakes: So the one thing as I read through the harms I notice, you know, it comes from a variety of different sources. And there are just some terms in that that are a bit evocative, like a bit emotional or passionate. And I wonder if we could go through and just sort of make it a bit more neutral and passive? That would be my - just my one thought.

Mikey O'Connor: Yes, give me an example of one just so I know kind of what I'm looking for.

Jothan Frakes: Yes I had just - here we go - just looking under data harms for example. I think it's on Page 3 where, you know, the second bullet says, "Their integrated registrar and registrar could use the data in that TLD for..." the word nefarious - "purposes."

Mikey O'Connor: Oh okay.

Jothan Frakes: Maybe just change it to, you know, use of data in that TLD for, you know, warehousing names or setting pricing.

Mikey O'Connor: Yes I can kind of take a pass through it for that. I'll do my first pass and we can take a look at it next week. Nefarious...

Jothan Frakes: That was my only comment. Otherwise it looks good.

Mikey O'Connor: Yes. Nefarious isn't a word that just rolls right off my tongue I have to admit. So that's good, I'll do that next time around. Other thoughts people have? Well let's, I mean, we can leave that topic open, but let's go into the conversation about how we're actually going to figure this stuff out.

If you roll back up towards the top of the document where we have this section called Analysis Approaches we sort of have a puzzler in front of us that has to do with Roberto's email. But I'm going to just presume for the moment that we get to just chug along at our own pace on this.

We may have to throw all of this thoughtful, contemplative-type stuff aside and go back into frenzy mode after the retreat. But who knows? So if we were just going at this and we wanted to analyze these harms I think the - it's the sort of the first three chunks; it's Mikey's first try, other possible components of analysis which is a list that I drew from yesterday's call and then the approach which is the - really the approach and sequence of the work.

I think what I'd really be interested in is sort of what are the two or three questions that we really need to answer about each of these harms out of this laundry list of about a dozen that's up there now?

Because I think that we need that decision made so that then we can say all right who wants to pick which harms to analyze and give those folks a framework to do their analysis in. And this seems like too many; but maybe not? Maybe it's a, you know, it's a reasonable list it just seems intuitively a little bit too many. What do people think about that?

Or do you want me to just, I mean, one option would be I could de-task to go through and thin this list for the next call. But I'd like some ideas from you all before I did that. Scott, go ahead. Oh you may be muted Scott.

Scott Austin: Thanks Mikey, yes...

Mikey O'Connor: There you go.

Scott Austin: And one that I guess stands out to me is the Whois harms and what was the financial interoperational impact and it seems to me, I mean, that's sort of (Whois) the starting point. And some of the other questions are subsets or contained in that. And I guess the other one - the last two are sort of not (unintelligible) at each other, I mean, does this harm happen only in very (unintelligible) environment and to what extent the vertical separation would be an effective means to present that harm?

I think those are both very good questions and I think they're sort of the flip side of each other and (unintelligible). And I guess the thing that I'd be interested in knowing, again, and I think I've asked this before, you mentioned court cases, compliance activities, (unintelligible) there anything that ICANN has as a repository like we have in UDRP we have lists of domain name disputes that are cases and how they were resolved.

Is there anything with regard to ICANN's current enforcement policies and examples of instances and whether that's lost (unintelligible) accreditation by registrars or - I guess what I'm looking for is repositories of information where maybe a harm occurred based on their status as a registrar or maybe even a registry to see if we could just start to look at some examples and then we could go through this analysis.

Mikey O'Connor: Thanks Scott. Avri.



Avri Doria: Hi, yes I was just typing what I was going to say. This is Avri. I mean, basically what I see here is we have a laundry list of everybody's fears, worries about harms.

And unless we're going to do some serious analysis and weighing and study and whatever I'm not sure I understand why we need to cut them down ,why we need to neutralize the language as long as we're very clear to say, listen, this is a laundry list; we tried to pick up everybody's concerns, we tried to be non-repetitive.

The group has not passed judgment on these. The group has not prioritized them or analyzed them in any way. But here you are, here's a collected view of what may or may not be the harms. And as long as we're doing that I don't know what more we have to do with them. Thank you.

Mikey O'Connor: Thanks Avri. I think that's a really accurate description of where we stand now for sure. And, you know, I have been - I've been watching the chat go by and I think, you know, maybe what we need to do is amp up that background introduction section with something that reads kind of the way you just said it, Avri.

And I'll sort of go through the MP3 and try to do that because as I reflect on the neutral language notion I'm not sure that I want to be the one to do that until it's report-writing time. I mean, this is raw material for an analysis; it's not a report, it's not as though we're endorsing these. These are just as you said the laundry list of all the ones that we've heard.

