

Registry Registrar Separation Discussion

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Hostess: Ladies and gentlemen, if you please will take your seats. We're about to begin our program. We have the Chairman of ICANN Board, Peter Dingates Fresh.

Chairman: Hi. Thank you, thank you, thank you. Can I have some sound here, please?

Thank you, thank you. Where's the sound? Sounds like it's coming through. Good afternoon, everybody, and thank you very much for coming to this session which is as you can see, very well attended and a very interesting topic.

We have been waiting for the scribes to arrive because we do want a record of the discussion including your questions at the end and the answers given to those. While we're waiting for the scribes the station is being recorded by .mp3 so we will capture it all.

Just before we begin, what's usually described as a housekeeping matter but which in this case something slightly more serious. I just need to remind people about the stage and the meeting of the ICANN Code of Conduct for meeting behavior. So if you'll just bear with me for a moment, and it has nothing to do with this particular session; it actually relates to an incident, unfortunately, at the end of the last session. So I thought it was obviously time to remind people who know and perhaps inform people who haven't been to an ICANN meeting before.

We actually have some rules for participants and attendees at an ICANN conference as to how to behave. Just running through this very quickly, we encourage participants to communicate with respect. We clearly have people all over the ICANN organization and attending with widely different views. That's the fun of the place, people diametrically opposed views coming from very different cultures and very different views on life.

What we need to do is make sure that as we communicate with each other, whatever the disagreement that we do so with respect. Part of that communication process is listening carefully to others in order to understand their perspectives. It also means that we have to take responsibility for our words and our actions. We're all grown-ups. We're all here for the same thing, to improve the policy-making processes of ICANN and to participate and to strengthen the Internet.

One of the suggestions we have really is to keep criticism constructive. Not that we don't ban criticism; in fact, we encourage it. But to be helpful, it has to be constructive.

Finally, please respect the diversity and be tolerant of the differences of others. If you could just remember that for the rest of the week, and we may have to refresh it again.

Let me come into this session. One of the issues in relation to the new gTLDs has been a developing discussion about the respect of rights between registries and registrars. We've started with a number of arguments, a number of positions, and a number of versions of the Guide Book have come out dealing with this.

What we thought would be a good way of helping you and the protagonists and the parties get some grip on this is to actually stage something that looks a little bit like a debate. What that's going to involve is parties who tend to represent clearly-defined but different views.

Now there are a lot of different views and this is not intended to encompass all of the views on this particular debate. But what we've done with apologies today is others of you who also have views is take people who have been quite constructive in putting together clearly-defined but very different views as to how the relationships between registries and registrars and affiliates of both should operate in relation to the selling of the new gTLDs.

Very briefly, we started this in about November 2007, when at a meeting on the GNSO recommendations, a number of these different viewpoints were raised. ICANN committed to undertaking a study of the registry/registrar separation requirements.

As a result of that, one of the Charles River Associates' reports was published making a number of recommendations. Since then, the discussion has taken off.

The way we're going to operate today is that Brian Cote is going to begin, presenting for about ten or twelve minutes a summary of the case for this particular viewpoint. Then there'll be a response from Richard Tindale who's going to represent a different view, for about ten or twelve minutes.

Then they have the parties. This is all being done very cooperatively. We've agreed what some of the key points of difference are that'll be helpful to get out and discuss. Then Richard is going to go first on those, and there'll be a response and then there's going to be another point from Brian, and a response.

So we've got 90 minutes. We think that that process is going to take 60 – 65 minutes, leaving us 20 to 25 minutes for questions. So without further ado, I'll ask Brian, who won the toss to kick off. Brian...

Brian: Thank you, Peter. Thanks, everyone. Brian Cote with Affilias, here to present our position and overview at the outset, as Peter said. First, is always, what's the issue we're talking about? The issue we're talking about is vertical separation of registry and registrar functions.

The four questions as we see them that need to be addressed are, should a registry be allowed to act as a registrar for its own TLD? There has been a consistent prohibition against the registry acting as a registrar in its own TLD and ICANN contracts since its inception.

