SINGAPORE – Competition, Consumer Choice & Consumer Trust Metrics
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JONATHAN ZUCK: That I was trying to think about a little bit is our plan of attack, if you will. During the ATRT review implementation meeting – or whatever that was called – there was somebody that called in from the "interwebs" and asked about what we were doing, which was very exciting that somebody noticed what we were doing. And so I explained that we were in the implementation phase of this data gathering and metric recommending task that we've been given.

So our first task as a working group that we were all part of was to try and determine datasets that would be worth collecting for the Review Team at the point at which it's convened and potential uses of those datasets, speaking broadly. We looked at numbers and things that we thought should become bigger, things that we thought should become smaller, but basically datasets and uses of those datasets.

I guess I regard this particular process that we're in right now is to make sure that we are collecting the things that we need to start collecting sooner rather than later so that the data is, in fact, available for the Review Team and then, in certain cases, looking into the cost benefit of individual metrics if they look like they'll be terribly difficult to try and the data will be difficult to capture relative to its value.

I think those will probably be the hardest conversations that we have. Beyond that, our job is principally about getting things going. It might be making one last pass through it in terms of recommended measures for

the metrics that we end up with so that we put a solid set of recommendations in front of the Review Team.

I think we should judge ourselves successful if the Review Team, once convened, actually uses our work. That, I think, will be the measure of our success. If it's too convoluted, too heavy, too ponderous and doesn't seem helpful to them, then we will have failed. I think that's how we should measure our success as a working group is that the Review Team, once convened, uses what we put in front of them because they're not required to do so. They're just recommendations.

Does that make sense to everybody that that's the exercise that we have in front of us? Are there any other questions about that?

MICHAEL NELSON: I thought you did a great job with summarizing where we're at. I would add another success factor though, and that is we won't have been successful if we've imposed a whole bunch of burden on a bunch of people to collect data that's not useful even if we do get the data that is useful, so I think we have to be efficient in what we do here.

JONATHAN ZUCK: Right. You're a little bit garbled, Michael, but I think what you were saying is that the one success metric is not collecting a lot data that isn't ultimately used. Is that what you were saying?

MICHAEL NELSON: Exactly.

JONATHAN ZUCK: Yeah, and I guess I consider that in the list of risks to be on the low end of risks, especially if that data is relatively easy to collect and not particularly onerous. I think our hard work here is going to be in the cases where the data is difficult to collect and so then we should be rigorous in making an assessment about whether it's worth it. If it's easy, then I'm not sure that the cost of that is very high going forward.

Maybe another sweep for the data will, in fact, be our evaluation of what we would like those metrics to look like a year from now or 18 months from now. That will be another possible indicator or another possible way of winnowing things if we put ourselves in the shoes of the Review Team and can't find a way that we would use the data. That seems like a reasonable criteria for us as a next phase once we get through this really critical phase of getting the data collected that needs to be collected now.

RON ANDRUFF: Just a point of order, Jonathan. We're jumping into the meeting. Just a point of order just to note that I would like to ask staff if they would just make a note of the attendance of the members of the committee. We jumped right into the meeting without any roll call or any of that, but I just want to make sure that we just get that on the record. I don't think we have to go around the room to do it, but staff can make a note of it.

That's all. Thank you.

JONATHAN ZUCK: Sure.

RON ANDRUFF: Sorry, but that was the first item on the agenda.

JONATHAN ZUCK: No, that's alright.

RON ANDRUFF: We have to do it.

JONATHAN ZUCK: Oh, because it's on the agenda? Let's go around the room and have everybody introduce themselves that's here in the meeting.

JUDY SONG-MARSHALL: Judy Song-Marshall, Neustar.

CHRISTA TAYLOR: Christa Taylor, DOT TBA.

EPHRAIM KENYANITO: Ephraim Kenyanito from Kenya.

KAREN LENTZ: Karen Lentz, ICANN staff.

ELEEZA AGOPIAN: Eleeza Agopian, ICANN staff.

MARGIE MILAM: Margie Milam, ICANN staff.

MATT ASHTIANI: Matt Ashtiani, ICANN staff.

JONATHAN ZUCK: Jonathan Zuck, ACT and IPC.

RON ANDRUFF: Ron Andruff, BC.

RUDI VANSNICK: Rudi Vansnick, NPOC.

EVAN LEIBOVITCH: Evan Leibovitch, ALAC.

STEVE DELBIANCO: Steve DelBianco, NetChoice and the Business Constituency.

LOUISE NASAK: Louise Nasak from Telecom Regulator of Vanuatu and observer.

JONATHAN ZUCK: Welcome. I'm sorry I stomped on the process here a little bit. We just have a short time, and the BC went overtime so we're trying to make up for their…. Go ahead, Evan.

EVAN LEIBOVITCH: Two things: on the initial comments you had, I think part of the issue is a matter of timing. There are some things that need to be done right now. There are other metrics that may still be considered to be necessary but might even be able to be collected right up to the time the Review Team starts doing its work.

For instance, if there's publications or there's firms that are doing data collection that are already doing the retention, they don't have to be collected now. They'll be doing the historical data that the Review Team will be able to collect, so my inclination right now is that we're dealing with the stuff needs to be done right now, such as talking surveys or whatever. They're still going to be useful metrics, but there's going to be some of them that can wait until very close to when the Review Team starts.

JONATHAN ZUCK: Probably most of them.