And so I think maybe we leave it the way it is with a better introduction so that it's clear that this isn't a recommendation for sure. Jothan, go ahead. Oh you may be muted Jothan.

Jothan Frakes: I was muted, excuse me. Can you hear me?

Mikey O'Connor: Yes, now you're good.

Jothan Frakes: So, you know, I'm fine with just saying that that's a suggestion and perhaps that is something that we take towards the final state. You know, in listening to Avri I think she made a really good point. You know, for me I just would prefer to, you know, have these listed out and have it be something that we can say, you know, this harm could happen - Harm X could happen; Harm Y could happen.

And having the evocative language, you know, might erode someone's believe in it being, you know, an actual potential harm as opposed to, you know, a perceived potential harm. So it removes it from the realm of opinion and more towards, you know, somewhat of a statement of actual or true fact from that person's point of view.

But I'm fine to withdraw my suggestion. And, you know, perhaps that's just something we take to the final drafting.

Mikey O'Connor: Well Jothan I think that's the right approach. I think what we do is we leave the statements pretty much the way they are because, you know, they're for the most part extracted from other people's words.

And then it's our job as a working group to determine which of these are likely to happen and, you know, our words should I think be a little bit on, you know, edited for the neutral language thing. But I think it's okay to have the list be in the words that they were originally spoken and then let people analyze from that. Jeffrey, go ahead.

Jeff Eckhaus: Yes, okay thanks. Yes, Mikey, actually you kind of touched upon what I was thinking was these are the initial words and thoughts of certain parties that thought these are what they believe the harms could be.

And to change that around I think you would need - I don't know if you want the input or approval or whatever it is from those people because they could say hey you're watering down what I believe the harm to be. Or they could say hey, you know what that makes more sense.

But, you know, so people sent out these letters, posted these publicly because they had a belief that these are harms so to change it - their harms are what they believe I don't know if we could do that unless, you know, we do, as Avri said, a thorough analysis and say you know what, we need to tone this down because we as a group studied this and we now believe that the harm isn't as, you know, as strong as it was originally written.

And this is what we've found that we believe could be the harm. So I think to do that without any sort of analysis just to make the language - make people happier - I don't know if we could do that. And I would say voting against it unless the original proposer has a change and said I studied it, I thought this was the initial harm; now I've studied it further and I believe this is it.

So that's sort of my thought about that.

Mikey O'Connor: Thanks Jeff. I think we're all agreeing. I think we'll leave the language the way it is for this list. And I will go through and make it clearer that, you know, these are for the most part other people's words. And we've collected as many of them as we could find. I think that ties into Ron's notion that maybe we should go out to the community and see if we could collect some more.

And if we did I would think that we would treat those pretty much the same way; we wouldn't change them necessarily we'd just add them to the list. And then it's after the analysis that the words maybe get a bit more neutral or not. It may be that - I like this, (Earl). I've been reading the chat too.

You know, maybe the wording still says visceral but we all agree and that's fine. But I think the pre-analysis we can leave them pretty much the way they are. Alan, go ahead.

Alan Greenberg: Yes I don't disagree at all. But that being said if the originator in any of these comments wants to change the wording I think - don't think we should forbid that either.

Mikey O'Connor: Yes I think that's right. Okay so let's presume we have a list and we want to analyze it. How do we do that? That's what I'm really interested in today because I'd really like to get us started analyzing. And Scott started us off down that path with comments that he made. Do other people have ideas on sort of preferences as to how to go about this? Jeff? Oh Jeff just wants to get in the room. Jeff Neuman is joining the call. Wow. I haven't seen Jeff in a while. Welcome back Jeffrey.

Jeff Neuman: Thanks.

Mikey O'Connor: Thoughts about how? Oh I could paraphrase Scott's comments. I think Scott sort of zeroed in on the - in Mikey's first try he sort of said look, the first question was - is really who was harmed and what was the financial or operational impact? And then a number of those questions sort of sits underneath that one.

Scott also liked the partner - I'm not sure he liked them but he highlighted that the last two questions in Mikey's first try are really the same question; they're just opposite sides of the same coin.

And he also highlighted the first question and asked whether there was a repository in ICANN somewhere that collects this kind of information about examples of harms actually having happened, course cases, etcetera and that that might be a good place to start.

We've got a pretty lively chat going on. Anybody want to switch from fingers to phone? Ron, go ahead.