Second question: Should we reverse ICANN's decade-long policy on use of registry data by affiliated registrars? Third question: Has ICANN conducted adequate analysis in review of the benefits and harms from a reversal of this policy? And lastly, has ICANN followed its own processes for reversal of the policy?

Next slide, please. What is our position? Mainly, Affilias has been advocating alongside with New Star and PIR but many of my comments today are going to be consistent with the registry super majority position that was communicated to ICANN.

Our position is that the existing policy that prohibits the use of registry data by an affiliated registrar should be maintained. To implement and enforce this policy, registries, back-end registry operators and their affiliates should not distribute domain names on their own TLDS. That is, continue the long-standing policy in effect.

Our position also accommodates a couple of exceptions. We noted with interest the findings of the Cray Report. We think the Cray Report pointed to a couple of specific examples. One was called a “single registrant TLD” and the other, “community-based TLD” were given the contours of a particular TLD model. I can certainly proceed with vertical integration because of the potential harms from the registrants in those TLD are minimized by the nature of the model.

What is ICANN’s policy? This has been a question of much debate between us. We’ve had a session last Monday where Richard and I went back forth on the contours of the policy. The policy simply is that, “The revenues and assets of a registry should not be used to advantage an affiliated registrar or to disadvantage a non-affiliated registrar.”

This policy has been in force since ICANN’s inception. This is not an ownership limitation issue. There’s been much confusion on that. We are not talking about ownership from our side of the fence. As long as this policy is continued, the prohibition of selling in your own TLD then we’re fine with cross-ownership, full reciprocal-cross ownership between registries and registrars.

The other question is what are the enforcement mechanisms? Well, ICANN has used a number of enforcement mechanisms over time to enforce this long-standing policy. A few are listed here, equal access and non-discrimination requirements, complex codes of conduct, audits, certifications, sanctioned programs as well as equivalent access requirements and ownership caps.

The question in front of us is what is ICANN’s goal? Is ICANN’s goal to change this policy? That means that they would then permit use of registry assets and revenues to advantage affiliated registrars. ICANN has hired an economist to look at some of these questions. ICANN’s economists who have said that, “If you want to capture the efficiencies of vertical integration, you must eliminate cross-ownership limits. You should eliminate equivalent access requirements as well.”

This is in theory about economic efficiencies. Or, should ICANN’s goal here be to change the enforcement mechanism? On the table is the elimination of cross-ownership. As I’ve said, we agree. It’s not about ownership. But what else is needed if you want to make cross-ownership to continue to protect registrants and registrars from abuses of data co-mingling?

eNom’s proposal is simply remove the prohibition on distributing names in your own TLD full stop. The registry super majority position on the other hand, as I said, said the way forward is to continue the prohibition on selling in your own TLD. This affords protections against abuses of data.

What are these abuses of data? Just to describe the game at a general level, at a high level, how is this game played where registry and registrar data can be co-mingled and used to the detriment of registrars and registrants? Generically speaking, if you go to the next – oh, I’m sorry. I jumped one ahead.

What are the real risks of data co-mingling? First, the integrated registry and registrar has an incentive to discriminate against unaffiliated registrars. That’s by the nature of the combination. They also have an incentive to engage in insider trading and use of the data.

They get access to sensitive registry data regarding look-ups and traffic that increase the risk of abuse, and increase in domain name prices. Over the last six weeks we conducted a survey of 59 small to mid-size registrars. Fifty-nine represents roughly 20 percent of the registrar families out there, registrars from around the world.

Results show that nearly 70 percent opposed the change in policy. Even more interestingly, over 80 percent of the surveyed registrars were very concerned about the preferential access to registry resources and misuse of confidential information. We have a website, registryseparation.org that we're going to be posting that survey results to.

Now, to the side of how's the game played? The game at a generic high level is very simple. On the left-hand side, it's about identifying high-value domains, and identifying them as cheaply as you can.

Then take them out of circulation so they never return to the "first come, first serve" registration marketplace. Then finally, auction them off or sell them at a premium in the after-market.