EVAN LEIBOVITCH: Yeah. Just one comment in response to Mike Nelson: as we found in some of the deliberations of the group right now, what is useful is in the eye of the beholder. We definitely have different parties here to whom various things have different levels of utility. I agree with you that that's

fairly low on the ladder because there's so many different points of view coming at this.

JONATHAN ZUCK: I think that's exactly right, Evan, and I would concur. Like I said, the only thing that our contribution to usefulness may be to make a pass through all of them to make sure that we're making some recommendation about how the data might be used. If we're incapable as a group of making that suggestion, that might be a somewhat objective indicator of usefulness. Again, the real criteria will be whether it's used by the Review Team, and let's do everything we can to put ourselves in their shoes.

I think that's going to be our process, and so what we need to do in the near term is look at datasets that need to begin to be collected now because they won't be available to us at the time at which the Review Team convenes. We did some of that exercise in the context of things that required Board approval. The informal feedback I've gotten from Board members is that our recommendation was well received by the Board, so I'm excited about that.

But we need to look at the other datasets that we need to make decisions about collecting now. Then the next phase would be to look at datasets that will be difficult to collect, etc., and make an assessment about their relative value to the difficulty of collecting them.

EVAN LEIBOVITCH: Just a quick question, Jonathan: based on the conversations you had with the Board members, did they have any idea of what the surveys might cost when they told you this was a good idea?

JONATHAN ZUCK: Yeah, we put projected costs into our proposal to them.

EVAN LEIBOVITCH: And they were okay with that?

JONATHAN ZUCK: Well, I didn't ask for a lot of details because I try very hard not to snatch defeat from the jaws of victory whenever possible. The fact that they were still smiling I'm going to regard as a success. There's an awful lot going on at ICANN right now, so it's possible to slip a million bucks by, I think, pretty easily at this juncture. This is the time to do it.

Ron?

RON ANDRUFF: Jonathan, there were actually two parts to that I wonder if you just might talk about. There were two parts to the study, and we're speaking about the first piece of research. There was another part, the second part.

JONATHAN ZUCK: Well, there were two research efforts.

RON ANDRUFF: Exactly.

JONATHAN ZUCK: One was a survey, and one was an economic study. They were both part of the recommendation. Again, I didn't really deep dive and go, "Oh, are you sure you like the second one too?" I just took the approving nods at their face value.

RON ANDRUFF: No, I was more referring to just to make sure that everyone in the group in the room was understanding that there were, in fact, two elements to it.

JONATHAN ZUCK: Right. Those in the room that aren't aware, our very first exercise was to look at datasets and analysis that needed to be begun now because the data may or may not be available to us at the time of the review.

The two areas in which that was true and which required Board approval, largely because of the cost involved, was a consumer survey related to consumer trust in the DNS so that we would have a baseline that could then be compared to a second survey around the time of the review.

The second was an economic study that included pricing and getting pricing data as it was going along because a lot of that may not be maintained in useful format a year and a half from now or whenever when that team was convened.

There was an economic study and a survey, or really a pair of surveys, that were recommended to the Board that they have in front of them in the meeting this week, so cross your fingers.

Any other questions about that?

Okay. The next natural phase of this is to gain an understanding of datasets that we think will not be available to us later on that the staff are not already collecting on because I think some things they've just started to collect because it was easy for them to turn on that switch.

If we can advance the slides – actually I guess before jumping into that, one of the other things that we did was take one final pass, as much as it made me cringe, to look at additional metrics that we may not have thought of in the first effort.

Two issues that were raised: one was this issue of name collisions as a function of consumer trust and building a metric and some data collection around that. The other that Christopher Wilkinson brought up had to do with registrar discrimination based on registry ownership.

I think Steve wanted to make a couple of comments about both of those things, actually. One of the things we may need to assess with staff is the way – or perhaps with Maguy, who was in the room at one point – about how we might collect the information about collisions.

STEVE DELBIANCO: If you go back one slide, I think that collisions and discrimination was on the previous slide, wasn't it?

JONATHAN ZUCK: Mm-hmm.

STEVE DELBIANCO: That was on your first one. Okay.

JONATHAN ZUCK: I think it's the old deck.

STEVE DELBIANCO: The old deck. I've got it. Collisions came up on one of our last conference calls, and I think that I agreed to look into whether it would fit and, if so, what kind of data and would we need to gather it now. I think there's probably no doubt that collisions do pose a risk to consumer trust in the DNS and possibly also a risk to ICANN's reputation at managing changes to the DNS as well, though that's a secondary concern.

It was not on our original work because at the time while the SSAC knew about collisions…

JONATHAN ZUCK: They were waving a very small flag.

STEVE DELBIANCO: They were waving a tiny little flag, and we didn't see it. It was not on our radar at all; we didn't see the flag. I think it's a good candidate to consider adding it to a consumer trust metric at such time that we want to add new metrics.

On the question of where would the data come from and do we need to begin gathering it now, on that question I really believe that the quantity of collisions is irrelevant. Collisions happen every day. All that really matters is the impact of the collisions, the quantity and severity of problems that people have with collisions.

Now, Jeff Schmidt Advisors (JAS) has just prepared part one of report, and in it there are mechanisms where he's recommending that we gather reports on collisions and that might also be aware that the group who's experiencing the collision would report the severity, and if in fact there were risks to human life, they might ask ICANN to suspend and block that second-level domain to stop the collisions while they mitigated.

That's a very high bar, and I'm not suggesting that that's the only bar we care about. The question would be: if we dive into the JAS report, talk to compliance a little bit, would there be a special system to capture the quantity and severity of collision problems, or would it just be part of compliance or general complaints that come into ICANN?