Ron Andruff: Thanks Mikey. You know, I'm thinking about the question you're posing, how do we go forward from here? And I'm not sure I have an answer but I do know that how I approached it when I - when this first list came through when Jeff E. prepared this list and gathered that stuff up and the subsequent iterations have come through.

I've been making my notes in the columns, you know, as to how I feel about these various elements and so forth. So I'm wondering if maybe we want to break it down - break them down into the various blocks of issues.

Let's say for example front-running, put a paragraph or two; gather the facts about - that have been - or let me take that word fact back - gather the information that's been prepared by others under the various rubrics, front-running or let's say collusion or shelf space, and then let the members weigh in with their comments on those particular elements.

So I'm just thinking about maybe slicing this thing up and creating a space for people to start weighing in with commentary online or through the list to get this thing started because I'm not sure we can all kind of - you can't bring one topic to the table and we all start throwing in our thoughts and comments on a call. I don't think we'll ever get through it.

So it's just an idea that we might try to slice this up a little bit into various issues, the various harms that are starting to aggregate, and people can start putting their comments in with regard to those things. Maybe that moves the ball down the field.

Mikey O'Connor: Okay thanks Ron. Jeffrey, go ahead.

Jeff Eckhaus: Yes, thanks. I think Ron's got a pretty good point there. I think that's a good way - if we decide to do an analysis sort of to take a few of these specific ones I don't know - I know this is a sort of land-mine question but if there are certain ones that people say hey this is a more egregious one or, you know, something like that we start with those.

You know, I mean, I think that is a way, ones that - we could say I know we hate polling or anything of that sort but maybe one - a way to do it is to say hey which ones are - which harms are people most worried about? And maybe we could analyze those.

That's just to choose a starting point or we could work from ones - which ones are the people least worried about? And start, you know, maybe the easy ones first. But I think that's a good way to start is to take one or two or three and move forward from there and see, you know, sort of have the group analyze it. I think that's a good way to do it. I think Ron's got a good starting point there.

Mikey O'Connor: Okay. So then the question would become how do we - how do we do clumps? Do people want to throw some ideas out right now on the call as to sort of the major harms that have evolved? Is the list a good starting point for that or do you want to, I mean, one thing we could do - I know it's the dreaded word - but we could do a little poll and take this list as it stands now and throw it out there and let people indicate which ones they really wanted to focus on and go from there. Alan.

Alan Greenberg: I'm getting a little bit confused. I thought the last idea that was proposed - I think by Avri - was that we identify this as a list of harms that have been identified; we're not trying to refine it or prioritize them and leave it at that. And now we're back to how do we analyze them and which ones do we do first?

If we have a poll maybe we need a poll to decide are we doing a lot of refining and trying to categorize them and prioritize them and say what are the chances of them or are we simply presenting them for some future analysis not by this group?

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

((Crosstalk))

Mikey O'Connor: Yes, maybe we need to get Avri back in the conversation. I didn't hear her say that. I heard her say...

Alan Greenberg: Okay well...

Mikey O'Connor: ...that in terms of putting them in this list which is the starting point list that we don't refine them much. The second list...

Alan Greenberg: I may have mis...

Mikey O'Connor: ...is the one that's refined and that's the one that's after the analysis we do.

Avri Doria: Can I put my hand up?

Mikey O'Connor: Oh Avri.

Avri Doria: Yes, sorry I didn't get my hand up but I go called on.

Mikey O'Connor: Yes you did.

Avri Doria: I think that what I was describing was what the list is. And in that respect you're right. I think - and the fact that more online and that is I don't believe that we can go any further. I believe that the original authors could certainly expand what they said and give more characterization certainly.

And I agree with Alan that if the original proponents or I'd say even someone else that subscribes to the same view as the original proponent wanted to expand on the wording and either, you know, do whatever I think that would be okay.

I think the notion of us doing a deeper analysis is something that's already been excluded by many of the people on this list. I know certainly I was in favor of doing a deeper, you know, risk analysis and I argued for it - excuse me - and various people talked about how it wasn't possible, how it wasn't reasonable.

And I thought that eventually we got to the point of saying yes listing out the harms that people see has some utility but this group has not accepted the notion nor is it seeing itself as capable of doing a deeper analysis.

And so therefore I would agree with what Alan was characterizing as the other point of sort of saying let's just leave the list as-is, you know, let all the proponents and supporters of the proponents amplify the language as they see fit and then move on to whatever else is on our plate because we're done with harms. Thanks.

Mikey O'Connor: Okay. I guess I didn't take the - I didn't take that sense of the group quite as seriously as you did in terms of conducting an analysis. Maybe, you know, I think we're right at the nub of a really important question because what I've been sort of presuming is that we're going to analyze these. And if we're not then that's fine. But I've been - I've been wildly mistaken.