Or, we've seen keeping the domain for internal monetization over time, which is a form of warehousing which is contrary to an ICANN policy. But this also, this practice represents significant revenue for many registrars.

So how do they do it? In the past, many of you in the room should be familiar with the practices of domain tasting and front-running. There's much focus on domain tasting and in fact, at the end of the day, ICANN adopted mechanisms to reduce domain-name tasting.

But essentially testing names out on the market to see if they'll get traffic, and then pulling them back out of circulation and auction them off at a multiple or selling them on the secondary market.

Front-running was another type of practice. Again, these are just specific practices of the overall general game of identifying high-value names and leveraging them for auction prices. Front-running was identifying the interest in a name through queries, through look-ups, check commands by potential registrants, and then taking that name out of circulation and making it uniquely available through a single registrar.

If you want to read about more detailed concerns of registrar practices in the generic sense, Gandhi, a major registrar issued a very interesting report that details some of these practices. But this effectively is at the core of the policy. Or I should say, these are some of the practices that could be enhanced if the policy were to be changed, and I'll tell you why.

A change in the policy will on the one hand provide for eNom – Richard is asking for this change – control of their own data and their competitor's TLD data if they become an integrated registry and registrar with the ability to sell in their own name.

Here are the facts. They will see all queries for those domain names, whether they're existing domain names or non-existent domain names. They will see the DNS traffic. They will know exactly when all the names will delete. In effect, by having access to this registry data, some of which is unique and available only to the registry today, they will have an engine for jacking-up their profit in continuing this game of identifying high-value names and auctioning them off.

Registrants on the other hand will lose. How do they lose? If these practices proliferate in the marketplace, they're disadvantaged. The domain names that they may be looking for are not available or in the system. So there is a scarcity of names. At the end of the day, they end up paying a higher price through the auction market, through front-running practices.

The registrant would otherwise go as a first come, first serve registrant to a registrar and get a name for \$6.00 to \$10.00 a year now has to pay a multiple of that. And importantly, because we think this issue is two-fold. It's about do we change the fundamental, long-standing policy but also the enforcement mechanisms. What are those mechanisms?

If we don't have mechanisms in place that capture these behaviors in a timely fashion, the registrant loses, the industry loses. We saw what tasting by the time we got around to addressing tasting, most if not all of the high-value names had been taken out of the system.

Whatever the path is forward, the enforcement mechanism needs to be able to detect in a timely fashion these types of practices so that we can address them and preserve the benefits of the market for the registrant.

To clarify our position, I stated the registry constituency super majority position. We believe it should be a "bottom up" approach in terms of addressing this policy change. We believe that it should be based on evidence that builds up to facts, and that'll allow you to draw your own conclusions.

Richard's side, eNom's side, that's not a registrar constituency position as far as we know. It has been promoted by just a handful of large registrars, as our survey shows. It has been in our view a "top down" process that has been supported by incomplete economic analysis and supported by self-interest.

As I wrap up here, in terms of a fact-based approach this analysis and the bottom up approach, here's what we think are in our view facts versus myth and spin. What's eNom has been saying on this issue? Well, they myth and the spin of it is they're saying, "This is about whether a registry should be allowed to own a registrar."

That's not the case. Ownership is not a problem. Enforcement mechanisms prohibiting the sale of a TLD is the core of this policy that needs to go forward. Or otherwise they can manufacture or own one of the retail stores that it sells computers through.

We support permitting cross-ownership. This debate is not about ownership. It's about control and separation of functions. eNom has also been saying that what we are requesting is not a change in ICANN policy. Richard has said, "Just give us the 2001 contracts." That worked well with no abuses. It was the golden-age of registrations.

The fact of the matter is that ICANN policy has consistently worked to constrain data sharing and mitigate abuse of data sharing between registries and registrars. During that time period, there is a code of conduct that required and enforce the policy against data sharing and abuse. The policy has been consistent. The enforcement mechanisms have changed over time.

