SUMMARY OF PUBLIC COMMENT ON INITIAL REPORT ON INITIAL REPORT ON VERTICAL INTEGRATION BETWEEN REGISTRARS AND REGISTRIES

I. Summary and analysis of public comments for the Initial Report on Vertical Integration Between Registrars and Registries

Comment period ended:	12 August 2010
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II. BACKGROUND

The GNSO Council has commenced a policy development process (PDP) on the topic of vertical integration between registrars and registries. The GNSO Council formed a working group to evaluate whether any policy recommendations should be developed on the topic of vertical integration between registrars and registries affecting both new gTLDs and existing gTLDs. The Initial Report describes several proposals regarding vertical integration that have been developed and analyzed by the VI Working Group for the New gTLDs. No proposal included in the Initial Report has achieved consensus support within the VI Working Group. These proposals were included for the purpose of seeking public comment and will be subject to further analysis and debate as the VI Working Group continues to strive to develop a consensus position to recommend to the GNSO Council on an expedited basis.

III. SUMARY ANALYSIS AND CONTRIBUTIONS

Twenty-two contributions were received in the Public Comment Forum on the Vertical Integration (VI) Initial Report. Two Stakeholder Groups and three Constituencies submitted statements. These five statements are provided in **Annex A** of this Summary.

The following contributors participated in the Public Comment Forum (listed in alphabetical order):

Name: On Behalf of:

Nacho Amadoz   puntCAT
Eric Brunner-Williams   dotNAI Project
Steve DelBianco   Business Constituency (BC)
Keith Drazek   VeriSign, Inc.
Jeff Eckhaus   Demand Media
Brett Fausett   Adorno, Yoss, Alvarado & Smith
Volker Greimann   Key-Systems GmbH
Debra Hughes   American Red Cross
Ashe-lee Jegathesan   Melbourne IT
George Kirikos   Leap of Faith Financial Services Inc.
David Lesvenan   ECLID
David Maher   Registries Stakeholder Group (RySG)
Naomasa Maruyama   Japan Network Information Center (JPNIC
Michele Neylon   Blacknight Solutions
Constantine Roussos   Applicant for .MUSIC
Glen de Saint Géry   ISPCP Constituency
Daniel Schindler   Himself
J. Scott Evans   IPC
Antony Van Couvering   Minds + Machines
Jean Christophe Vignes   EuroDNS SA
Clarke Walton   Registrar Stakeholder Group (RrSG)
Christopher Wilkinson   Himself

As described in more detail below, the following observations can be reached from the comments submitted in the VI Public Comment Forum:

- ICANN should quickly resolve the issue of Vertical Separation

- No consensus is likely to emerge from the VI Working Group in favor of any of the substantive models discussed in the Initial Report

- There is generally no support for the models reflected in the Nairobi Board Resolution and DAG v.4

- There is general support for the Key Principles described in the Initial Report that:

  o Certain new gTLDs likely to be applied for in the first round may be unnecessarily impacted by restrictions on cross-ownership or control

  o A process should be adopted that would allow applicants to request exceptions in the event ICANN adopts a strict separation model and have them considered on a case-by-case basis

- o Single Registrant, Single User TLDs (SRSUs) should be explored further
- o Recognized the need for enhanced compliance efforts and the need for a detailed compliance plan to enforce any vertical integration restrictions adopted by ICANN
- There are general concerns regarding adopting a model that requires involvement of national competition authorities that may not understand or have experience with the domain name marketplace.

This Summary only reflects the comments submitted to the Public Comment Forum on the Initial Report. Additional comments related to the topic of vertical integration submitted in the Public Comment Forum on the Draft Applicant Guidebook v.4 are not summarized below, but instead are incorporated by reference. [1]

IV. GENERAL COMMENTS

Policies that prevent registries and registrars from owning each other limit competition and thus negatively affect consumers by denying them better prices and services. *Demand Media Comments, submitted by Jeff Eckhaus on 12 Aug 2010.*

The exploit of the present – is the masquerade by existing contracted parties that they are the "applicants," and their interests substitute for the interests of applicants who seek to enter into a registry operations contract and begin service to registrants through registrars. The allocation of benefits to existing beneficiaries of past economically, geographically, culturally, and linguistically limited grants of contract is not a substitute for expanding service beyond the legacy monopoly and the beneficiaries of the 2001 and 2004 new gTLD rounds. *Comments of dotNAI Project submitted by Eric Brunner-Williams on 12 August 2010.*

The vertical integration debate only exists because ICANN plans to allocate new TLDs in a way that harms the public interest – i.e., giving the "surplus" to registry operators, not to consumers. This results from the fact that price caps continue not to exist in the latest DAG. Instead, TLDs should be allocated via a regular tender process, whereby the registry applicant offering the lowest price wins the contract for a set period and without presumptive renewal. Consumers would then receive most of the benefit. *Vertical Integration comments by Leap of Faith Financial Services Inc., submitted by George Kirikos on 10 Aug 2010.*

1. <u>ICANN should quickly resolve the issue of Vertical Separation</u>

The ISPCP is concerned that introducing new issues that require suitable compliance and enforcement to be made available by ICANN, could result in further delays to the New gTLD application timeline. Given the two year delay that has already occurred in order to address the "overarching issues" that emerged, it would not seem appropriate to follow a course that

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[1] To review the comments pertaining to the Draft Applicant Guidebook, please refer to:
http://forum.icann.org/lists/4gtld-guide/

might result in additional delays and postponements. *ISPCP Constituency Statement, submitted by Tony Harris on 11 Aug 2010.*

The debate over registrar-registry separation for New TLDs has gone on for over two years, which has negatively impacted consumer and public interests by indeterminately delaying the introduction of New TLDs. ICANN should now quickly and firmly resolve the question. *Registrar Stakeholder Group Comments - Vertical Integration Initial Report, submitted by Clarke Walton on 13 Aug 2010.*

ICANN's Board should decide the matter – and should do so quickly, because delays in deciding this issue, since the Board approved the new TLD policy, have harmed the public interest and ICANN's credibility. *Comments of Daniel Schindler on 11 Aug 2010.*

The issue before ICANN is should communities defer submitting applications until there is an exception to a "Vertical Integration" policy that benefits others. If so, their needs are subordinated to the drawn out machinations of policy development for registrars that wish to capture registries and registries that wish to capture registrars, *Comments of dotNAI Project submitted by Eric Brunner-Williams on 12 August 2010.*

It would not be productive – and would be a source of further delay - to link the current round of applications for new gTLDs with fundamental changes in the ICANN business model. Rather, we should be talking about limited exceptions to accommodate initially small start-up registries. *Comments of Christopher Wilkinson submitted on 13 Aug 2010.*

2.   <u>No Consensus Likely to Emerge from the VI Working Group</u>

The Interim Report reflects no consensus for any of the proposals. The Registries Stakeholder Group (RySg) also recognizes that, due to the significant and entrenched differences among the large number of participants, full consensus may never be realized. *Statement of the Registries Stakeholder Group, submitted by David Maher on 11 Aug 2010.*

It is clear that that the community will not reach a consensus on vertical integration. *Comments of Daniel Schindler submitted on 11 Aug 2010.*

Verisign remains committed to continued efforts to reach consensus for later rounds of new TLDs, but recognizes that the VI-WG is unlikely to do so in time for the first round. *Verisign Comments, submitted by Keith Drazek on 11 August 2010.*

Key-Systems recognizes that the VI-WG is unlikely to reach a consensus in the short term, but firmly believes that the first round of applications will be the defining round for future launches and the restriction on participation of certain types of applicants will effectively shut out such applicants in subsequent rounds as well. *Comments of Key-Systems, submitted by Volker Greimann on 12 August 2010. Supported by Michele Neylon of Blacknight Solutions.*

Policy development has been going on for 30 months, with no sign of consensus, and could easily go on for another 30 months, or longer. *Comments of dotNAI Project submitted by Eric Brunner-Williams on 12 August 2010.*

The Working Group has achieved nothing even close to consensus. It is astonishing how resistant it is to coalescence. It is going to be up to the Board to cut the Gordian knot and make a decision. In developing a solution, the solution needs to be justifiable in a common sense way. The solution should not try to be Solomonic by trying to cut the baby in half. The rules need to keep things strictly separate, or very open. The solution needs to be based on principles, not on trying to please everyone, or one party in particular. The solution needs to be based on evidence and logic.   The Board needs to be very, very careful of undue lobbying and influence. *Comments of Minds + Machines, submitted by Antony Van Couvering on 13 Aug 2010.*

V. KEY PRINCIPLES DEVELOPED BY THE VI WORKING GROUP

A. General Observations.

The ISPCP notes that the report states that there is general acceptance within the WG, for the *"Key Principles Developed by the VI Working Group".* Whereas the issues these principles address are unquestionably important, they nonetheless raise some concerns within the ISPCP. *ISPCP Constituency Statement, submitted by Tony Harris on 11 Aug 2010.*

B. Certain new gTLDs likely to be applied for in the first round may be unnecessarily impacted by restrictions on cross-ownership or control .