So let's drive that one to ground right now because if we aren't going to analyze them then I think you're right, Avri, I think we're pretty much done with this. But I am sort of laboring along under the notion that there is a way that we maybe haven't defined what that way is and that maybe risk analysis was a term that got people too excited.



But I didn't realize that that extended all the way to not analyzing them at all. So let's chew on that a little bit. Ron, go ahead.

Ron Andruff: Thanks Mikey. I think there's a certain amount of analysis that has to happen here. Many of us on this call are not from the technical community so we're not necessarily aware of all the things that can happen through writing various code and so forth. But, you know, when I read this list it's a pretty egregious list.

And, you know, if I'm just looking at the comments that were made - I guess this goes back to the 4th of August so it's a little bit older document but it's - was the one you used to make the summary up. But it says under availability pricing harms almost free domain tasting then comes domain front running then post-tasting pricing.

There's, you know, there's only three elements in that whole thing and they're all pretty serious, collusion between two parties, shelf space, easier cyber-squatting, account lock-ins; those things are serious issues and they need to be discussed.

And I would like to know more about what those unfair marketing relationships between two vertically integrated entities could be. It's just a bullet under other harms but I'd like to know what that means. I'd like to know what shelf space means in detail. Those are the - these demand some discussion within this group.

So we really have to figure out how we do it but we cannot just say okay we've come up with a long list and even members of the working group don't know what these - list means; that doesn't cut it. Thank you.

Mikey O'Connor: Thanks Ron. Jeffrey, go ahead.

Jeff Eckhaus: Sure and I just want to add to that to what Ron said is that while these - another point to discuss - and I think this is really the big key to everything is are these harms - do we believe they are a direct result from vertical integration meaning they could not happen if there was - if there's forced vertical separation could any of these harms - would it prevent these harms from occurring?

Does vertical integration make it easier for these or is it the same? And that's sort of something - I don't know if we could look at it because it would all be opinion, you know, that we can't prove any of these - a fact until, you know, we have it unless we see - we can study it in ccTLDs and some of the other existing but we can't say it is a fact in new gTLDs of course.

But I think that would be an important question to also review if we decide to go that route.

Mikey O'Connor: Thanks Jeff. Scott go ahead. Oh he may be muted again.

Scott Austin: Yes I don't know - it's just taking me a little longer to unmute. But I appreciate Ron, you know, bringing it up because I agree with him that I think that having gone through the exercise this far as a group that it does - the list demands some sort of analysis.

And if it's shallow and it needs to be labeled as that (unintelligible) that's all we can do with that. But this is a pretty erudite group that's been assembled here that has a lot of exposure on the day to day workings of these technical areas.

And I think that if people - if it's made the list, it's obvious that there's somebody - that someone working in this area is aware of. And whether or not it gets boiled down to 100% certainty or 100%, you know, of anything - I don't think we can reach that but, I mean, there's got to be a certain confidence interval that these things are likely to occur or not likely to occur in

the presence of vertical integration or vertical separation, whichever way you want to go.

And I don't think we've had that out yet. And I think it deserves to at least go through that much of analysis. And as Jeff said it doesn't have to be whether it occurs or not but I think there is a question of likelihood and whether that's a percentage or whether it's speculation that it's more likely than not, as simple as that, I think that it's worth going through that exercise.

Because I don't think you're ever going to have a group that's spent as much time over the past months boiling this down to at least some recognized harms, the things that have actually been put to paper, and if we just forgo that and say okay here's a list it will be - it will die by (faint) praise or die by (faint) analysis or die by the fact that nobody cared enough to take the next step. And I think it's worth it.

Mikey O'Connor: Thanks Scot. Eric, go ahead.

Eric Brunner Williams: Thank you Mikey. I want to differ with Jeff E. that really because collusion is possible without vertical integration that we should not examine it in the context of vertical integration.

And the same observation or the same rationale for the non-examination of a argued harm that it might exist or it does exist or it can exist in the presence of complete vertical separation therefore it is not a proper subject of study in the context of vertical integration. I differ with that completely. Thank you.

Mikey O'Connor: Thanks Eric. I guess I'm going to frame this question a slightly different way because when Avri brought this up I hate it when I feel like my perception of reality is like completely wrong.

And I don't think that...

((Crosstalk))

Mikey O'Connor: I don't think that Avri was arguing against doing analysis, I think she was pointing out that she brought up the possibility of risk analysis on the list and got pretty strong resistance to that idea. If we were to step back from the phrase risk analysis and just say that we want to do something with this list, some sort of analysis, as yet undetermined but hopefully figured out soon.