If we can discover that any of those places are a repository for it, we have to verify that the data will be preserved when it's gathered and that it be codified and categorized so that, after the fact, when you dive into somebody who reported a problem because their internal network print servers all stopped working the day that .server was finished with sunrise and went public, and it's because somebody bought a second-level domain that collided with the name of their printers.

When that happens, the report has to be categorized as if it's a collision, or later on we'll never know whether it was collision related. I don't

think we'll be able to compare it to the pre-new gTLD, to the legacy gTLD. This won't be a relative measure; it'll be an absolute measure of the quantity and severity of complaints due to collisions and their impact.

Any further discussion on that? Is it something. Do you think that we need to turn on the gathering now or just assume that we can get it later on?

MICHAEL NELSON: This is one of the main reasons I was pushing for some kind of survey of network administrators and CIOs within large companies because if go out and we ask 200 or 300 of these people, "What kind of problems have you seen with domain name administration?" one of the issues that would probably come back is name collisions.

It would be very useful to go to these companies that often manage systems that cover 50,000 or 200,000 employees and see if they're actually seeing problems. This is something we could do now and then do in a year and see if things have gotten worse or gotten better. It shouldn't be very expensive, but I think it would be great to capture this problem.

If you just sit and wait for complaints to come in, it's sort of hard in some cases to ascertain whether the problem is a name collision problem or something else. If you go out to the CIOs who know the issue, and in some cases have already been worried about it, I think we can get a good assessment as to how severe the problem really is and whether it's getting worse.

STEVE DELBIANCO: Thanks, Michael. I think that's a valid proposal and that we should discuss it, certainly. I guess the question will become whether or not it requires a baseline to do or whether it's a part of a proposal for just a survey at the time of the convening of the group.

MICHAEL NELSON: I think you need a baseline. The other advantage of doing this sooner rather than later is that you'd actually through this survey educate some of these network administrators. Some of the lags that people lagging behind the issue may not have looked at it, but a survey might get them to look a little deeper.

JONATHAN ZUCK: Alright. Thanks, Michael. One thing that I probably also want to clarify for the group is I don't think it's within our remit to try and do signaling. We have to be careful, I think, in trying to modify behavior as a result of the establishment of these metrics, etc., because I think that's a lot of what created some of the discord that we had in the original group was that that assumption was being made.

But I've got Steve, Evan, and Ron in the queue – oh, and Christo.

STEVE DELBIANCO: I think it would be a mistake to use this collision metric to justify a survey of CIOs. There might be plenty of other justification for what Mike brought up – I don't question that – but this isn't one of them.

The effect of collisions is unknown. When you interview somebody about collisions, they'll have no idea because if there are collisions and something is not working, they will have remedied it. The impact of collisions happen only as second-level domains come up in new TLDs where they conflict with resources that were being used in a company.

Based on the diddle data – and, Mike, this is such an extensive body of work that would overwhelm you to look at what's been going on with collisions – it's a highly specific area, and each new top-level domain has to use the alternate path of delegation with controlled interruption to generate collisions and collect feedback. It is an entire science in and of itself, and it's not something that a CIO is going to have any idea about for a survey.

As I read the JAS report too, it's not obvious that they have recommended an explicit capture of the collision quantity and mitigation, so this may well require the general complaint system to quickly add an item in the list so that the complaint can be categorized properly.

When something stops working, it's not always clear that the person would actually reach out to ICANN with a complaint at all not know that it had anything to do with the new top-level domain .server being delegated. They may not have any idea. They may solve it long before they figure out that's what it is.

JONATHAN ZUCK: Evan?

MICHAEL NELSON: That's why I think having a very short survey would be quite useful.

EVAN LEIBOVITCH: Actually, I'll continue on what Steve said in the fact that a lot of the IT managers or whatever when they see the collisions happen, they may actually identify the internal source of where the collision is happening. If they're not doing some kind of best practice, they're going to find that out.

However, having said that, this raises things that we can put into the existing survey being considered. In other words, if we're already talking about doing an end user survey of what is consumer trust in the TLD space, we can do a baseline of how much people are encountering collisions right now before delegation.

JONATHAN ZUCK: There is no such thing as [inaudible].

EVAN LEIBOVITCH: Well, so you're saying there's no baseline at all to deal with here?

JONATHAN ZUCK: [inaudible].

STEVE DELBIANCO: Yeah, there's a misunderstanding here. When a collision occurs, it is the cause of a symptom that will show up in your enterprise. If there's no symptom in your enterprise, if the fact that printer.server, if it doesn't

interrupt my printing, I'm having collisions and I don't care because it doesn't cause my systems to fail. When operations fail, the organization that encounters the failure will do investigation. As you say, they'll try to fix it internally.

In some cases, they'll discover that it was because of the delegation of a brand new second-level domain in the .server TLD, and they may or may not even call ICANN to say anything about it. If they do and they want to know what happened, that's when we can record that incoming quantity.

EVAN LEIBOVITCH: But, Steve, when that call comes in, that's not necessarily a compliance thing. That may be just an informational call.

STEVE DELBIANCO: I had mentioned complaint, not compliance, and I don't know who it is at ICANN that manages their complaint system. Now, I know that not all complaints are related to compliance.

JONATHAN ZUCK: I think a lot of them still come through compliance, but they get delegated off elsewhere.

Ron?