The IPC believes there may be other single registrant registries that would be unduly restricted by the current ban on vertical integration and/or cross-ownership between Registries and Registrars. The IPC hopes to be able to collaborate with other constituencies and stakeholder groups to come up with a framework for a workable exception to the prohibition to vertical integration that can be presented to the VI working group for inclusion in its final report. *Statement of the Intellectual Property Constituency, submitted by J. Scott Evans on 12 August 2010.*

1. Special Considerations Needed for Linguistic and Cultural TLDs.

PuntCat believes that a model of Registrar Registry separation is, as a default model, the best approach to ensure benefits to end users. However, such a model might restrain innovation and consumers 'choice in certain cases, such as small community-based linguistic and cultural top level domains (lcTLD), and that these specific cases should be addressed appropriately. *Nacho Amadoz, on behalf of puntCAT submitted on 7 Aug 2010.*

The one-size-fits-all approach might not adequately cover lcTLDs' specific characteristics and focus on their sponsoring communities. And forcing lcTLDs to operate under that default model could precisely create the market distortions and restrictions vertical separation was originally intended to eliminate. *Nacho Amadoz, on behalf of puntCAT submitted on 7 Aug 2010.*

PuntCAT believes that by giving lcTLDs the capacity to run an ICANN accredited registrar, with the appropriate thresholds and check and balance systems, would create the development of a more competitive market for these TLDs. *Nacho Amadoz, on behalf of puntCAT submitted on 7 Aug 2010.*

It is of the utmost importance that linguistic and cultural domains would be allowed to have the capacity to own an ICANN accredited registrar. *Nacho Amadoz, on behalf of puntCAT submitted on 7 Aug 2010.*

Many local communities may end up not being able to effectively distribute or even apply for a local TLD without a local partner to support them. Many smaller communities have no local registrar and non-local registrars may be unwilling to support such a "fringe" TLD, so allowing a local registry to set up its own ICANN accredited registrar will be the only way to effectively support and market the new TLD. A local community should be able to entrust the technical and operative operation of a TLD to a local registrar partner if this is supported by the local community. In some cases, the local partner may even be required to make sure local interests of the community can be safeguarded. *Comments of Key-Systems, submitted by Volker Greimann on 12 August 2010; Supported by Michele Neylon of Blacknight Solutions.*

2. Special Considerations Needed for Non-Profit Organizations..

In order to meet the needs of not-for-profit organizations that might register a new gTLD strictly to execute a public service mission and not for commercial purposes, ICANN should offer an exception that provide for a "closed" new gTLD in which second level domains are registered and closely managed by the registry. This model provides an opportunity for organizations that want to operate a new gTLD in order to create a safer, more secure and more controlled environment to conduct their mission related activities, without offering second level domain for sale to the public. *Comments of the American Red Cross, submitted by Debra Hughes on 12 Aug 2010.*

In a "closed" new gTLD environment, second-level domain names would be assigned to employees, volunteers, departments or agents of the not-for-profit organization. The new gTLD registry would not be used to offer domains to the public for registration as currently done in existing gTLD registries like .com or .org. The linchpin to the success of this model is that the registry must be able to exercise maximum control over the use of domain names, email addresses, or any other application associated with second level domains. In this model, a registry should not be required to use an ICANN-accredited registrar for registration of second-level domain names, as this requirement is contrary to the purposes of the new gTLD under this model. Also, it is likely that for many registrars, a new gTLD where domains will not be sold to the public does not present a lucrative business enterprise and registrars might find the strict requirements related to processing registration applications cumbersome. *Comments of the American Red Cross, submitted by Debra Hughes on 12 Aug 2010.*

C. Support for a process that would allow applicants to request exceptions and have them considered on a case-by-case basis, in the event ICANN adopts a requirement of strict separation.

The BC believes that uniquely for domain names intended for internal use, the principle of registry-registrar vertical separation should be waived. The term "internal use" is used for a range of entities that were under control of the single registrant and "not for sale to the general public," including:

- divisions and product names for a single registrant (e.g. copiers.canon)

- employees of a single registrant, for use in second level domains and email addresses

- subscribers, customers, and registered users of a single registrant, subject to approval and control by the single registrant.

Statement of the Business Constituency, submitted by Steve Del Bianco on 13 Aug 2010.

It is possible that in the forthcoming expansion of domain names there will be proprietary domain names not for sale to the general public (e.g. dot *brand)*. In this unique case the BC would accept that it makes no sense for a company owning its own name or trademark in the form of a domain name to be obliged to go to a third party to register its own second-level domain names. Thus an opt-out for this special case of internal use seems appropriate. *Statement of the Business Constituency, submitted by Steve Del Bianco on 13 Aug 2010.*

ICANN should continue the policy development process in order to further define the eligibility for and scope of exceptions for Single Registrant TLDs, including a single registrant distributing domain names to its customers, subscribers, and registered users. *Statement of the Business Constituency, submitted by Steve Del Bianco on 13 Aug 2010.*

Limited exceptions to vertical integration should be authorized; one reason for exceptions is that registrars may have little incentive to devote resources to new gTLDs that target a narrow registrant base*. ECLID Comments on the Initial Report, submitted by David Lesvenan on 12 Aug 2010.*

The Red Cross urges ICANN to take all necessary steps to create exceptions to the absolute prohibition on vertical integration in the New gTLD Program. The ICANN Board needs to consider that not all new gTLDs will be used to offer domains for sale to the public. The Red Cross believes these diverse models complement the future success of ICANN and the global network and should be explored now and not dismissed, deferred or characterized as too difficult to consider. *Comments of the American Red Cross, submitted by Debra Hughes on 12 Aug 2010.*

Red Cross suggests an exceptions procedure that:

1. Adds no additional cost to the applicant for requesting the exception or for being evaluated for it. The evaluation would take place at an appropriate point

following the Initial Evaluation. If the request is denied, the applicant may request an Extended Evaluation at no additional cost to the applicant. If a request is denied and the applicant does not wish to request an Extended Evaluation, or if the request is denied following an Extended Evaluation, the applicant may withdraw and receive the appropriate pro-rated refund;

2. Provides a list of exemplary circumstances that describe cases for which an exception would be allowed;

3. Provides review by an external review panel responsible for reviewing applications for exception; and

4. Outlines a set of guidelines for an external review panel, including selection of panelists, with a recommendation that panelists are familiar with the unique needs of not-for-profit organizations and other types of organizations that may make legitimate arguments in favor of an exception.

Comments of the American Red Cross, submitted by Debra Hughes on 12 Aug 2010.

There is a need for an exceptions process. Defining criteria and establishing inflexible guidelines in regards to who is eligible for exceptions is a complex task which might exclude community applicants with specialized business models that are set up for that purpose. *Comments of Constantine Roussos, Applicant for .MUSIC, submitted on 12 Aug 2010.*

There should be no additional cost to new applicants for requesting exceptions or for being evaluated for it. *Comments of Constantine Roussos, Applicant for .MUSIC, submitted on 12 Aug 2010.*

EuroDNS firmly believes the VI issue should not be analyzed through one set of example (existing "major" gTLDs) or with one single type of Registrant in mind. If the community wants new gTLDs to succeed, exceptions must be the rule. *Comments of EuroDNS, submitted by J.C. Vignes on 13 Aug 2010.*

D. Single Registrant, Single User TLDs (SRSUs) should be explored further.

With regard to SRSUs, to avoid potential "gaming" of these exceptions, the ISPCP believes that that this exception should be carefully considered and clearly enunciated, with regards to any exceptions and related definitions that may eventually emerge as WG recommendations. *ISPCP Constituency Statement, submitted by Tony Harris on 11 Aug 2010.*

The Working Group Initial Report included a preliminary draft of single registrant exception on pages 32-33 that contemplates a more restrictive definition of internal uses than what the BC has contemplated, listing only "the registry itself, its employees, agents and subcontractors." *Statement of the Business Constituency, submitted by Steve Del Bianco on 13 Aug 2010.*

Because this model represents a large issue, it should be explored in a separate PDP process and not within the VI WG. *SRSU TLDs, submitted on behalf of Japan Network Information Center (JPNIC) by Naomasa Maruyama on 12 Aug 2010.*

The SRSU exception must be tightly defined to avoid gaming. *Response to the Initial Report, submitted on behalf of Melbourne IT by Ashe-lee Jegathesan on 12 Aug 2010.*

In exceptional cases where a new gTLD is targeted at a narrow community, or the applicant is a single-registrant, single user (SRSU) or .brand, or the TLD is unable to gain support and distribution from existing registrars, a limited exception could enhance competition, guarantee distribution, and serve the public interest. *Verisign Comments, submitted by Keith Drazek on 11 August 2010.*

The SRSU justifies a separate call for proposals with a different time-line. A separate procedure is needed to verify the respective Trademark claims and to collect audited evidence of the numbers of national or regional registrations. There might well be competing claims – equally substantiated – for the same name that had been trademarked in different jurisdictions or sectors. An appropriate arbitration mechanism might be necessary. Auctions are not an appropriate option because they would bias decisions towards the larger entities which would not support a policy of promoting diversity, choice and competition. *Comments of Christopher Wilkinson submitted on 13 Aug 2010.*

E. Support for the Need for Enhanced Compliance Efforts and the Need for a Detailed Compliance plan.

The ISPCP is concerned as to the <u>Compliance</u> definitions and their enforcement, with regards to possible exceptions that are being discussed such as, but not limited to, SRSU TLDs, to avoid potential "gaming" of these exceptions. *ISPCP Constituency Statement, submitted by Tony Harris on 11 Aug 2010.*