Is there anybody that doesn't - that wants to just stop and leave the list right here where it is or - I just want to make sure that I'm not completely missing a really big point. Alan, go ahead.

Alan Greenberg: Yes, we've had a number of different things raised in the last few minutes and I think we need to differentiate between them. The issue that Ron brought up that things may be understood by the person who presented it but not by someone else just reading the list and making - understanding the shorthand or the buzz words they've used is a very important issue.

If the issue is not being described clearly enough so someone who does not make this their life cannot understand it at all then I think that needs to be fixed. The issue of analyze again, looking at the probability of it happening or the impact and that kind of thing I think is a different issue and we need to separate the two questions out and - in the discussion.

Mikey O'Connor: Okay although I think that the first part isn't terribly controversial; I wouldn't...

((Crosstalk))

Alan Greenberg: I'm not saying it's controversial. But Ron raised it in the same discussion as we're having about whether we should do analysis and...

Mikey O'Connor: Yes.

Alan Greenberg: ...I don't think that's quite analysis. Now maybe he meant something deeper than that but certainly that aspect of it I think is a separate issue from analysis. And...

Mikey O'Connor: Okay.

Alan Greenberg: ...it should be done prior to it and presumably prior to our publishing a report listing a harm which no one else will understand.

Mikey O'Connor: Yes, absolutely right; I agree with that. But I think everybody does. Avri, go ahead.

Avri Doria: Yes, this is Avri again. I guess whether we call it risk analysis which has a proper format or any kind of analysis within that analysis there's judgment of is it true, is it not true, is it likely, is it not likely, how closely does it relate to a reality, how far is it from reality and some notion of priority between them.

I'd see that as the activity that we should engage in because I don't think we are capable of engaging in. I think that the whole, you know, further elucidation of what people mean by their issues like I said before I think that's great. You know, if people want to write more, if they want to explain what on the shelf means or they want to explain any of these other things so that they're sure their point gets across I think that's great.

What I'm sort of become against is calling anything analysis that is not properly speaking analysis. So to say we analyzed these I think would be a wrong thing at the end of the day because I don't believe this group has sufficient cohesion to actually be able to analyze anything.

But I do believe that this group has the ability to make sure that what they say is clear and understandable even by people who don't agree with them. And so certainly I'm in favor of everybody making this list totally understood so

that anybody can read it and can say ah-ha, yes, that is a possible harm; I understand.

And it only relates to the cases where there is vertical; or it only relates to the cases where there isn't; or it only relates to cases where you have 33.3% vertical. But I just don't see us as able - as capable or the proper unit at this point to do what could properly be termed analysis.

Maybe I'm being, you know, an academic pedant in calling that but I think analysis is a word with certain meaning and connotation and we shouldn't pretend that we're going to do it. Thanks.

Mikey O'Connor: Thanks. I have to sort of stop and cogitate about that for a minute and make sure that I didn't accidentally pick the wrong word. If we were to - Avri stay on the line for a second with me.

If we were to try to determine the group's view on the - I'm just going to pick one; I'm not going to necessarily pick the right one - but, you know, the group's view as to how to - just picking the last one in Mikey's first try - could we determine our view as to the extent that vertical separation would be an effective way to prevent a given harm? Or do you think that even something like that is beyond our capability?

Avri Doria: Yes I believe that we're - we have basically politically divided ourselves - or opinionally divided ourselves to the point where no I don't believe as a group we could determine that something was or was not a possible result of vertical integration. I believe we would have some people that said it was, some people that said it wasn't.

The split would be - I can't determine what the split is because...

Mikey O'Connor: Yes, yes.

Avri Doria: ...there's basically, you know, like in a lot of elections there's people who are strongly pro-opinion, people who are pro the opposite and then a bunch of swing people in the middle who decide point by point which ones they agree with.

And so I don't believe in this group as it currently exists we can make any definitive decisions. You know, that's why I suggested, which I admit was totally trashed by people, the notion of trying to come up with a statistical measure that sort of gave us a notion of what the average viewpoint was and what the variance on the viewpoint was. But I do not believe we could come to a consensus point on most any of these. Thanks.

Mikey O'Connor: I may be guilty of the mistake of running us right down the same conflict that we've just been through. And maybe you're just driving it. That's something I have to cogitate about. While I cogitate, Ron, go ahead.

Ron Andruff: Thanks Mike. The - Avri and I have been carrying on this dialogue a little bit on the list in terms of what are the right words. And I see (Clo) has checked in also about the nomenclature. You know, it's really about amplifying what these are. I think maybe that's moving more in the right direction and doing an analysis.