RON ANDRUFF: In fact, I would like to put Maguy on the spot and ask if she might maybe respond to that. Just give us a sense of whether or not

complaints do land on compliance desk, Maguy, was the first question. The second is: do you have systems in place, or are you contemplating systems that might address some of the things that Steve has brought up? Thank you.

JONATHAN ZUCK: Welcome to the working group, Maguy. We're glad to have you.

MAGUY SERAD: Thank you. The first question: do complaints come to the compliance system? We receive a lot of complaints, but they're not necessarily all compliance complaints. That's one way of complaints coming into ICANN.

Other ways complaints are received by ICANN is through what we call our front desk or front line. They receive calls or they receive e-mails asking directional guidance. ICANN now is looking at an enterprise-wide what they call customer service call centers that they will implement, but today I know in our current state they do receive complaints. They a lot of times have nowhere to direct them. For example, if it's a compliance one, they guide them to send it to compliance.

Another way of receiving complaints also might be through staff. There are too many different ways, but I know the organization is moving towards what we call an enterprise solution to where we have one point of contact around the globe in the local languages to be able to receive complaints. That's still in the design. It's not implemented yet.

RON ANDRUFF: Today, do we capture complaints? You said sometimes they're handed off to you. Do we capture that? Is there a place where that's captured? The reason I'm asking the question is because this working group is actually preparing the way for the working group.

JONATHAN ZUCK: The Review Team.

RON ANDRUFF: That working group is, I'll call it, 10 to 12 months out. Would we have captured information now, or will we be able to capture information then? One of the two I would hope is a yes.

MAGUY SERAD: In the future, it would make sense to capture. I mean, why would you establish an enterprise-wide solution that's customer service, customer reporting without having the data and the baselining and the evolution of that tool and serve the customer?

Today, is it being captured around other areas? I do not know, Ron, but I know in compliance we do capture what we receive and we capture complaints even if they are not compliance related. We call those customer service.

RON ANDRUFF: Thank you very much.

MAGUY SERAD: Jonathan, may I go back to my seat?

JONATHAN ZUCK: Oh, I thought you had joined the working group.

MAGUY SERAD: No.

JONATHAN ZUCK: Oh, I'm disappointed now.

MAGUY SERAD: I'll contribute.

JONATHAN ZUCK: Alright, you may go back to your seat.

MAGUY SERAD: Thank you.

JONATHAN ZUCK: You're excused.

I mean, I don't know how to ask you to explore that question, but if it's possible to track customer service requests that surround the area of name collisions, if we can ask that question.

Christo is in the queue. Go ahead.

CHRISTOPHER WILKINSON: Hi. I don't know why I appear as "Christo," but it's a new nickname which I never had. Good morning or good afternoon, everybody.

Just a quick word basically in support of Mike Nelson's concern: from my point of view – and I have no expertise in collisions – but the minimum baseline would be to tell your CIOs and IT managers that you're interested in this. Because if in six months' or 12 months' time you start another survey on this aspect of customer trust and the managers concerned in the companies fall out of the sky, you're not going to get good data.

I think the minimum baseline is to make sure that the companies are advised to collect, at least internally, their experiences in this area. Thank you.

JONATHAN ZUCK: Thanks, Christo. I'm going to use that name from now on, if you don't mind. It's got kind of an adventuresome spirit to it that I appreciate as something from one of the Musketeer novels.

CHRISTOPHER WILKINSON: The Count of Monte Cristo, you mean?

JONATHAN ZUCK: Exactly.

CHRISTOPHER WILKINSON: Okay. I'll settle for that.

JONATHAN ZUCK: Alright. So, Count, your suggestion is very interesting, particularly in the context of name collisions because one of the things that's going on right now is a fairly concerted outreach campaign to educate IT professionals about the impending risks of collisions. It could very well be that the baseline of letting people know it's something to watch out for is, in fact, a occurring as a byproduct of the effort to educate on the way out.

There's already a fairly concerted, high-level, worldwide effort to do some outreach and education on name collisions. There are certainly people that are trying to ensure that that effort is rigorous enough, so I think it will reach a fairly broad spectrum of people, which could form that baseline of understanding of the issue to begin with and that you sought.

Steve?

STEVE DELBIANCO: Let's see if we can wrap up on this topic then. There were three data sources that have been identified. There's something Maguy called front line, which is the front line/the front door for complaints. We need to ascertain that the data there is kept indefinitely. Staff can probably determine that in a minute.

The second was the compliance intake system, the current one. I know that there's a new one coming, but until that's here we have to focus on

what we have now since collisions will begin happening in the next several weeks.

The third is the controlled interruption. If the Board approves JAS's plan, their plan is to do controlled interruption on every single second-level domain that's in the diddle block list. It will generate a code that tells the following words to the internal administrator: "Your DNS configuration needs immediate attention. See this URL." I kid you not, that's what the zone fault will say.

They're going to generate that by generating collisions, and hopefully the administrator looks at the URL. The URL directs them to a resource within the registry who will assist them in mitigating the problem. We just need to verify that when we design that system that we ask the registries themselves to retain historical data of how many of these collision replies came in and were dealt with.

That's three data sources, and what we want to ascertain about each is that the data is retained, number one, and if possible, can the complaints be categorized a priori? If they can't be categorized a priori, I realize we can go back in later on and try to look for something that was a collision.

That's all I have on that one, so I don't think it will require we do anything immediately.

JONATHAN ZUCK: With those questions, right? I guess the answer to those questions?