The compliance plan should consist of both an audit approach (some registries are reviewed each year) and a complaints approach (third parties can raise concerns). *Response to the Initial Report, submitted on behalf of Melbourne IT by Ashe-lee Jegathesan on 12 Aug 2010.*

An assumed 500 new gTLDs per year would earn ICANN an additional $12.5 million per year, which should be sufficient to pay for strengthening its compliance program. *Response to the Initial Report, submitted on behalf of Melbourne IT by Ashe-lee Jegathesan on 12 Aug 2010.*

Red Cross agrees with the Initial Report statement that "[a] firm corporate commitment to compliance combined with the establishment of a genuine "culture of compliance" across all stakeholders in the community is absolutely necessary if ICANN is to devise and operate an effective enforcement bureau." Red Cross acknowledges and commends the preliminary work performed by the VI Working Group on this topic, including the preliminary list of possible components of compliance and enforcement program and hopes that ICANN will take all necessary steps to assist the Community to create a robust, proactive and timely compliance

and enforcement program. *Comments of the American Red Cross, submitted by Debra Hughes on 12 Aug 2010.*

Key-Systems proposes the implementation of a balanced and realistic system of strong yet flexible rules and compliance controls coupled with a penalty system designed to discover and discourage any form of abuse. Contracts and policies should be crafted in a way to detect and discourage abuse, as well as to enable compliance enforcement, thereby removing any perceived need for the prohibition, instead of a introducing a blanket prohibition on VI and CO for registrars, effectively allowing unintegrated registries or registrars to conduct in the same abusive fashion the prohibition is intended to prevent. *Comments of Key-Systems, submitted by Volker Greimann on 12 August 2010; Supported by Michele Neylon of Blacknight Solutions.*

One important element to successful enforcement is the requirement to grant equal access to all ICANN accredited registrars, which in itself serves as a check and balancing factor against the potential for abuse. *Comments of Key-Systems, submitted by Volker Greimann on 12 August 2010; Supported by Michele Neylon of Blacknight Solutions.*

It would be costly and time consuming for ICANN to be monitoring such arbitrary numbers that do not really make a difference that matters. Enforcing arbitrary cap numbers or ownership interests is not money well spent or an activity that is warranted in regards to new entrants. *Comments of Constantine Roussos, Applicant for .MUSIC, submitted on 12 Aug 2010.*

If a Registry or a Registrar misbehaves and puts Registrants or the overall stability of the DNS at risk, they should be held liable as stated by the relevant contractual provisions to be enforced by ICANN's Compliance staff.   It does not make much sense to forbid an entire stakeholder group from participating in the next evolution of this industry on the off-chance that some – unidentified as of yet – harm may result from one bad actor acting improperly. *. Comments of EuroDNS, submitted by J.C. Vignes on 13 Aug 2010.*

VI. MAJOR PROPOSALS DEBATED WITHIN THE VI WORKING GROUP

As to the *"Major Proposals Debated within the VI Working Group",* the ISPCP is supportive of preserving a level playing field for all, and avoiding the possibility of distortion in the domain marketplace, which currently operates in a highly competitive and functional mode. *ISPCP Constituency Statement, submitted by Tony Harris on 11 Aug 2010.*

While none of the proposals has consensus support, it is important to note (as reflected in polling) that proposals that would prohibit or restrict vertical integration (e.g. JN2 and RACK+ proposals) have broader combined support than proposals that would permit unrestricted vertical integration. For example, there is strong support for continuing 15% ownership caps and imposing a restriction on a vertically integrated registry and registrar from selling in its own TLD, while there is less support for allowing 100% cross ownership and unrestricted vertical integration. It should also be noted that the proposals calling for

restrictions had the broadest support across the various interests in the VI Working Group. *Statement of the Registries Stakeholder Group, submitted by David Maher on 11 Aug 2010.*

Polls showing support for atoms or molecules without further context are at best incomplete or, at worst, misleading.   As the VI Working Group moves toward a final report to the Council (and ultimately the Board), it should refrain from presenting molecules or atoms in a manner that creates a false impression of consensus where it does not exist.   *Statement of the Registries Stakeholder Group, submitted by David Maher on 11 Aug 2010.*

The Business Constituency opposes any change to the status quo for all TLDs intended for sale to third parties (i.e. those unconnected with the Registry). "Status quo" refers to registry contracts for .com, .net, and in the 2001 and 2004 new gTLD rounds, which prohibited a registry from acquiring or controlling more than 15% of a registrar. The BC position is to oppose changes to any separation safeguards, and to maintain the 15% limit on cross-ownership interest between registrars and registries. *Statement of the Business Constituency, submitted by Steve Del Bianco on 13 Aug 2010.*

Key-Systems supports all proposals that maximize consumer benefits while minimizing potential harms from any entity, be it vertically integrated, cross-owned or fully separated. Key-Systems strongly urges against discriminating any entity by preventing them from participating in the first round of applications based solely on levels of ownership in other entities. *Comments of Key-Systems, submitted by Volker Greimann on 12 August 2010; Supported by Michele Neylon of Blacknight Solutions.*

At this stage, in view of the short delays and lack of documented facts and experience, all changes in current policy for the purposes of the next round of gTLD applications should be: (a) temporary within time lines and thresholds, (b) reversible and,(c) when confirmed, retroactive. *Comments of Christopher Wilkinson submitted on 13 Aug 2010.*

With this information Demand Media believes the ICANN Board will see that allowing some form of VI or CO in the first round of TLDs, whether a numerical limit (allowing VI up to 250,000 domains) or 100% cross-ownership without self-distribution (JN2 Proposal), will benefit consumers, encourage growth and allow for new entrants in this marketplace.   All stated goals of ICANN and the new gTLD process. *Demand Media Comments, submitted by Jeff Eckhaus on 12 Aug 2010.*

A. JN2

This proposal is a reasonable starting point for the first round of new gTLDs. It has the benefit (versus CAM3, for example) of permitting exceptions to be updated over time. *Response to the Initial Report, submitted on behalf of Melbourne IT by Ashe-lee Jegathesan on 12 Aug 2010.*

An appropriate enhancement to this proposal would be an appeals process utilizing competition authorities. *Response to the Initial Report on Vertical Integration between Registrars and Registries, submitted on behalf of Melbourne IT by Ashe-lee Jegathesan on 12 Aug 2010.*

JN2 offers stability for existing contracted parties meeting the co-ownership limitation at the expense of contracted parties that planned on co-ownerships in excess of that limit. *Comments of dotNAI Project submitted by Eric Brunner-Williams on 12 August 2010.*

While not perfect, this proposal is still the one EuroDNS stands behind as it allows for 100% cross ownership providing the Registrar elects not to distribute the TLD for which it acts as a Registry. The fact that this proposal is backed by several Registrars but also by Neustar and Verisign is also quite significant. *Comments of EuroDNS, submitted by J.C. Vignes on 13 Aug 2010.*

The JN2 Proposal goes against the very nature of Internet ecommerce and business practices that rewards new entrants for expanding the value proposition pie and success. The 15% cross-ownership interest or placing a cap on number of registrations are both unsubstantiated measures that are designed to punish success. New gTLD entrants will not have any chance of becoming the size of Verisign, Afilias or Godaddy. *Comments of Constantine Roussos, Applicant for .MUSIC, submitted on 12 Aug 2010.*

B. Free Trade

Such a major change is not warranted at the same time that many new gTLDs, with various new business models, are being added. Given that the current registry/registrar separation model seems to be working well, major changes should only be considered after an analysis of the new market in 2012. *Response to the Initial Report, submitted on behalf of Melbourne IT by Ashe-lee Jegathesan on 12 Aug 2010.*

This proposal offers opportunity to all contracted parties, subject to one or the other of the control mechanisms. *Comments of dotNAI Project submitted by Eric Brunner-Williams on 12 August 2010.*

It is no surprise that the Free Trade Model received the most support with 17 votes (not 16 which is incorrectly stated in the report), with over 35% more votes than the second most popular proposal. Free Trade is consistent with the economic times of today because the marketplace will always be the sole determinant of success*. Comments of Constantine Roussos, Applicant for .MUSIC, submitted on 12 Aug 2010.*

Free Trade should be reserved for only new entrants. There are obvious risks allowing companies such as Verisign to vertically integrate because monopoly power can be abused. *Comments of Constantine Roussos, Applicant for .MUSIC, submitted on 12 Aug 2010.*

Free Trade would impose a disproportionate burden on ICANN's other regulatory instruments (auditing, compliance, etc.) and is rather optimistic as to the resulting behavior of the Registration businesses (they are not "Authorities") in the public interest. *Comments of Christopher Wilkinson submitted on 13 Aug 2010.*

While EuroDNS and others have long advocated 100% cross-ownership without

restriction, we are afraid the so-called "Free Trade" proposal goes a step to far by doing away with the essential "equal Registrar access" requirement. *Comments of EuroDNS, submitted by J.C. Vignes on 13 Aug 2010.*

C. RACK+

This proposal appears to be the closest to the status quo, with a 15% cross-ownership provision. It is a reasonable starting point for the first round of new gTLDs. *Response to the Initial Report on Vertical Integration between Registrars and Registries, submitted on behalf of Melbourne IT by Ashe-lee Jegathesan on 12 Aug 2010.*

RACK+ offers stability for existing contracted parties meeting the co-ownership limitation at the expense of contracted parties that planned on co-ownerships in excess of that limit. *Comments of dotNAI Project submitted by Eric Brunner-Williams on 12 August 2010.*