But amplifying what the harms are is the work that we need to do. Once that's done I agree wholeheartedly with Avri and others on the working group that it will be very difficult for us to say well this is a harm for VI; this doesn't harm VI. Let's, you know, we're never going to get there because for all the good reasons she just stated.

At the end of the day what we need to be doing at this stage of the game really is making sure that we fully flesh out as many harms as we can and say that these are the issues that concern many in the working group that should vertical integration go forward or should vertical integration not go forward that's why.

But I think if there's a long list that gives the people at least an opportunity to understand why there were a number that were for vertical integration and why there were a number of people that were against vertical integration based upon those more amplified clarifications on what those harms are. Thank you.

Mikey O'Connor: So I'm just going to pluck one idea out of the chat from Volker. What if we got the harms really shaped up in terms of the language so that they were very clear since we seem to be agreed that that's important. And then build the arguments for and against the harms.

And then Volcker says maybe without even declaring a winner in the end. Is that a direction that works for people? I'm going back to the queue now. Alan.

Ron Andruff: May I respond to that?

Mikey O'Connor: Sure, Ron, go ahead.

Ron Andruff: Yes, no I think - yes, can we do it? Sure, I think it's possible to do it. But I think it comes back to the point it's a fool's errand; at the end of the day we will get to a point where we've got half the group saying these are not harms and half the group saying these are harms and for these reasons and that reason.

So I'm not sure if it's really a good use of the time but clearly like I said before amplified clear harms so everyone can see it, that we can do. Thanks.

Mikey O'Connor: Okay. Alan go ahead.

Alan Greenberg: Yes, a couple things, to the extent that we could come to closure on any of them saying this one only happens in vertical integration or this one might be more likely in vertical integration it would be good to add that if we could



come to closure on that, we probably can on some of them and definitely not on others.

But Volcker's last question of does that mean if 1 out of 100 evildoers, to use his word, does something then we shouldn't have vertical integration? I think that's exactly what we're not in the position to do. You know, we can't measure these things with a precision to predict 1 in 100 will do it or 6 in 100 will do it or 50 in 100 will do it.

We can try to put a metric on whether it's possible but we can't use our crystal balls to think whether someone's going to do it or what percentage of the community would do it. And if we even try that we're getting down into a path that I just don't believe we should be following.

To the extent we can come to closure on agreement, fine, but more than that I don't think we should be venturing there.

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

Scott Austin: Sorry I'm trying to turn off the mute as quickly as possible. The - something that come to my mind and this is sort of a law school rubric but the use of the term permit, preclude, prefer and I agree with everyone who's made a comment that do statistical analysis or some kind of predictability with percentages is absolutely impossible.

But just the idea of whether the presence of vertical integration would permit a particular harm to occur to perhaps we could even go so far as to say would create a preference for it or create a greater likelihood than not. And then in another context perhaps say vertical separation would preclude a particular harm, just a couple of ideas to throw out in terms of words.

Mikey O'Connor: Those are interesting words. I'm kind of following the chat. And I guess the - this is helping me understand better. I'm still interested in sort of capturing the

wisdom of the group about these things because I agree with the argument that people have made that we've spent an awful lot of time on this and we're probably among the best educated folks as it comes to this particular issue.

And so I'm wondering if instead of treating it as an analysis or treating it as a statistical exercise if we treated it as a sense of the group kind of exercise. And maybe get back to Avri's notion that says, you know, and to a certain extent Volcker's that says we have a series of pretty well defined harms.

We asked ourselves a series of questions about those harms. We record the results for posterity and then we move on. I hate just defining them and then stopping; it seems like there's knowledge and wisdom behind that that we want to capture.

I'm not exactly sure how to do it. But before we go into the how I want to see if I'm on the right track. Is that the sense of the group that people would like to somehow capture some of our knowledge, experience, wisdom, whatever about these or do we really just want to stop at listing them clearly? I guess I'd like to hear a bit more about that.

I'm reading chat. Anybody want to jump on the phone and talk? I'm not - so maybe we've driven this bus far enough for today. Let me - there have been a lot of really good ideas that went by on the call and in the chat. Maybe I'll take an action to listen to this part of the call again and see if I can summarize the points.

And I find that when I listen to the MP3 I often find connections between things that I didn't hear as the call was going by. So let's leave off this for a while and let me do one more turn of the crank.

Let's - oh Roberto, go ahead.