STEVE DELBIANCO: Yes.

MARGIE MILAM: If you're talking about having the registries retain the data, I think that would require some sort of amendment to the contract or something. I mean, there's no obligation at this point to collect that that I'm aware.

STEVE DELBIANCO: No. Take a look at the JAS advisor's draft plan. It's the alternate path. We know that the contract requires either the alternate or primary path, and if the alternate path is chosen, then however the ICANN Board approves the alternate path. This requirement for data retention is in the alternate path requirements. It's not a separate contract provision.

                        You'll be quite amazed at the number of things a registry has to do to generate these controlled interruptions within their zone. Among the many things they have to do, simply retaining the data will seem like an afterthought in there, but I don't think it's a contract amendment.

JONATHAN ZUCK: Any other questions on that?

                        Okay, then let's move to the second additional metric that was suggested about discrimination by registrars that own registries against new gTLDs by not carrying them, I guess is the best way to summarize it.

                        Steve had the homework of going back and seeing if there was an existing metric that almost captured that that could be amended in

some way to make sure that we were capturing the presence, or lack thereof, of a TLD on the registrar's shelves.

STEVE DELBIANCO: Metric 3.10, I'll read it to you very quickly. It's the retail price of domains and new gTLD domains offered to the general public and the TLD attributes should be noted with the data. It is gathered from registrars. It was noted that it would be difficult to automate the collection and that we asked staff to confirm that registrars retained historical records with some periodicity on the pricing of the domains they offered.

I don't recall. Karen, did you verify that registrars had snapshots of their shelf space of TLDs?

KAREN LENTZ: I don't think so because that metric got folded into the recommendation on the economic study, so the idea was that the baseline would be captured at the time that the study was first collecting data and then going forward. We did look at the RAA. I don't think there was anything particularly speaking to a requirement for them to keep that specific data point.

STEVE DELBIANCO: Thank you. What I wanted to note is that if in metric 3.1 – our existing metric on retail price – whatever the gathering of the data is, it's as if you sweep through all the registrars and record what price they are

charging at retail for every TLD that they carry. As a matter of doing that, I think you do learn which TLDs they carry.

If you then map that against the TLDs that were live at that time, you know which TLDs they did not carry for whatever reason. It could have been discrimination between the registry and the registrar, or a registrar may have decided not to carry it at all, but it ought to be an outcome of that data gathering if we are able to know which TLDs are not even offered at each particular registrar.

If that's all true, there wouldn't be a need for any new metrics on here in order to have the data necessary to analyze that evidence of discrimination.

JONATHAN ZUCK: I've got Christopher in the queue, and then I'll come to you, Evan. Go ahead, Christopher.

CHRISTOPHER WILKINSON: Yeah. First of all, thank you very much. I'm very pleased that this aspect of competition and consumer trust is being discussed, so I very much appreciate that.

On the details, I'll read the text of the 3.1 carefully after the conference call and come back to you if I have any further comments, but as I think has already been suggested, registrar discrimination between registries is not just about price. It's also about shelf space and availability.

Which is in general why I had also proposed that mutatis mutandis, since we've already got a registry code of conduct which, when I last

read it, was in part about nondiscrimination among registrars, I think in the new situation with vertical integration ICANN does need a registrars code of conduct, but for the time being let's see what people have to say and how this can be sorted out in detail.

I appreciate that we're finally on the agenda. Thank you.

JONATHAN ZUCK: I think where this may be going is that if the Board approves the economic study on pricing, that we will want to make sure that this is folded into the RFP associated with that study because this will be one of the things.

We will capture the presence or lack thereof of a TLD on the shelf, Christopher, by capturing what's in fact on the shelf and then comparing that later to what was available to be on the shelf. I think we'll be able to capture that information.

If we think that a code of conduct is necessary, then there's other forums to bring that up. This isn't it, unfortunately, but I think there are places to raise that, but unfortunately that's not our remit here.

Evan?

CHRISTOPHER WILKINSON: Yeah, I get that point.

EVAN LEIBOVITCH: Two questions: number one, Christopher, how would you objectively measure what you call shelf space? I mean, as I think of shelf space in a

supermarket I think of, okay, different things are available but one is put right in front of customer's faces and the other one is buried. How do you objectively measure that?

CHRISTOPHER WILKINSON: Well, a very primary measure would be to see whether a registrar on its website is putting its own registries up first on the homepage or on the registration page. Then there is the question as to whether or not the registrar is failing to offer any group of registries, particularly the registries owned by its competitors. I think there are ways of checking this.

EVAN LEIBOVITCH: Okay, but that's an availability issue. You were going to something else. It's one thing to say, "Okay, here's what we have in our catalog, but on any given day we're going to promote our own over those that we don't have as our own registry." That gets into promotion and marketing issues, and I'm really wondering if we're serving well by trying to measure that.

Availability, I think you're absolutely right, but trying to get into what a registrar is promoting one registry over another, that just strikes me as a real black hole.

CHRISTOPHER WILKINSON: Well, I think when there is a complaint based on fair competition considerations, those kinds of questions will be asked. Whether you've got the data or not is another matter.

May I also suggest that in addition to consumer confidence, this goes to success of the new gTLD program as a whole. You've got hundreds of new TLDs, and if the registrars decide that they're only issuing some of them, some of these new registries – particularly the smaller ones – will be squeezed out.

JONATHAN ZUCK: I'm going to, I think, but that off, Christopher, just because I think we're, again, stepping outside our remit to look at the success of the program outside of the three categories that we were given explicitly in the AoC.