And finally, ask yourself, "What is the motivation? Why?" Yes, this slide is not an indication that we were hardly putting this thing together at the last minute and to cut off sentences. Registries could benefit from the proposal from what Richard is putting on the table.

Certainly, integrated registry/registrar where you could sell your own TLD, that could be very interesting to registry-like affiliates and others. What we're concerned about is the practices that will put freight in the marketplace. What we're concerned about is the quality of the registrant experience.

What we're concerned about is the quality of the industry in the long-term health of the industry. We are completely supportive of the new round. We have a large back-end business ourselves at Affilias. This is something that we find very interesting. However, this is an important point in terms of protecting registrants in the industry.

What is their motivation? Well, on the one hand, with their registry/registrar hat on, they would get to sell direct. But, with eNom's registrar hat on, they get to maintain equal access and non-discrimination obligations that are imposed on registries. In fact, they're asking to get to have their cake and eat it, too, at the detriment of the registrars.

Thank you.

Peter: Brian, thank you very much for that. Thank you particularly for the clarity and the brevity of what's involved. It's very complex arguments. I found it very helpful.

Richard, you get approximately equal time now to make your case and explain your position. Go ahead.

Richard: Thanks, Peter. Can you hear me okay? I'm Richard Tindale and I'll be presenting the case for a registry owning a registrar in its own TLD.

Let me try to describe what this debate is about. To simplify terminology, let's call registries "producers" and registrars "retail stores". What we're debating is should a producer be allowed to own one of the retail stores that sells its products to the public?

When a producer can own a retail store, it's called "vertical integration". An example of this is – I'll make an example of this using Apple computer. Apple Inc. produces computers and sells them through hundreds of retail stores, like Staples, Amazon, Costco and your neighborhood computer store.

They also sell Apple products through their own Apple retail stores. So the question that we're debating today is, should Apple be allowed to also use its own retail store to sell its product? Or, should Apple be forced to sell its products only through other people's stores? That in a nutshell is the question that's on the table.

Let's look quickly at the current model for TLDs. The purple, whatever that shape is, at the top left-hand corner, that's a back-end provider, a back-end technical registry provider. It's interfacing to the green, round shape which is the registry. I'll call it .XYZ Registry here.

A registry may or may not have a technical back-end provider like that, as a separate entity. It may be that the registry performs its own technical functions. So those two things could be part of the one entity or they could be a separate technical provider.

The registry provides names to a number of registrars in this example. I've got five registrars. All of these registrars interface to the registry. Some of those registrars, for example, Registrar Two here, has a resell model. So Registrar Two in fact sells names through a reseller. The reseller may well bundle the domain names with other products and sell them to consumers.

But in all cases the registrars, whether they go direct to the consumer or through a reseller [audio skipped here 0:29:41.8] through the registrar or consumer.

Let me talk about where we all agree in this debate. These are points where there's no disagreement between Brian and myself. First of all, we're agreeing that the model that I just went through will not be changed. That model, neither of us are proposing to change that model.

We're also agreeing that the registry cannot sell directly to registrant and so the entity that holds the contracts to operate the registry, we're agreeing that that entity will not sell directly to consumers. In the model again, the green circle, the registry is not selling directly to registrants.

We're agreeing that there should be open access to all registrars. In this model, there are five registrars who connect to the registry and we're both agreeing that if it was a sixth that they would be allowed to connect. If there was a seventh and eighth and if there were 500 registrars, all of them would be allowed to connect to our registry.

Fourth, we're agreeing that there should be non-discriminatory treatment of all registrars. The registry, in green, again, must treat all five of these registrars in a completely equal and non-discriminatory fashion.

Finally, number five, we're both agreeing that the registry can own a part of a registrar in its TLD. We're both agreeing, for example, that Registrar Four, in the blue box, that the registry circled in green, we're both agreeing that the registry can own part of that registrar in blue. There's no disagreement on any of those points that I have just discussed.