Roberto Gaetano: Yes just one thing, when we talk about the harms I saw also on the chat that there were discussions related or if one harm applies - if vertical integration or vertical separation can limit a certain harm and the fact that we might disagree on this.

I think that there's also - if we start thinking a little bit more and more than that of the different harms there are also other things that might pop up like for instance a certain particular harm might not happen in a specific case like, I don't know, single registry, single registrant.

So in that case maybe that could be helpful in identifying some subsets for which - for instance vertical integration will be possible because the harms that are generally possible in that particular case do not apply. So that was a bit - a starting point for the exercise of the harms.

I don't think that any of us was thinking that we could have complete agreement on which harms would apply for vertical integration or vertical separation. But if we - in the next days if we - I hate to use the word analysis because maybe we - different people will give a different meaning to this word.

But if we - if we then try to figure out and be more specific and find the (unintelligible) - the consequences of the harm and how they apply and when they apply maybe we can have a better picture. I don't know if that is - sounded probably confusing and maybe later on I will try to put that in writing and send it to the list.

Mikey O'Connor: Thanks Roberto. I think that one of the sort of bright phrases that sort of popped out of this conversation for me was when Avri said that this group isn't capable of coming to an agreement about that because we are so deeply divided on the underlying point.

And so we might not be able to arrive at some of those conclusions even though I think it would be useful to try again to get the sense of the group and see if we can slice this a different way. Eric, go ahead. You may be on mute, Eric.

Eric Brunner Williams: You hear me now?

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

Eric Brunner Williams: Okay I want to ask a simple - a simplified reply to Roberto's comment in order to see if I understand it. Roberto, are you asking a question in the form what harms cannot - or what precursors for a harm cannot give rise to harm in let us say in a community application that is vertically integrated with a - I mean, a community registrar, registry integration by nature of the community being somehow incompatible with the harm.

And conversely what precursors from harm can't give rise to harm in a standard application with a standard registry integrated with a registrar? Is that kind of the sense of your question to discover what harms are not possible or what types? Thank you.

Roberto Gaetano: May I answer?

Mikey O'Connor: Yes go ahead.

Roberto Gaetano: What I'm trying to say is that if we go through one by one through the harms there might be some harms that apply under certain circumstances but not generally. And if we can isolate those situations in which the harms do not apply for instance the example that you are making in a community application, maybe some of the harms in a community application do not apply while they apply in a general situation.

In - we may then have some reason for considering the community application in a different way from the general application on the basis of the fact that those harms do not apply. Does this answer your question?

Eric Brunner Williams: Thank you, Roberto, it does, yes.

Mikey O'Connor: Okay this is great. I feel like we worked hard and I will listen hard to the MP3 and see if I can - and also I've got the chat transcript and I'll see if I can pull something together because I think we're on the right track I just don't - I can't invent it on the fly on the phone so let me try it and then we can edit what I come up with.

For the last little bit of the call Roberto sent a note to the list just before the call that is called worried. And he had a series of about five questions that I think I'll just paste into the - going to cheat and just paste it into the agenda down at the bottom.

And his question really is what's going on? And then he's got a series of five questions. And I thought it would be useful for us to talk a little bit about this on the call. But Roberto, if you didn't intend that I'd be happy not to; I just thought it was a really interesting series of questions and I didn't ask Roberto before I did this so let me take a minute to check and see if that's okay.

Roberto Gaetano: Yes...

Mikey O'Connor: Did you - are you okay with that or would you rather have it sort of take place on the...

Roberto Gaetano: Yes.

Mikey O'Connor: ...you know, we've got a pretty lively conversation going on the email list and maybe that's the right place for it but...

Roberto Gaetano: I don't mind having it during the call if we have time. The sense of my worry is are we, you know, is this a moment in which for the number of reasons we are not so active, for whatever reason. And will this change in the future or are we getting at the end and we should just, you know, stop with what we have because we don't have the intention to go any - or the strength or whatever to go any further.

That is this kind of question so is it worth it to try to find new ways to go forward and will this topic still have the interest of the participants to this working group or should we just call it a day and that's it and leave it to the board, you know?

Mikey O'Connor: Yes, well I think it's - I think it's a great series of questions. I think I'm going to hold off with my answer and let other people chime in for a while and see what people think. Anybody want to - I haven't read any of the subsequent email. Does anybody have any thoughts for Roberto on this? I don't see anybody leaping. I suppose I could go read the email real quick.

Well one thought that came from Alan is that - oh Alan, you've gone ahead and raised your hand. You go.

((Crosstalk))

Mikey O'Connor: I was reading your email, I bet I know what you're going to say.