RACK+ needs to address the question of scale economies for startups and the issue of "orphans." *Comments of Christopher Wilkinson submitted on 13 Aug 2010.*

While proponents of this solution should be commended for their consistency, EuroDNS does not believe the status quo to be an adequate solution to face the challenges that lie ahead. *Comments of EuroDNS, submitted by J.C. Vignes on 13 Aug 2010.*

D. CAM3

A potential problem with the exemption procedure included in this proposal is that the authorities on national competition might not adequately understand the issues regarding globally operated TLDs. Hence, for this option to be viable, more publicly available economic analyses of the new market would have to be available to these authorities. *Response to the Initial Report, submitted on behalf of Melbourne IT by Ashe-lee Jegathesan on 12 Aug 2010.*

The CAMv3 proposal allowing complete co-ownership, predicated on an involvement by national competition authorities is without precedent in ICANN's history. It offers opportunity to all contracted parties, subject to one or the other of the control mechanisms, intervention by ICANN upon detected harm or intervention by a national competition authority upon detected competition policy concern. *Comments of dotNAI Project submitted by Eric Brunner-Williams on 12 August 2010.*

There is not uniform international coverage of competition authorities with the appropriate powers and competences. Even the competition authorities in the EU and the US have little experience or precedent in this field precisely because ICANN has been doing that job. The delays demanded for responses from the public authorities concerned are not very realistic: it is not so much that a competition authority needs a lot of time to treat a specific case, it is rather that those authorities have to prioritize their cases in terms of the scale of abuse and the availability of alternative recourse. (e.g. ICANN). *Comments of Christopher Wilkinson submitted on 13 Aug 2010.*

Using Competition Authorities is not practical as they may not be informed enough and the whole process would be extremely time consuming. *Comments of EuroDNS, submitted by J.C. Vignes on 13 Aug 2010.*

E. DAGv4 and the Board Nairobi Resolution on Vertical Integration

1. <u>The Nairobi Resolution is acceptable, with appropriate exception for a .brand TLD.</u>

The IPC generally supports the strict separation approach approved by the ICANN Board, however, appropriate exceptions to this approach should be recognized for <.brand> registries. *Statement of the Intellectual Property Constituency, submitted by J. Scott Evans on 12 August 2010.*

<u>The Nairobi Board Resolution is unacceptable</u>.

The Nairobi Board resolution on issue of vertical integration is untenable -- "there will be strict separation of entities offering registry services and those acting as registrars. No co-ownership will be allowed." While the Initial Report describes various proposed solutions for restrictions on vertical integration between registrars and registries for adoption in the New gTLD Program, we urge the Board and ICANN Staff to recognize that the default position of no cross-ownership is unacceptable to many stakeholders in the ICANN Community. *Comments of the American Red Cross, submitted by Debra Hughes on 12 Aug 2010.*

The current restrictions on registrars in DAGv4 place unprecedented and unnecessary barriers on competition and the ability of registrars to compete against incumbent registry service providers and registries, especially if such restrictions should be lifted at a later date. *Comments of Key-Systems, submitted by Volker Greimann on 12 August 2010; Supported by Michele Neylon of Blacknight Solutions.*

EuroDNS believes this strict interpretation is not necessary and may ultimately be detrimental to the whole new gTLD process. EuroDNS truly hopes that the community will give its members time to work harder still towards a solution as it is (at least) clear that the DAGv4 vision is not shared by most. *Comments of EuroDNS, submitted by J.C. Vignes on 13 Aug 2010.*

As an applicant, there is no substantive difference between the Board's Nairobi zero co-ownership language, the DAGv4's 2% language, the 15% language of two of the VI WG positions, and the 100% language of another two of the VI WG positions. These affect the contracted parties, not applicants. *Comments of dotNAI Project submitted by Eric Brunner-Williams on 12 August 2010.*

2. <u>In the absence of openness, the Nairobi Resolution/DAG-v4 may be an acceptable alternative.</u>

Minds + Machines believes that the CO/VI issue must be resolved in favor of greater openness. However, if the Board finds that the midnight fears and shudderings of powerful people dictate that it cannot lead but only follow, then Minds + Machines recommends that the Board keep the very strict separation proposed in Nairobi, then modified in DAG4. The DAG4/Nairobi strict separation model has several advantages: it is easy to understand, based on clear principles, and it would show the Board to have been serious in Nairobi when it said that this was the way it would go if the community could not agree on a different way. Furthermore, it is a position that can be changed in any direction, so that as the landscape becomes clearer, the Board can move judiciously and seriously in the right direction quite easily. *Comments of Minds + Machines, submitted by Antony Van Couvering on 13 Aug 2010.*

F. IPC

The concept of Single Registrant, Single User TLDs is acceptable in principle. However, the exceptions within this proposal to prevent gaming need careful review. *Response to the Initial Report, submitted on behalf of Melbourne IT by Ashe-lee Jegathesan on 12 Aug 2010.*

An improvement to this proposal would be the inclusion of needed protection mechanisms; for example, as of now, this proposal allows registrants to license names to third parties that have pre-existing relationships with the brand owners in too broad a fashion and without defining "pre-existing relationship." *Response to the Initial Report, submitted on behalf of Melbourne IT by Ashe-lee Jegathesan on 12 Aug 2010.*

The IPC proposal is offered without reference to the standard and community-based types of applications, and is a distinct and covert attempt to develop a new type of application, in which co-ownership figures only incidentally as an implementation detail. It offers opportunity only to trademark holders, and is at odds with RFC1591's conception of public purpose. *Comments of dotNAI Project submitted by Eric Brunner-Williams on 12 August 2010.*

The IPC proposal would in practice expand "intellectual property rights beyond that granted by the national governments ..." *Comments of Christopher Wilkinson submitted on 13 Aug 2010.*

G. Additional Proposals Suggested for the VI Working Group's Consideration

VeriSign recognizes that the ICANN Board, absent a consensus recommendation from the VI-WG, will likely draw its own conclusions and make its own decisions regarding the market structure for the first round of new TLDs. VeriSign believes its recommendation to the VI-WG represents a compromise position that will welcome new entrants, increase competition, benefit consumers, and maximize the likelihood for success of small or underserved TLDs, while also minimizing potential consumer harms from a vertically integrated or cross-owned entity. For the first round of new TLDs, VeriSign supports the following:

- 100% cross-ownership allowed without self-distribution;
- Self distribution allowed with de minimus (10% to 15%) cross-ownership;
- Contractual language that restricts "control" beyond de minimus ownership percentages;
- Contracts and enforcement primarily focused on structural separation, ownership restrictions, and restrictions on sharing of sensitive registry data;
- Clearly defined exceptions process for SRSU and orphaned TLDs (all with numerical registration caps);
- Independent, 3rd-party audits (funded by ICANN) for cross-owned exceptions above the de minimus percentage;
- Restrictions on ownership, self-distribution, data-sharing, and control should also apply to Registry Service Providers (RSPs);
- Short-term results of the VI-WG should apply to the first round of new TLDs, but its work should continue for later rounds.

Verisign Comments, submitted by Keith Drazek on 11 August 2010.

Together with INDOM, EuroDNS and Blacknight, three European ICANN accredited registrars with extensive experience in ccTLDs, Key-Systems originally proposed a more open approach, known as the Open Registrar Proposal, which was regrettably not included in the last poll and therefore excluded from the initial report despite the wish to do otherwise. *Comments of Key-Systems, submitted by Volker Greimann on 12 August 2010; Supported by Michele Neylon of Blacknight Solutions. Comments of EuroDNS, submitted by J.C. Vignes on 13 Aug 2010.* The Open Registrar Proposal is described in **Annex B** of this Summary.

VII. OBSERVATIONS ON THE DOMAIN NAME MARKET AND COMPETITION.

The BC believes that removing the existing vertical separation safeguards between registries and registrars may increase the likelihood of the exercise of dominance within the domain name marketplace. The BC believes that the proponents of change have not satisfactorily demonstrated the likelihood of market place benefits to users. *Statement of the Business Constituency, submitted by Steve Del Bianco on 13 Aug 2010.*

Experience with ccTLDs show that vertical integration of registries and registrar functions can work and does not necessarily harm registrants. *Comments of Key-Systems, submitted by Volker Greimann on 12 August 2010; Supported by Michele Neylon of Blacknight Solutions.*

Many European Registries have implemented some form of Vertical Integration1 without noticeable harm to the Registrars' market share or the Registrants' rights. Many *potential* "harms" have been discussed by the VI Working Group for future, yet such harms have never happened in the many ccTLDs space which currently use VI principles in their respective business models. *Comments of EuroDNS, submitted by J.C. Vignes on 13 Aug 2010.*

For years companies and individuals have relied on the expertise and accessibility of their Registrar(s) to deal with the complexity of the DNS, to use and benefit from the Internet without having to deal with its more technical aspects. Now that ICANN is "pushing the Internet to next level", it seems counterproductive – and borderline absurd – to ask of a Registrar to flatly refuse to help its existing or potential customers. Many projects will simply not happen if their promoters are left on their own, without the relevant expertise. *Comments of EuroDNS, submitted by J.C. Vignes on 13 Aug 2010.*