CHRISTOPHER WILKINSON: Okay, but Evan asked the question.

JONATHAN ZUCK: Again, I think there's going to be other. In terms of a code of conduct or something like that, I mean, I don't want to diminish your concerns. I just need to map them against our remit, and I think that if we make them a part of the economic study that we propose RFP is being formulated – and let's get you involved in that process of creating that RFP – I think that's the best we can do to address that particular concern within this group. Okay?

CHRISTOPHER WILKINSON: Okay. I'll go along with that.

JONATHAN ZUCK: Thank you.

Do you have something?

RON ANDRUFF: Well, no. Just as I'm listening to this discussion, Christopher and Evan and others, it appears to me that it might make sense to take a snapshot at some point of what registries or registrars are offering to the marketplace to get a sense if, in fact, there is a broad offering on a global scale of these names or not. There may be something there, but I think that's a conversation to be held later.

JONATHAN ZUCK: That's what we're talking about doing.

RON ANDRUFF: Very good. Perfect.

JONATHAN ZUCK: I think that's captured in the recommendation.

RON ANDRUFF: Excellent. Thank you.

CHRISTA TAYLOR: Sorry, Jonathan? One thing to comment on: a lot of registrars will be listing the registries, but they don't necessarily have an agreement there, so they're not going to convert over into sales. In part of our economic study, we should have the number that are actually on the

shelf and the number that they're actually selling because it's not necessarily the same thing. Does that make sense?

A registry might be saying, "We're selling X,Y,Z," and then they're not actually selling it later on. They could be taking preregistrations that aren't going to convert later on because they never entered into an agreement with the registry.

JONATHAN ZUCK: Sorry. I guess I am confused that they would list something that they can't sell?

CHRISTA TAYLOR: Yes. You're thinking down the line that you might be selling it and you could be saying, "I'm taking registrations or preregistrations today," but you don't actually go into the agreement. Therefore, it's never, ever closed.

JONATHAN ZUCK: Christa, what I'm going to ask you to do is make a note of that yourself, and I think we'll be capturing it in the record, but what will happen is if the Board sees fit to approve our study is that we'll probably – some subset of us – will be a part of trying to define what should be in that economic study.

A number of people volunteered for that when raised it, and you were one of them because you raised a number of other issues associate with pricing, initiation fees and things like that that we want to make sure we build in. I'm asking you to bookmark that because that will be the time

to try to work that into the RFP that we put out to the vendor if the study's approved.

CHRISTA TAYLOR: Okay, cool. Thanks.

JONATHAN ZUCK: Okay?

Rudi? And, everyone, please introduce yourself for the record.

RUDI VANSNICK: Yeah. I see a lot of concerns as I have seen yet a lot of potential registrars using new gTLD names and offering preregistration while the potential registry themselves are not yet defining which way they are going to do the real commercial stuff. This creates a lot of confusion.

With regards to the consumer trust, I have a lot of concerns that this is going in a bad direction, and we need to catch that as soon as possible in our survey.

JONATHAN ZUCK: I think that's a good point, Rudi. I mean, some of these pricing strategies/discrimination policies that are coming out even before something is awarded is still a problematic impact on consumer trust, and it could be under the umbrella of that pricing study.

RUDI VANSNICK:	Yeah, and especially when there is a sunrise process. That endangers the sunrise process also.
JONATHAN ZUCK:	Let's just make a note of that and make sure that it's a part of the definition of the study. (I just turned my microphone off.)
	Okay, any other questions about that? I think that we've found a home for that, and it will be in this study which hopefully – fingers crossed – we'll be talking about in greater detail after the Board meeting. Okay?
	Now what I'd like to do is hand the talking stick over to Karen to talk a little bit about some of the things that the staff have come across in terms of feedback. I imagine we won't get through all of these, but we can start to look at how we'll discuss them from a process standpoint going forward.
	There aren't too many of them, but let's start looking at some of the things about which you had questions about data availability and high overhead in a cost-benefit analysis.
KAREN LENTZ:	Thanks, Jonathan. The handful of metrics that are on the agenda for today are those that had already been identified by the group as baseline items. They're the ones remaining after you took out the metrics relating to the surveys and the economic study.
	What we have on these slides for each of these items is basically the best current information as to where we would get it and how complete it would be.

1.13 is one we talked about some on the last call. It's Quantity of Compliance Concerns regarding Applicable National Laws, including reported data security breaches. This is a metric that came, I believe, from the GNSO. We tried to split it up a little bit because it includes a few different things.

On national laws, this is something that would be – it's not something that with regard to the compliance system that exists, it's not something that you can just pull out, "Show me all the ones that relate to national laws." It's obviously doable to identify those going back through the complaints that we have.

JONATHAN ZUCK: It's ascertainable is what you're saying?

KAREN LENTZ: Yes.

JONATHAN ZUCK: Okay.

KAREN LENTZ: Something else that was referenced as a possible source in the earlier notes was WIPO. In their UDRP database, there is a search function where you can look at all of the cases that reference some national laws. That's obviously a subset of national laws relating to intellectual property. Typically, we looked at those cases identified in the WIPO search tool, it was in the decision where the panelist was making

reference to some national law that might be applicable in addition to the UDRP three-part test.

Then there's the second half of this on data security breaches which I'll come back to, but I think we had a little bit of difficulty honing in on which types of national laws are at issue here because laws obviously cover very broad. If it's intended to be specifically about data security or data protection, then that's one area to focus. It's a little bit open as far as we read this as to which bucket of national laws.