What is the difference in our positions? The difference is 2 percent. Their position is that the registry must own 49 percent or less of a registrar in that TLD. The opposition is that the registry can choose to own 51 percent or more of a registrar in that TLD.

I'm going to pause on that slide for a moment, because this is a very, very important point that I want to emphasize. This is the essential difference between our proposal and the registry constituency super majority position. This slide is the essential difference between those two positions.

What does that difference mean in practice? I'm guessing that people are having a little trouble reading what's in the blue box there? Would that be a fair assessment? Can people read the blue box? Yeap? Okay. You can see I've got in there that in this scenario now we're both agreeing we can own part of Registrar Four, in blue.

Their position is the top one which is 49 percent or less of that registrar. Our position is the bottom one. We're saying, "If the registry wants to, it can own 51 percent or more."

We're asking for vertical integration so that a registry can control – in other words, own 51 percent or more – of a registrar that sells names in that TLD. Unless – and this is a very important caveat – unless the registry has market power – let me rephrase that, unless the registry/registrar combination has market power or unless the registry is price-capped.

Let me also emphasize that I should have price-capped. We're saying if a registry has its price capped, that many of the things that we're asking for are inappropriate and that controls need to be in place. But as I'll discuss shortly, when the registry is not price-capped, as none of the new TLDs will be, then these concerns are not valid.

Are we asking for something new? No, we're not. The provision that we're asking for, vertical integration, was explicitly in the following contracts. 2001 to 2006, biz, 2003 to 2006, org,

2001 to 2006, info. The very contract that Affilias launched their TLD and operated under for six years contains the exact provisions that we're asking for.

Brian has talked to a range of safeguards, which are in that contract and they are acceptable to us. As you can see, there are a range of other contracts in which this concept of vertical integration, in which the registry could own more than 51 percent of a registrar. That that provision was in a number of ICANN contracts over a long period of time.

Millions of names were registered during this period. It's a longstanding and a consistent position of ICANN in these contracts that the sort of vertical integration that we're asking for is permissible.

Let me read from the .info agreement, the 2001 .info agreement, Section 3.5, talks about the treatment of registrars. "This also shall not preclude an affiliate of registry operator – an affiliate being an entity owned by the same shareholders as the registry – this shall also not preclude an affiliate or registry operator from acting as a registrar with respect to the registry TLD."

As I mentioned, the contract also contained safeguards. Let me go back to some of those safeguards. The contract contains these sorts of safeguards which are acceptable to us.

Let's talk about ICANN's policy position. This is what I can say about vertical integration in 2001. This reflects – I provided the link here – this reflects ICANN's belief that, "There's little if any competitive value under today's market circumstances in forbidding the registry operator from also being a registrar from owning a registrar so long as it is done in such a way as to not discriminate against other competitive registrars."

There's a long and deep history of registry contracts with vertical integration. Have we seen problems with these registries? Have we seen abuse of registrants? Have we seen predatory pricing? Have we seen misuse of data? Have we seen discrimination against other registrars, in all eight of those contracts for all of those years for all of those millions of names? Did we see these things happen?

I believe the answer is that we did not. Is this model that we're proposing for our domain industry unusual in other industries? No. Vertical integration is the norm in almost every other industry. The producers of medical equipment, software, television, toothpaste and thousands of other products are allowed to own a store that sells their product directly to consumers.

Typically these producers also sell through independent retail stores because that helps them sell more product. We don't give this sort of vertical integration a second thought with other industries. In fact, we would typically think it odd if a producer of a product in another industry was not allowed to sell directly. We would view that as the exception rather than the norm.

It's less common in our industry because our industry is evolving from markets with monopoly suppliers and price caps. There have been some controls on the producers in our industry also owning a retail store. But there have also been many contracts with no such controls.

Let me give an example of another industry using the same chart that I used for the domain industry. Hopefully, you can read this one as well. In this case, our registry is Apple Inc. who are a producer of laptops like the MacBook. Apple sells – the registry/producer in this case – sells MacBooks through Staples, through Amazon, through Costco. They sell through their

own retail stores, and they sell through neighborhood computer stores and hundreds of others. The same sort of model flows through.