The Board should look at the full spectrum of evidence available to it by not restricting itself to the very limited fact set provided by the experience of gTLDs, but look also to ccTLDs, where a wide variety of business models have been tried -- many of them on a global basis. *Comments of Minds + Machines, submitted by Antony Van Couvering on 13 Aug 2010.*

There is no material interest in the policy question of whether parties-as-registrars to contracts with ICANN or parties-as-registries to contracts with ICANN may merge their structures, with or without functional separation, and with or without the issue of market power informing the policy drafters*. Comments of dotNAI Project submitted by Eric Brunner-Williams on 12 August 2010.*

The CO/VI issue must be resolved in favor of greater openness. This is the general trend in successful economies and societies, and eventually we will get to a place where anyone can compete with anyone absent some showing of abuse of market power.   It makes sense that ICANN should be in front of that curve, rather than behind it. *Comments of Minds + Machines, submitted by Antony Van Couvering on 13 Aug 2010.*

In the mid 1990's when ICANN was initially set up, it became clear that the competition authorities in the US and the EU expected ICANN to fulfill that role. As a result, most of the international experience and expertise in this area now resides in the ICANN community. One should not now expect the official competition authorities to take up parts of that responsibility, nor for ICANN to delegate other parts of the responsibility to – yet to be created – external entities. *Comments of Christopher Wilkinson submitted on 13 Aug 2010.*

Competition in the Registry market is intrinsically weak. ICANN should continue improving the conditions of competition. To-date this has been undertaken through structural separation and price caps. There may well be other ways of improving the conditions of competition but most of the alternative proposals set out in the Initial Report would move the DNS market in the other direction. *Comments of Christopher Wilkinson submitted on 13 Aug 2010.*

1. Need to Preserve Equal Access Among Registrars

Many ccTLD registries that operate their own registrar service such as DENIC, NIC.AT and others show many added benefits for registrants of vertical integration, as long as equal (or even favorable) access to non-integrated registrars is provided for. *Comments of Key-Systems,*

submitted by Volker Greimann on 12 August 2010; Supported by Michele Neylon of Blacknight Solutions.

VIII.   MISCELLANEOUS COMMENTS ON THE INITIAL REPORT.

Further work is needed on one of the fundamental terms in the report: "registrar." To illustrate, a client is the holder of an ICANN registrar accreditation that it uses to manage a set of mission critical domain names registered to a sister company. It does not sell domain names to the public, and it has no intention of ever using its registrar accreditation to sell domain names to the public. This registrar would not be a registrar for any TLD for which it was selected as the registry operator. For all practical purposes, this entity is simply a domain name registrant that uses an ICANN registrar accreditation as a management tool for its own domain names.   In spite of the fact that it holds an ICANN registrar accreditation, it is not a "registrar" as that term is commonly used in the Initial Report. The Initial Report's lack of differentiation among the various types of entities holding ICANN registrar accreditations poses the risk that the client could be barred from the registry services market for no compelling policy reason. *Comments of Brett Fausett, Adorno, Yoss, Alvarado & Smith on 13 Aug 2010.*

IX. NEXT STEPS FOR VERTICAL INTEGRATION

To avoid further delays in the launch of the New gTLD Program, perhaps some of these issues could be addressed and resolved in time for the Second Round of applications, such as the Compliance and Enforcement Issues. *ISPCP Constituency Statement, submitted by Tony Harris on 11 Aug 2010.*

The RySG encourages the VI Working Group to continue its efforts to reach a compromise and consensus recommendation for future rounds of new TLDs, even if full consensus is unlikely. *Statement of the Registries Stakeholder Group, submitted by David Maher on 11 Aug 2010.*

A. Revised Report should include List of Harms.

The VI-Working Group is encouraged to incorporate a comprehensive list of potential harms from vertical integration and/or cross-ownership. The list should include the range of potential consumer harms that might result from both allowing and prohibiting vertical integration and/or cross-ownership. *Statement of the Registries Stakeholder Group, submitted by David Maher on 11 Aug 2010.*

VeriSign encourages the VI-WG to continue its work and, in time for the next version of the Initial Report (to be submitted prior to the next GNSO Council meeting on August 26, 2010) incorporate a comprehensive list of potential harms from vertical integration and/or cross-ownership. To be most helpful to the GNSO Council and the ICANN Board, the list should include the range of potential consumer harms that might result from both allowing and prohibiting vertical integration and/or cross-ownership. *Verisign Comments, submitted by Keith Drazek on 11 August 2010.*

The Initial Report does not include an explanation of what the problems resulting from vertical integration might be. These problems must better explained and further studied for two reasons. First, it would help the GNSO and ICANN Board make an informed decision regarding a VI policy. Second, it would help reconcile the inconsistent backing received by some of the Report's proposals. *Demand Media Comments on the Initial Report on Vertical Integration between Registrars and Registries, submitted by Jeff Eckhaus on 12 Aug 2010.*

B.   Concerns about Including a List of Harms in the Revised Report.

The VI Working Group as a whole seems entirely comfortable with proceeding on a non-empirical basis. Potential harms and fears are thrown out without reference to their likelihood, their likely effect, or their monetary or social impact. In this environment, anyone's concern is as good as anyone else's, because it is belief-based.   The little outside knowledge that has been brought to the table (e.g., advice of competition experts) has been rejected or belittled when it doesn't suit the commercial objectives of one camp or another. *Comments of Minds + Machines, submitted by Antony Van Couvering on 13 Aug 2010.*

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IPC COMMENTS FOR ICANN
on
Initial Report on Vertical Integration Between Registrars and Registries

The Intellectual Property Constituency ("IPC") is a constituency of the GNSO and represents the full range of trademark and other intellectual property interests relating to the DNS. IPC members are international, regional and national intellectual property organizations from around the world, corporate entities with intellectual property interests (often as owners of intellectual property), and individuals with an interest in intellectual property matters. The IPC appreciates this opportunity to provide its comments on the Initial Report on Vertical Integration Between Registrars and Registries posted for comment on 23 July 2010.

The issue of vertical integration is of deep importance to the IPC and its membership. The IPC generally supports the strict separation approach approved by the ICANN Board on March 12, however, appropriate exceptions to this approach should be recognized for <.brand> registries, i.e.a single registrant registry. The IPC also believes theremay be other single registrant registries that would be unduly restricted bythe current ban on vertical integration and/or cross-ownership between Registries and Registrars. The IPC hopes to be able to collaborate with other constituencies and stakeholder groups to come up with a framework for a workable exception to the prohibition to vertical integration thatcan be presented to the VI working group for inclusion in its finalreport.

The IPC would also like to take the opportunity to extend its thanks and appreciation to the members of working group for their efforts on this issues.

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COMMENTS FROM ISPCP CONSTITUENCY

The ISPCP has followed the work of the Vertical Integration group attentively, and would like to submit the following brief comments.

We note that the report states that there is general acceptance within the WG, for the *"Key Principles Developed by the VI Working Group".* Whereas the issues these principles address are unquestionably important, they nonetheless raise some concerns within the ISPCP . Our Constituency is concerned as to the Compliance definitions and their enforcement, with regards to possible exceptions that are being discussed such as, but not limited to, SRSU (single registrant, single user) TLDs, to avoid potential "gaming" of these exceptions. We feel that this should be carefully considered and clearly enunciated, with regards to any exceptions that may eventually emerge as WG recommendations.

As to the *"Major Proposals Debated within the VI Working Group",* the ISPCP is supportive of preserving a level playing field for all, and avoiding the possibility of distortion in the domain marketplace, which currently operates in a highly competitive and functional mode. As service providers to all Internet users, ISPs and Connectivity Providers need the domain name marketplace to operate transparently and smoothly, ensuring Internet users have fair and equitable access for their registration needs, within an environment where competition guarantees low prices and affordability.

With regards to *"Compliance and Enforcement",* and in reference to the challenges related to effective Compliance and Enforcement, we note the following statement included therein: *"Writing rules, creating the necessary plans, obtaining the necessary resources, hiring qualified employees, training, establishing operational systems, and having an effective program at the time new TLDs launch, is not a trivial task".* Our constituency is concerned that introducing new issues that require suitable Compliance and Enforcement to be made available by ICANN, could result in further delays to the New gTLD application timeline. Given the two year delay that has already occurred in order to address the "overarching issues" that emerged, it would not seem appropriate to follow a course that might result in additional delays and postponements. Perhaps some of these issues could be addressed and resolved in time for the Second Round of applications.

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Registrar Stakeholder Group Comments - Vertical Integration Initial Report

- *To*: "vi-pdp-initial-report@xxxxxxxxx" <vi-pdp-initial-report@xxxxxxxxx>
- *Subject*: Registrar Stakeholder Group Comments - Vertical Integration Initial Report
- *From*: "Clarke D. Walton" <clarke.walton@xxxxxxxxxxxxxxx>
- *Date*: Fri, 13 Aug 2010 07:15:29 -0400

BACKGROUND

The Registrar Stakeholder Group ("RrSG") is providing comments regarding the
Initial Report on Vertical Integration Between Registrars and Registries ("VI
Initial Report"). This position paper captures the overall sentiment expressed
by the RrSG members who provided feedback about this matter. Due to time

constraints, however, no formal vote regarding this position paper was taken.

RrSG POSITION

The RrSG appreciates the effort of the Vertical Integration Working Group ("VI WG") and respects the VI WG's commitment to evaluating the proposed solutions regarding vertical integration between registrars and registries for New TLDs.