RON ANDRUFF: Karen?

KAREN LENTZ: Yes?

RON ANDRUFF: I'm sorry. I just would like to speak to the issue of the national law because I think one of the problems that we have in general in ICANN today is that we're dealing with analog laws in a digital world.

I'm just wondering, do you feel – and I'm just asking for your suggestion – do you feel that there is a baseline that we could say, "Okay, this is a national law on a global scale that we could see"? Or are we going to see holes in those national laws because they just haven't kept pace in different countries?

I'm just wondering, again, how when we're talking about metrics, we really want to have the standard on a global scale if we're going to try

and do that. It seems to me we may not be able to get there because many countries might not have that.

Steve's shaking his head, so I'll defer to Steve.

STEVE DELBIANCO: It might be easier to explain what we did on this one.

[JONATHAN ZUCK]:   It was Wendy's recommendation initially, right? Related to data protection laws?

STEVE DELBIANCO: Data protection laws are among them, but so would be unfair and deceptive trade practices in your particular country. There's no need to try to find some global standard law.

This is simply a count, a tally of the number of compliance concerns that have gone through the compliance department or through law enforcement where we become aware of a problem with a contract party that's associated with applicable national laws wherever the complainant lived.

It's fine if it's where you live. Unfair and deceptive trade practices in Canada could be very different than they are in England.

RON ANDRUFF: That answers my question. Thank you, Steve.

KAREN LENTZ:	Okay, thanks. Maybe I can ask you, Steve, for some clarification on this. The set of national laws that are of interest here – you mentioned unfair trade practices – it's not specifically about data security breaches?
STEVE DELBIANCO:	Of course not because it says, ", including reported data breaches" at registries and registrars. It was "including" but not limited to. That was simply an add-on there.
	This is in a long series of metrics to do with problems that would undermine consumer trust. There's compliance concerns that Maguy tracks. There's items in here on domain takedowns.
	The one right in the middle – 1.13 – are what can we learn from law enforcement when they've been engaged in bringing an action against a contract party for any national law – unfairness of trade practices, data security breach, failure to notify or protect the data, privacy violations whatever they are?
	We realized it was a good metric but very difficult to gather. We ranked this one as difficult because law enforcement and governments may not gather the data and turn it over to ICANN when you call and ask for it.
KAREN LENTZ:	Okay, thank you.
MICHAEL NELSON:	Just to make it more difficult, a lot of these laws are actually state or provincial laws in the United States. Consumer protection, we have data

breach notification laws that vary state-by-state. California has a stricter one than some of the other states, so this is a tough one.

JONATHAN ZUCK: Mike, you're right about that. I wonder if – and this is, again, a kind of case study for us. We flagged it as something difficult to collect. You have agreed with that assessment.

Is there a way for us to define this as a best efforts data collection exercise in which we confine ourselves to the compliance database that gets created?

When there's a notation that the subject of the complaint broke a national law to the extent of which that's ascertainable, we would go ahead and collect that data after the fact and then presumably make a request of law enforcement at the time of the review if the Review Team found that useful and then take the answer that we got.

It sounds like our theory that this would be difficult was supported by your research.

Rudi?

RUDI VANSNICK: I think we have to narrow down to a certain level that we are able to really compare also the results we are going to get. When I read in the title "including reported data security breaches," it means that we have to listen to all the certs also because they're getting most often the security breaches in the country. They should report back. It's almost impossible to go to them.

I think we have to narrow down strictly to the limits that are acceptable for us that helps us to identify where we can help to do something. It doesn't make sense to get all the data that we cannot really do something with. If you're getting too much data, at the end you get confused in what is the solution you have to bring forward. You have to narrow down.

As we know that, for instance, in Europe. We have the data privacy regulation in Europe, but each member state is implementing it in a different way. If you say we are using the data privacy regulation that is at European level, okay, but what if in each country they do it in a different way?

JONATHAN ZUCK: Rudi, again, I think the issue here is that this is a category of complaint, and so it almost doesn't matter which versions it is – whether it's state law, member state law in Europe, etc. – it's a category of complaint that might affect trust.

In other words, I have my own government that is trying to protect me with the laws that it passes. What I believe the person that's in breach of those laws under which I reside speaks to my trust in the DNS.

I think that's the nature of it, so just simply collecting a number could be something interesting to see. Whatever number is available to us at the time is something interesting to see at the time because it's a category of complaint.

We're not going to parse through all of that because we're not compliance. It's really just a question of whether or not the laws of my

hometown or jurisdiction were violated is just the category of complaint.

I think we're just going to call that a best efforts exercise.

UNIDENTIFIED MALE: It's an aspirational.

JONATHAN ZUCK: It's aspirational. I don't know whether or not it's worth asking Maguy what the difficulty would be of creating a flag or something like that in your compliance system that would capture that it had to do with breaking the law as opposed to breaking the contract, right?

I mean, I guess that's the – I guess it might not even be a compliance issue. It might be part of the global complaint system. You might not get them all anyway, so it may be the same answer as before because you're not law enforcement.

MAGUY SERAD: Correct, we're not law enforcement.

JONATHAN ZUCK: You're just the sheriff here.

MAGUY SERAD: When we are processing compliance complaints and one of the possible responses might be, "I cannot be in compliance according to ICANN because the applicable laws override it." What we do, we ask them to

provide us proof of that law. The compliance then takes a backseat in that aspect.