Alan Greenberg: I was pointing out that for at least some of the participants the morality and public order group has been very, very active with many, many emails and a lot of meetings so that's certainly been a distraction.

And I suspect there's a fair amount of exhaustion and as you can see from this discussion there's some belief that the harms is something that we're not - we're not going to get very far on no matter what we do and therefore I suspect some people haven't focused on it. So, a combination of all of those.

Mikey O'Connor: Thanks Alan. I sort of spun through the list and, you know, I tend to think that we're sort of at a point where our future is being - is likely to be determined by others. And those others are going to meet in Norway pretty soon. And they're a sort of - I think there are several possible outcomes; one is the outcome that we're essentially done; we've sort of reached the end of what we as a group can do because we're deeply divided and so on and so forth.

Another is we're essentially given another task by the board and we go back into frenzied negotiating mode. Another is to go through the rest of our charter because we haven't touched all of the bases in our charter yet.

But I personally haven't been pushing the group real hard for a lot of those reasons; not knowing where the board is at, not sure where to go next. I'm not personally. I'm tired. And everybody is awfully busy.

Kristina added the notion of the day job and while I don't have one of those I do have a boat. And so I'm sort of of the mind to wait a couple of weeks before trying to really make this determination because I think we will really have a lot better information after the board.

I know that they won't say anything formally but they will have talked about it. There's - I think one of the biggest issues is timing, you know, how soon is the Applicant Guidebook going to roll out? Is it going to be towards the end of this year or is it going to be another iteration? There are just so many unknowns that it's hard to sort of work everybody back into a frenzy right now.

So my inclination is to just wait a couple of weeks before trying to answer that. I don't think that we're done no matter what. You know, at a minimum I think we have to consciously wrap this up; we can't leave it in the state that we're in right now. We have to finish it.

But there could be a relatively light amount of work to do that or there could be quite a lot of work to do it. And I think we need to wait until we know what the rest of the circumstances are before we choose. So I'm not as worried as Roberto. But I, you know, as I say I'd be interested in hearing from others of you about this. Sebastian, go ahead. Oh you may be muted Sebastian.

Sebastian Bachollet: Hello?

Mikey O'Connor: Oh there you go. Now you're working.

Sebastian Bachollet: Yes, I was muted. Yes, I - my feeling is that we will have still work to do because the retreat will not be the endpoint. I don't see how we will not have something to be done for Cartagena because the three main item who are all in front of us in the different working group about DAG is - are very important to have some - it's my feeling, it's not any - I have no information at all but it's my feeling that we will need to have a live - in-live discussion.

And I have different reason why I don't think what Avri write that the retreat will be the endpoint - that it will be the endpoint. I have different reasons, the first one is I think that we will - board will say or people will say in the community that to finalize some of those so important points we'll need the face to face meeting and that will be Cartagena.

My other point it's the composition of the board today knowing that it will be changing after Cartagena; it's something who worries me a lot because this time - and I guess for the first time but it's - you have three boardmen that are changing that could be a big point in the discussion.

And my third point is that during the IGF we had some talk. And I was in a working group where we talk about the ccTLD. And after my presentation the chair of the board say we will discuss that item during the retreat. And it was something - it was never heard before.



My point was if we came - if a different new gTLD candidates came saying that they are - this part is the same in the - in the answering the proposer saying ICANN don't need to study that five times because it's the same it will cost less for everybody. And for the first time I heard that they will discuss that as an issue.

And then I am not sure that they will not come out with some tweaking things that we will have to discuss prior to Cartagena. Once again it's just my own feeling and nothing else. Thank you.

Mikey O'Connor: Thanks Sebastian. And I don't know if I have said it on the call but congratulations on your recent appointment; that's very exciting. I think that what we need to do is sit tight for a while and let other events evolve before we choose.

I think as I said a few weeks is going to provide a lot of information and we'll be in a lot better shape to choose sort of where we're going. I mean, not that we get to choose but we will be better informed about our future, let's put it that way.

Anybody else want to chime in on this topic before we wrap up? I think we'll wrap up a little bit earlier today than normal. I feel like I've got a pretty tasty MP3 to go listen to and try to summarize for the call next week. I'm not seeing anybody throwing their hands up so we'll call it a day today. Thanks for joining us on the call.

And as I say we won't try to sing Happy Birthday to Margie with this many people on the call but I do strongly encourage you to listen to the end of the RAP Drafting Group call this morning when the MP3 is posted as we did attempt to sing Happy Birthday to Margie with varying degrees of latency over a multiparty international teleconference. And the results are I think quite hysterical.

So with that have a great day and we'll see you next week.

END