The RrSG recognizes the importance of resolving the vertical integration question in a manner that not only considers the interests of ICANN stakeholders but also balances those interests with the interests of consumers and the public. Members from the RrSG, however, have participated in the debate regarding registrar-registry separation for New TLDs for more than two years. This extended period of time negatively impacts consumer and public interests as the introduction of New TLDs is continually and indeterminately delayed.

ICANN should move forward by evaluating the VI WG's proposed solutions and the related community comments then ICANN should quickly, positively and firmly decide on a resolution to the question of vertical integration between registrars and registries, as such would inure to the benefit of consumers and the public interest.

CONCLUSION

The opinions expressed by the RrSG in this position paper should not be interpreted to reflect the individual opinion of any particular RrSG member.

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GNSO gTLD Registries Stakeholder Group Statement

Issue: Initial Report on Vertical Integration Between Registrars and Registries

Date:12 August 2010

Issue Document URL: Initial Report

This statement on the issue noted above is submitted on behalf of the gTLD Registries Stakeholder Group (RySG). The statement that follows represents a consensus position of the RySG as further detailed at the end of the document. The RySG statement was arrived at through a combination of RySG email list discussion and RySG meetings (including teleconference meetings).

The RySG submits these comments in response to the Interim Report of the Vertical Integration PDP Working Group (VIWG). The RySG recognizes the significant work that has taken place in the VIWG by a significant number of participants (over 60) from across the ICANN community. The RySG also notes the compressed timetable under which the VIWG has to work to produce a report to the Board (through the Council).

The RySG wishes to underscore the following points for the VIWG to consider:

- The Interim Report reflects no consensus for any of the proposals. The RySG recognizes that the lack of consensus is in part a byproduct of the compressed schedule and the resulting time and resource constraints otherwise needed to address the complex issues surrounding vertical integration and a strong divergence of views among the participants in the VIWG. The RySG also recognizes that, due to the significant and entrenched differences among the large number of participants, full consensus may never be realized. The RySG encourages the VIWG to continue its efforts to reach a compromise and consensus recommendation for future rounds of new TLDs, even if full consensus is unlikely.

  Proposals were put forward by a number of participants in the VIWG. While none of the proposals has consensus support on its own, it is important to note (as reflected in polling) that proposals that would prohibit or restrict vertical integration (e.g. JN2 and RACK+ proposals) have broader combined support than proposals that would permit unrestricted vertical integration. For example, there is strong support for continuing 15% ownership caps and imposing a restriction on a vertically integrated registry and registrar from selling in its own TLD, while there is less support for allowing 100% cross ownership and unrestricted vertical integration. It should also be noted that the proposals calling for restrictions had the broadest support across the various interests in the VIWG. To the extent that polls are given weight, the interests participating in the respective polls should be taken into account when determining the level and nature of support

- A number of polls were also taken with regard to "molecules" and "atoms." The effort to develop molecules and atoms was an attempt by the co-Chairs to find at least partial consensus among the VIWG. A number of VIWG members noted concern with the inclusion of molecules and atoms in the Interim Report and the inclusion of polls taken with respect to molecules and atoms. Atoms were singular elements taken from the various proposals. The fundamental flaw with putting any stock in molecules or atoms is that a VIWG member could support an atom in isolation and could indicate that support in response to a poll. However, should that atom be combined with another atom from a different proposal that VIWG member might negate his or her earlier support for the first atom. As such, polls showing support for atoms or molecules without further context are at best incomplete or, at worst, misleading.

- As the VIWG moves toward a final report to the Council (and ultimately the Board), it should refrain from presenting molecules or atoms in a manner that creates a false impression of consensus where it does not exist. Importantly, the inclusion of molecules

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or atoms in this manner risks presenting the Council and the Board with an "a la carte menu" of elements of vertical integration policy that do not have the same qualitative support as the proposals that were discussed in far greater detail and where poll results were based on comprehensive proposals and not a subset of fractured elements.

- The RySG encourages the VI-WG to continue its work and, in time for the next version of the Initial Report (to be submitted prior to the next GNSO Council meeting on August 26, 2010) incorporate a comprehensive list of potential harms from vertical integration and/or cross-ownership. To be most helpful to the GNSO Council and the ICANN Board, the list should include the range of potential consumer harms that might result from both allowing and prohibiting vertical integration and/or cross-ownership.

RySG Level of Support

1. **Level of Support of Active Members**: Majority

    1.1. # of Members in Favor: 8

    1.2. # of Members Opposed: 0

    1.3. # of Members that Abstained: 0

    1.4. # of Members that did not vote: 5

2. **Minority Position**(s): N/A

General RySG Information

- Total # of eligible RySG Members[2]: 14
- Total # of RySG Members: 13
- Total # of Active RySG Members[3]: 13
- Minimum requirement for supermajority of Active Members: 9
- Minimum requirement for majority of Active Members: 7
- # of Members that participated in this process: 13
- Names of Members that participated in this process: 13

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[2] All top-level domain sponsors or registry operators that have agreements with ICANN to provide Registry Services in support of one or more gTLDs are eligible for membership upon the "effective date" set forth in the operator's or sponsor's agreement (RySG Articles of Operation, Article III, Membership, ¶ 1). The RySG Articles of Operation can be found at <http://gnso.icann.org/files/gnso/en/improvements/registries-sg-proposed-charter-30jul09-en.pdf>. The Universal Postal Union recently concluded the .POST agreement with ICANN, but as of this writing the UPU has not applied for RySG membership.

[3] Per the RySG Articles of Operation, Article III, Membership, ¶ 6: Members shall be classified as "Active" or "Inactive". A member shall be classified as "Active" unless it is classified as "Inactive" pursuant to the provisions of this paragraph. Members become Inactive by failing to participate in a RySG meeting or voting process for a total of three consecutive meetings or voting processes or both. An Inactive member shall have all rights and duties of membership other than being counted as present or absent in the determination of a quorum. An Inactive member may resume Active status at any time by participating in a RySG meeting or by voting.

1. Afilias (.info & .mobi)
2. DotAsia Organisation (.asia)
3. DotCooperation (.coop)
4. Employ Media (.jobs)
5. Fundació puntCAT (.cat)
6. Museum Domain Management Association – MuseDoma (.museum)
7. NeuStar (.biz)
8. Public Interest Registry - PIR (.org)
9. RegistryPro (.pro)
10. Societe Internationale de Telecommunication Aeronautiques – SITA (.aero)
11. Telnic (.tel)
12. Tralliance Registry Management Company (TRMC) (.travel)
13. VeriSign (.com, .name, & .net)

- Names & email addresses for points of contact
  - Chair: David Maher, dmaher@pir.org
  - Vice Chair: Jeff Neuman, Jeff.Neuman@Neustar.us
  - Secretariat: Cherie Stubbs, Cherstubbs@aol.com
  - RySG representative for this statement: Brian Cute, briancute@AFILIAS.INFO

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BC Comment on Vertical Integration Working Group Initial Report

August 2010

**Executive Summary of Commercial and Business User Constituency (BC) comments
on Vertical Integration Working Group Initial Report**

This submission is in response to ICANN's call for public comments on the Vertical Integration (VI)
Working Group Initial Report. The BC has closely followed the Working Group's discussions and
considers VI a priority topic. Several BC members are actively engaged in the VI Working Group (in
their individual capacity, not as official representatives of the BC).

The BC developed and posted a position on VI in September 2009 (see Annex A). In this comment
filing, the BC restates its September 2009 position and provides two clarifications to ensure that
our position is relevant to the VI Working Group's initial report. All other elements of the September
2009 position remain, and the BC asks the WG to take note of these clarifications to the BC position.

First, the BC restates "**The BC thus opposes any change to the status quo for all TLDs
intended for sale to third parties (i.e. those unconnected with the Registry)**." Below, we define
the meaning of "status quo" at the time the BC took this position and in the context of bi-directional
separation.

Second, the BC restates "**The BC believes that uniquely for domain names intended for
internal use, the principle of registry-registrar vertical separation should be waived**."
Below, we define the meaning of "internal use" as used in our position.

Finally, the BC request that ICANN continue the policy development process in order to further

define the eligibility for and scope of exceptions for Single Registrant TLDs, including a single registrant distributing domain names to its customers, subscribers, and registered users.

The BC expects that its position will evolve as the Working Group continues its policy development efforts.

BC Recommendation 1:

The full BC position from September 2009 is included in Annex A. The first recommendation from the September 2009 position is:

> The BC believes that removing the existing vertical separation safeguards between registries and registrars may increase the likelihood of the exercise of dominance within the domain name marketplace.
>
> The BC believes that the proponents of change have not satisfactorily demonstrated the likelihood of market place benefits to users.
>
> The BC believes that the proposed 100,000 waiver is likely to effectively remove the principle of separation in that it will apply to the most market-significant names.
>
> **The BC thus opposes any change to the status quo for all TLDs intended for sale to third parties (i.e. those unconnected with the Registry).**

Clarification: In the BC September 2009 position, "status quo" referred to registry contracts for .com, .net, and in the 2001 and 2004 new gTLD rounds, which prohibited a registry from acquiring or controlling more than 15% of a registrar.

In addition, the BC September 2009 position included specific references to "vertical separation safeguards", such as prohibiting registrars from selling names in registries where they had a controlling interest.