We don't do the scenario you are describing, and we don't have access to that data. I've been listening. I listened to everybody, including the gentleman in the corner. We don't capture that.

May I still stay? Am I still invited to stay at the table now?

JONATHAN ZUCK: Steve?

STEVE DELBIANCO: Karen, we probably should move on because on this slide you have the fact that the good news is that one concern, these data security breaches, they already are collected in the new RAA. You're nodding, for the record. Then you said – could you explain the last bullet on this slide about the registry agreement 2.18?

KAREN LENTZ: Sure. On the data security breaches point specifically, as noted there on the second bullet, the RAA already requires that registrars report any such instances to ICANN within seven days, so you have those as they occur.

The last point was meant to indicate that there's no corresponding provision in the registry agreement. Those were separate sets of negotiations. We looked in the registry agreement for something similar. The only sort of related thing is the provision that a registry

needs to take reasonable precautions to protect personal data. To the extent that there are issues with that, it would be relating to that section, 2.18.

STEVE DELBIANCO: Yeah, complaint to Maguy. She'd have it in her log.

KAREN LENTZ: Right. Correct.

STEVE DELBIANCO: Sorry.

JONATHAN ZUCK: We went through one of these, and I think reached some resolution in terms of how we would try to refine this. The question is: do we need to – and, again, treating this as a case study – do we need to go in and kind of reflect that in the representation of the metric? Is that something that you'd take a shot at, or do we need to take a shot at?

KAREN LENTZ: Yeah. I guess it would be helpful looking forward to the end product of this group. We inherited a set of 70 metrics, and we'll be producing a set of some X number, which may be reorganized and reframed a little bit. If you're asking, "Can we redraft it or clarify what the exercise will consist of in terms of the actions for collecting it?" then, yes, I think we can certainly do that.

JONATHAN ZUCK: Perfect.

STEVE DELBIANCO: Jonathan, question.

JONATHAN ZUCK: Yeah.

STEVE DELBIANCO: In the work Evan and I did feeding into the metrics we needed to gather, Karen, do you remember the request ASAP – as soon as possible – to the GAC and law enforcement? Remember, the GAC chair and law enforcement representatives in ICANN, we were going to ask them what they thought the best ways were to collect this data. Did that ever happen?

KAREN LENTZ: It's happened informally. The law enforcement discussions are ongoing. We've worked with staff who have those connections and had several one-off meetings and discussions to get their recommendations.

On the GAC, there hasn't been any sort of formal request to the GAC. The reason for it is just trying to be cautious about how they're approached and what the request is. We've kind of gone back and forth as to what would be the most effective way to approach and frame the request. As far as the item that Steve mentioned, making an actual concrete request to the GAC as the GAC, that hasn't been done.

STEVE DELBIANCO: Karen, if you get what you want from law enforcement, there's no need to go to the GAC.

KAREN LENTZ: Agreed.

JONATHAN ZUCK: Okay. Oh, hi, Cheryl.

CHERYL LANGDON-ORR: I can't stay for the whole time, which is why I'm not sitting at the table, but as those of you who don't know, I am actually part of this group.

I'm not clear then, Karen. Are we actually getting or looking like we are going to be getting what we need from law enforcement? Because I'm very worried about the time and the possibility of needing to switch and ask the GAC if needs be. Can you assure us that there is a good chance we will get what we need from law enforcement or not?

KAREN LENTZ: You know, the law enforcement conversations have really been case-by-case. There are different regions in different countries who have different sets of data and different levels of recordkeeping and ways of categorizing it and different forms of working and sharing with parties.

I don't think I can say that there's an easy, comprehensive dataset from all of the law enforcement contacts that we have. But, again,

approaching this metric as a best efforts, there is some data, there is some willingness, and there is some ongoing dialogue for that. I hope that helps.

CHERYL LANGDON-ORR: Thanks, though Karen, if I may respond again, please. I'm feeling a little uncomfortable about that because of the nature of the data we'd like and the fact an [ASEP] that it is data we need in category.

If there is a reasonable doubt that we will get what we need from law enforcement, we really have to go forward with preparing a question to the GAC in whatever way is deemed appropriate. I would think it would be deemed appropriate informally for the chair and vice chairs of this group to approach the leadership of the GAC while they're here, for example.

But I'm very nervous that we're going to um and ah about who may or may not give us what for so long that we won't get what we need when we need it. I just want to put that as sort of a hole in the ground, and I think we need to come back to that very shortly and see which way we should go. I'm sensing a little potential for failure just on this metric.

Thank you for indulging me.

JONATHAN ZUCK: Thank you, Cheryl. I think one of the things that we believe probably is that this is not decaying data, that whatever form it's in it's probably ascertainable later, and so making requests to governments for related data at the time, we'll get the results that we will get.

I think that rather than looking at it as a potential for failure, there's a high potential for only some success, I think is probably the best way to categorize this particular metric, and I think that that was our anticipation when we created it.

We can certainly ask for GAC recommendations about that, but I think it's going to come down to asking governments for their data at the time of the Review Team if the Review Team deems that to be valuable information to have. I don't think it will be a case where the Review Team will be, "Gosh, I wish we had been collecting this data." I don't think it falls in that category.

Alright, well, thanks, everyone. We're going to take this back to the phone lines to continue the work here, but we made it through one of these. We'll get through the rest of the ones, especially the ones that are urgent to collect upfront, on the next call, but thanks, everyone, for participating.

[END OF TRANSCRIPTION]