How does vertical integration benefit consumers? ICANN has commissioned economic reports and competitive experts. They and the vast majority of economic literature and experience indicate that vertical integration benefits consumers in the following ways.

Price. When a producer owns a retail store, there's greater distribution, efficiency and greater competition, both of which benefit consumers through lower prices. With vertical integration there is typically more innovation. Producers who own a retail store are more likely to innovate these new services as they have more control over the delivery of those services.

If you don't have a retail store where you can provide a new service, you have to persuade other store operators to incorporate the service, which they may or may not view as something that they want to provide.

Service and Safety. Manufacturers, producers tend to be more interested, in our view, in the value and safety of their brand and their product than other parties. For example, Apple probably cares more about the perceived value and safety of the Apple MacBook than Costco does. This is not to say that Costco doesn't care at all about the safety and value of the MacBook.

We just think that the Apple store is going to provide more safety and more value wherever it can to consumers for its own product. Let me restate the caveat that's so important to this entire debate. "If there's market power or if there are price caps involved, then all of these potential advantages are at risk." The argument for vertical integration is not as powerful if there is market power or a price cap situation.

So why has this become an issue of debate in ICANN now? We've had years of vertical integration, as I've discussed in those eight contracts with no problems. What's the push back now?

The answer is that we're competing for back-end registry deals today. Let me give an example. Let's say Network Solutions, NSI, is competing with New Star to get a back-end registry deal with a party who planned to apply for .movie. NSI is competing for the back-end registry operator deal, and so is New Star. To this party who attend to apply for .movie.

If Brian's plan for vertical separation becomes policy, the movie people, the movie applicant know that selecting NSI as their back-end registry provider, would mean that movie names cannot be sold through NSI, the registrar. NSI is a great registrar and the movie people know that.

The movie people really want to have their names sold by NSI as a registrar. The movie TLD applicant is not incentive in this case to select NSI as their registry back-end operator because by doing so would eliminate an important retail distribution channel for .movie.

Brian explained some of the claims. We've got to be debating those interactively in a minute. These are the sorts of words that are being tossed around that the registry will discriminate against unaffiliated registrars. That data will be co-mingled, that there will be misuse of data. There will be insider trading, that there will be misuse of traffic and lookups.

We're going to go through each of these in a very careful way in a minute. These are the questions I think we should ask for every one of these allegations of misuse.

Peter: Richard, you're up to equal time with Brian, I'd say.

Richard: Yeah, it's my last thought. Sort of. For every claim, let's look at the following questions. What is the specific allegation being made against the registry, the potential allegation of misuse? How would the registry do what's being alleged? Why would the registry do what's being alleged?

Could this misuse – and I'd like to emphasize this one – could this misuse occur with or without vertical integration? Did this misuse happen when .biz, .info or org pro-museum era, carpet etc. head vertical integration contracts?

Finally, does this sort of misuse happen in other industries where there is already vertical integration? In the interest of fairness, Peter, I'll just cut off there. That is my last slide but let's go to the questions.

Peter: Thanks Richard. We've got more to go before we get to questions. Ladies and gentlemen, we have now heard a summary of the case, if you like, for both of the parties. [Applause - 0:44:01.7] Thank you.

Richard, let me thank you also for the clarity of your presentation. I think that as we get into this people will begin to understand how complex it really is. What we're now going to do, the parties have agreed that there are three or four key issues that they want to take into some greater depth.

Reversing the order, Richard gets to go first. Richard, as I understand the first one is really a discussion about what is the current policy and what might the history of that policy be? Would you like to kick off on it?

Richard: Yes. Yeah, so the policy with respect to vertical integration has been mixed. There have been some contracts that have allowed what we're asking for. I listed those on one of the slides. There are other contracts that have not. In fact, the .com contract for many years, in fact, allowed vertical integration.

There's been a mixture of contracts. I think, from my point of view, the telling part of this entire discussion of what's policy is where has the policy come from with respect to separation? The answer is it's come from the .com contract. As with many things that we do in this industry the rules that we set up for registries and registrars have been driven by the Legacy monopoly situation of .com.