The BC is concerned about potential abuses of cross ownership, including access to registrant information that could be used for cross marketing or other purposes for which the data was not collected. Maintaining separation of registrar and registry functions and ownership is viewed by BC as one important 'structural safeguard'.

While the BC position was silent about registrar ownership of registries, the intent of the BC position was to oppose changes in existing structural separation safeguards. Therefore, the BC position is to oppose changes to any separation safeguards, and to maintain the 15% limit on cross-ownership interest between registrars and registries.

Clarification of BC position on BC Recommendation 2:

The second recommendation from the BC September 2009 position supports a narrow exception for registries operated by a single registrant that is distributing second level names for internal use:

BC position (closed markets)
It is possible that in the forthcoming expansion of domain names there will be proprietary domain names not for sale to the general public (eg dot *brand)*. In this unique case the BC would accept that it makes no sense for a company owning its own name or trademark in the form of a domain name to be obliged to go to a third party to register its own second-level domain names. Thus an opt-out for this special case of internal use seems appropriate.

Recommendation 2:
The BC believes that uniquely for domain names intended for internal use, the principle of registry-registrar vertical separation should be waived.

When the BC developed its September 2009 position, "internal use" was a term used for a range of entities that were under control of the single registrant and "not for sale to the general public". At the time, BC discussions of "internal use" included the following entities:

o   divisions and product names for a single registrant (e.g. copiers.canon)
o   employees of a single registrant, for use in second level domains and email addresses
o   subscribers, customers, and registered users of a single registrant, subject to approval and control by the single registrant.

The range of internal uses discussed by the BC should be considered by the Working Group as it develops consensus principles for single registrant exceptions its final report. The BC will continue its internal discussions on these categories.

BC Request for continued policy development of single registrant exception within the Working Group

Finally, the BC requests that ICANN continue the policy development process in order to define the eligibility criteria and conditions for the Single Registrant exception as part of the current round of new gTLDs.

The Working Group Initial Report included a preliminary draft of single registrant exception on pages 32-33 that contemplates a more restrictive definition of internal uses than what the BC has contemplated, listing only "the registry itself, its employees, agents and subcontractors."

The BC requests further exploration of the range of internal entities for which a single registrant may distribute and manage domains within its TLD. As noted above, the BC is interested in flexibility to allow a qualified single registrant to distribute and manage domains for its departments, employees, customers, subscribers, and registered users. However, the BC understands that there would need to be well-defined criteria and enforceable contractual terms.

On all issues regarding vertical integration, the BC expects that its position will evolve as the Working Group continues its policy development work.

Submitted by the BC Executive Committee, 12-Aug-2010

Annex A

BC Position on Registry-Registrar vertical separation

September 2009

Background

The principle of the vertical separation of Registry and Registrar was established 11 years ago as a pro-competitive action at the time of the monopoly of one entity (Network Solutions now VeriSign) owning the registry and acting as registrar for .com .org and .net. ICANN created the system we have today, where registrants place orders with ICANN-accredited registrars, who in turn place the orders with ICANN-contracted TLD registries.

In essence there were three pro-competitive benefits:
    a) the splitting of a dominant market player thus avoiding the potential for the
    exercise of dominance;
    b) the subsequent development of a competitive market with multiple registrars
    offering consumers a variety of services connected with the purchase of domain
    names;
    c) the subsequent development of competition at the registry level as ICANN
    moved to open up the registry market. The BC
supported this principle.

To ensure this structure held, ICANN restricted registries from acquiring a substantial percentage of any registrar, so VeriSign (the .com and .net registry) cannot buy a controlling interest in registrar GoDaddy, for example.

Judged by price alone (as an indicator of a competitive market) the pro-competitive benefits have proved to be real. Today the price of a .com domain name has dropped and there are multiple registrars competing for business with varied offerings.

Developments

In the subsequent 11 years, the BC has continued to support a cautious expansion of gTLD registries (in pursuit of the competitive benefits) and the continuation of Registry Registrar separation. Some of the largest registrars have become registry operators which also register those TLD names to the public. For example GoDaddy provides the registry for country-code .me (so Montenegro makes the rules, not ICANN). Also certain registries have been affiliated with domain registration companies for some time
e.g. HostWay and .PRO, Poptel and .COOP, CORE and .CAT, Verisign and DBMS, GoDaddy and .ME, Afilias and .INFO.

Some registrars, such as eNom, are pressing ICANN to eliminate the restrictions on Registry-Registrar cross-ownership, so that those registrars can compete as registry businesses, sell new gTLD domains directly to the public, and sell them to all other ICANN accredited registrars as well. Other registrars, such as Network Solutions, has called for a continuation of the structural separation requirements between registries and registrars, but some liberalization in the cross-ownership requirements.

ICANN has reacted positively to the proposals to change in a limited fashion by proposing a continuation of the principle of separation BUT with a waiver for the first 100,000 names (described as a *limited lifting* of the requirement):

"With a limited exception, a registrar should not sell domain services of an affiliated registry. This limit is set to a certain threshold, in this model, 100,000 domain names".
http://www.icann.org/en/topics/new-gtlds/regy-regr-separation-18feb09-en.pdf

The questions are thus:
a) 11 years on, do the pro-competitive benefits outlined above continue to exist?
b) Does the 100,000 waiver effectively remove the principle of separation in that it willapply to the most market-significant names?

The position of the existing market players
In favour of the status quo of continued separation
Certain existing registries, such as NeuStar (.biz) and Public Interest Registry (.org) are in support of any entity becoming a registry or registry operator, so long as that entity does not distribute domain names in the same TLD that they operate as a registry. They oppose the proposal to discontinue separation on the basis that registrars have a substantial head start in marketing domain names to the public.

In favour of change and the ending of separation
Certain existing large registrars argue that only entities with market power which can be exercised for anti-competitive purposes (such as Verisign with .com and .net), should be subject to cross-ownership restrictions. These registrars claim it is in consumers' interests to allow cross-ownership because it would enhance competition and allow for the passing on of operational efficiencies in the form of lower prices.

BC Position (general market)
Given the uncertainty of the merits of the arguments either way the BC believes that the burden of proof must lie with the proponents of change. Those who favour change must demonstrate: a) that the competitive benefits outlined above no longer apply and b) that there will be new competitive benefits and no significant adverse effects as a result of such change.

The decision is of course not in the hands of registrars or registries but in the hands of the ICANN Board. The question for the Board is simple: "Will removing the vertical separation safeguards either INCREASE or DECREASE the likelihood of the exercise of dominance within the domain name marketplace?"

Recommendation 1:
The BC believes that removing the existing vertical separation safeguardsbetween registries and registrars may increase the likelihood of the exercise ofdominance within the domain name marketplace.

The BC believes that the proponents of change have not satisfactorilydemonstrated the likelihood of market place benefits to users.

The BC believes that the proposed 100,000 waiver is likely to effectively removethe principle of separation in that it will apply to the most market-significantnames.

The BC thus opposes any change to the status quo for all TLDs intended for saleto third parties (i.e. those unconnected with the Registry).

BC position (closed markets)

It is possible that in the forthcoming expansion of domain names there will be proprietary domain names not for sale to the general public eg dot *brand*. In this unique case the BC would accept that it makes no sense for a company owning its own name or trademark in the form of a domain name to be obliged to go to a third party to register its own second-level domain names. Thus an opt-out for this special case of internal use seems appropriate.

Recommendation 2:
The BC believes that uniquely for domain names intended for internal use, the principle of registry-registrar vertical separation should be waived.

ANNEX B

OTHER PROPOSALS

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Open Registrar Proposal

The core of the vertical integration debate is ensuring competition, i.e. making sure that an organization that holds a monopoly or, more correct from a competition law point of view, an "essential facility" (the TLD), ensures access to such resource under fair, reasonable, and non-discriminatory terms (the "FRAND" standard);

The choice made in order to ensure such access is to disentangle two roles: the registry (managing the infrastructure) and a registrar (reseller network) providing access to the infrastructure. What's interesting is that although we are talking about "new" gTLDs, the debate is nothing new: we have seen similar issues in telecommunications, the railroad network, energy and mining, and so on;

However, the Vertical Integration Working Group ("VI WG") is still one of a kind: 62 members, 1500 emails on the mailing list and several extremely good and diverse proposals. Having attended all conference calls, read each and every e-mail and examining all documents, we (a group of mid-size European Registrars) respectfully submit the following, with several key principles.

I. A balanced and Realistic view

Years of experience in the ccTLDs space abundantly show that models with cross ownership ("CO") or vertical integration ("VI") between registries and registrars **do not cause consumer harm by themselves** and therefore should not be automatically prohibited in the new gTLD ("nTLD") process.

To the contrary, we believe (along with DM and MMA) that too strict limitations of such models will end up crippling or worse discourage many potential nTLD applications, directly against ICANN goal of stimulating innovation and growth for nTLDs.

We are sympathetic to comments – such as PIR's – which point out some danger in total and unmonitored integration. However, this "danger" as yet to be substantivized with clear and quantifiable examples. Likewise, we believe that although past experiences must be taken into account when shaping this new framework, they should not be the only thing we – as a community – and ICANN – as a whole – listens to. As the name implies, *n*TLDs will open a new era and rules should allow for that.

A prime example of this "new era" is the strong interest that key consumer brands have shown in participating in the process. This WG is fortunate enough to count at least of one of them as its member and we all know of the interest of Canon and HP, to name a few. Since nothing in the ICANN rules prevent them from applying, we believe it is essential for this WG to allow them to pursue their goals.

As a result, we strongly believe the only suitable answer to the above is a strong yet flexible framework of rules to be implemented. It needs to be capable of effectively control CO and VI – and indeed avoid dangers but only those that are clearly identified – yet provide flexibility for innovation while guaranteeing equal access to Registrars.

Because none of us has a crystal ball, the ultimate goal must be to foster innovation. While we are not proponents of pure *laisser-faire* the truth is that the Internet is constantly evolving: our WG has no foolproof way of determining what TLD will or will be a success and it would be quite presumptuous to judge a business model before it is even created. Twitter as become a key service in less than two years and without any "specific service" attached to the .com Top Level Domain. Similarly – and closer to home – the .Tel Top Level Domain is quite successful with only a handful of Registrars promoting it effectively.

II. Fighting the issues, not the potential risks

a) Crisis? What crisis?

There may be risks in nTLDs but it seems unrealistic to want to avoid them all before they happen. To name just a few, UDRP, de-accreditation of a Registrar, whois compliance checks... All remedies that are constantly used in our industry and have one common aspect: they are always used after the fact. Likewise, should VI in specific nTLDs prove to be detrimental to customers, checks and balances are in place, or will be added to rectify it *when it happens*. Similarly, if a nTLD Registry were to violate its "equal access" provision, penalties can and should be enforced... But it is unrealistic to pretend correcting an issue before it arises: if it works, don't fix it!

b) Competition authorities are not the solution

We note certain proposals have suggested preliminary investigation of all nTLDs applications by competition authorities, but do not hold these to be practical solutions, as many such authorities will not be available for preliminary investigations or too slow

to respond when faced with a deluge of proposed applications. Since many in the ICANN community nTLD process has been delayed significantly already, we would like to avoid waiting unnecessarily for an answer that may never come or be satisfactory.

Besides, many Competition Authorities (in the US or the EU) simply do not have the authority to consider cross-border issues while in most of the cases, any clearance sought will likely fall under the *de minimis* rule, which states that competition authorities cannot consider issues where the impact on the market is less than 5% (again, this rule applies in the US as well as in the EU)

c) Audits are cost-ineffective

Likewise, we hold regular audits to be unnecessary and cost-ineffective, especially for smaller registries and therefore propose audits to be imposed only in case of legitimate complaints of non-compliance. However, we strongly think such an obligation should have more teeth than what was envisioned: an audit bringing unsatisfactory results should trigger financial consequences or even de-accreditation in severe and repeated cases.

III. Specific answers on Cross Ownership and Vertical Integration

a) No magic number

Having read the whole list and consulted with many stakeholders, we do not yet see unpreventable harm that could come from a registrar affiliated with a registry selling domains of a non-affiliated registry. The "15%" quota is a byproduct of the domain name market as it once was, way before there was millions of Domain Names in the world and, more importantly, before ICANN itself decided there should be no finite number of nTLDs available.

We therefore propose that full registry/registrar cross-ownership of 100% should be allowed and can be beneficial to the goal of stimulating innovation and growth for nTLDs. We no not believe in an arbitrary/artificial limitation of ownership as it provides no benefit in itself regarding the concerns raised regarding control. The same level of control is possible regardless if there is full ownership or just 15% ownership, depending on the setup of the owned entity. There is a high risk that such limitations only serve incumbent registry operators by preventing new competitors from entering the market.

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b) Vertical Integration is not automatically evil and can be quite useful

The fact that some ccTLDs Registries do act as Registrars for their own Internet Communities should be proof enough that VI is indeed a possibility. .SE, .UK, .DE have been doing it for ages and the German and British market are among the strongest in the world.

Moreover, VI may be needed for fringe TLDs and TLDs in regions with no or few ICANN registrars. Proposals suggesting 7 registries could band together to form one registrar needlessly curtails the economic options of a new TLD registry and disregards basic market requirements.

c) The need for a reasonable and practical "Chinese wall"

While we agree that there may be possibilities for abuse from a registrar affiliated with a registry selling domains of said affiliated registry, we believe such abuse can be effectively curtailed by implementing barriers, checks and balances as well as penalties for offending entities.

We therefore propose to limit the level of control to prevent harm by inserting yet-to-be-defined layers of barriers of information (information firewalls) between the registry and registrar entities, as well as implementing contractual guarantees for other registrars to prevent discrimination. Once again, we believe preventing any and all wrongdoing before it happens is, at best, wishful thinking. Creating enforceable sanctions towards Registries and/or Registrars guilty of clearly defined wrongdoing will be much easier and practical.

This can be achieved by requiring strict financial separation of registrar and registry entities, functional separation of the entities as much as is required, and to a lesser extent, a limitation of market share or market power in the TLD. Further limitation of control will be achieved by strict adherence to so-called "Rec. 19", by implementing guarantees to ensure equal access for all ICANN accredited registrars (see below), mandating the use of registrars (sale only through registrars), except in the case of SRSUs as detailed below.

IV. Equal Access

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In principle, all ICANN accredited registrars must be granted equal access, all registrars interested in carrying the TLD must have the same basic opportunities for registrations and management of a domain name. This includes an equal number of connections to the registry system for all registrars, first come, first serve amongst registrars for general availability/non-auction phases, adequate support levels for all registrars as well as firewalling information of registry data from registrar entity.

Cross-ownership should not prohibit a registrar to sell domains from a registry of which it holds shares, provided equal access to registrations is guaranteed and does not discriminate against other registrars.

V. Single Registrant TLDs

As a consequence of the above, single registrant TLDs will be possible and registries be in general allowed to own or act as a registrar in their own TLD.

As previously suggested in other proposals, a separation can and must be made on the requirement of equal access of registrars depending on the intended and actual use of the SR TLD.

a) SRSU

In cases where the SR is also the single user, no equal access of registrars shall be deemed necessary. Such uses would include dotBrands and organizations where the domain names would only be available for use by that organization in a very narrow sense, and responsibility for each domain name and its use remains with the single registrant. As soon as domain names are distributed, SRSU does no longer apply.

b) SRMU

However, once domain names are to be provided to multiple users, equal access rights for all registrars must once again be ensured to prevent opportunities for gaming. Many non-SR TLDs may otherwise be inclined to apply for SR status just to get around the equal access requirement. For example, a .WEB SR TLD without equal access based on a club membership structure or other creative distribution method shall not be allowed.

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To prevent gaming, strict guidelines would need to be defined to limit SRSU TLDs to such proposals without gaming potential. If no such guidelines can be defined by this WG, no exception from the equal access provision shall be made.

VI. Misc: our answers to some issues raised on list

a) Registry Service Providers (RSPs)

The Afilias and Neustar examples show quite clearly that a good RSP can be instrumental in the success of a TLD. The experience gathered for one automatically benefit the others and allow for better investment planning and outreach. Preventing RSP from having an interest in one or more TLD could therefore be counterproductive to the Community.

Thus, we propose that no cap should be implemented on cross ownership between a registry service provider (registry tech provider) and a registrar, but that similar levels of limitation of control be required. Excluding the requirement for annual audits, we see the Neustar proposal as a working model regarding RSPs.

b) Community and "Orphan" TLDs

As registries are able to set up a registrar under the proposed system, no special rules for these types of TLDs are necessary.

c) Compliance monitoring and penalties

As some market players may try to violate their obligations with regard to limits of control and/or equal access, SRSUs may turn out to be SRMUs after all, etc. For such violators, ICANN should put in place a firm and strict penalty system for the offending player, with penalties ranging from financial penalties, imposition of stronger restrictions up to the loss of the registry contract in case of severe and repeated offenses. Compliance should (and will be) monitored by competitors, registrars and registries alike, and complaints be investigated by ICANN and/or contractors of ICANN.

CONCLUSION: the need for VI-CO within reasonable boundaries

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Approaching the matter with an open mind at the very beginning of this WG's work, we have never been convinced of any potential danger of some VI or CO for the future nTLDs.

Any innovation carries an inherent level of risk: domain names brought cybersquatting and tasting, to which the community found solutions – similarly the community will find solutions *if and when* issues arise, which has simply not been the case so far.

ccTLDs have used VI/CO with great success while Registrars carrying those still continue growing their market share. It stands to reason then that a Registry offering Domain Name registrations directly is not enough to "capture" the customer who still knows and uses the choice of the market.

nTLDs allow for diversity, which means that .Nokia will not compete directly with .Biz and can be registered (and used) alongside a .Web. As a result, we don't see dotBrand TLDs as a risk for other TLDs and believe the community should understand that some companies need to gather additional control over the way their brand is used on the Internet, through SRSU if necessary. Likewise, a Japanese brand may prefer that its customers in France use their local Registrar while their key market would be "better served" by the brand company directly: it is presumptuous – at best – for this WG to try to guess each and every business model that nTLDs will use.

Privacy and data exchange has evolved tremendously over the last ten years, most of the time for the benefit of the consumer. There is no reason to believe that data is more secure in the hand of a small ICANN accredited Registrar – which may not have adequate redundancy or backup plans – than at the Registry level, as is the case in many ccTLDs.

The necessary safeguards do exist, they will evolve as the market does. In the meantime we should take all the steps necessary to allow this evolution to happen.

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