In fact, some of those contracts that I signed had in fact returned to a situation – not returned – I launched a vertical integration. Some of them have reverted to a separation of ownership. But the reason that that happened is because that is what was put in the .com contract in 2006.

From our point of view, the policy has been driven by what's been happening in .com. In our view, we think it's inappropriate and bad policy to set up the sort of rules in a small, new, starting registry that you would encumber a monopoly operator with 80 million plus names. We don't think it's appropriate to have the same sets of rules apply to new registries that you would apply to something like .com

The analogy I would use is to say that we tend to treat Mary's Corner Store, as a registry, with the same set of rules that we might want to have in place for WalMart. Okay?

Peter: Okay. Thanks for that. Brian, your ten, your view of the current policy and perhaps how we got here.

Brian: Well, I'm not sure if you're calling me Mary's Corner Store or if I should be offended or go ask to get my price caps removed, Richard, but thank you for the characterization.

I think there's a distinction here. There's a distinction between policy – as I said in my presentation, the policy against the mingling of data for the obvious potential abuse harms to both competition and registrars on the one hand, and then the pricing shenanigans that happened in the marketplace on the other has been consistent through time. The policy has been consistent through time.

The enforcement mechanisms have varied. Richard's quite right. There has been some impact from the VeriSign and that's an agreement way back when. That was a question that came up on Monday that was a bit of a stumper.

But in fact, one of the reasons the numeric ownership caps didn't show up until the 2005 contracts is because the net's all VeriSign spinoff had not been sorted out effectively. There was an inability to come up with a number.

We're talking about enforcement mechanisms, is what we're talking about. What should they be going forward? We say that the prohibition on selling in your own TLD is the one consistent enforcement mechanism that has worked quite well, very well, as Richard attests.

You haven't sent the kinds of abuses from registries who have been constrained from selling in their own TLD. We think that that's also easier to enforce. If Richard is really arguing for going back to the days of the murkiness of the VeriSign and net.sol spinoff and onerous codes of conduct and ICANN running enforcement proceedings that have \$10,000, \$100,000 penalties attached and a sanctions program, we don't think that's the way forward. We don't think that's the best way forward for ICANN or the community.

Peter: And a quick response...

Richard: Yeah, first of all, I'm Mary's Store, by the way. I'm Mary. So we don't ask you to go back to murkiness. We're not going to complexity. We would like to go to the contract you had. I have it here. It's fairly straightforward and it's fairly simple. It says that I can own that either registry can control and own registrar in my TLD. That's what your contract said.

It also has some safeguards. We like those safeguards. We'd be happy to take this contract and launch tomorrow.

Peter: Okay? Brian, why don't you take the next one, which is what is your proposed model trying to achieve? What really are the impacts for registrants if you get your way?

Brian: What we said in the slides, I think going forward that the continuation of the prohibition is important because it, again, is easy to enforce. The slides we put up about abuse are things that we feel very strongly about. Something that should be appreciated that as a registry with relationships with registrars, that's a bit of a sensitive topic and I've done my best to talk about in generic terms.

But the fact of the matter is whenever you combine a wholesaler and a retailer in the sense it's going to have access to this type of data, some of it which is unique to the registry, there are incentives that are created to cheat, incentives that are created to identify high-value domains and take them out of the system.

Again, I think our foremost point is that we look at the new TLD round as a registry operator with back-end services is a very unique and important opportunity, a business opportunity for us. As you know, Affilias is both a registry operator for .info and a back-end services provider.

But we also have a unique interest and I think we all do in the quality of the marketplace as it evolves from here. The introduction of competition is going to be wonderful. We welcome it. But the impact on the registrants is key. Registrants at the end of the day are going to tell us whether or not this was a success, and they're going to do that by how they're treated in the marketplace by the sales channels.

Peter: Okay. Richard, you didn't really answer the question that Brian posed about the enforcement costs. If you go to that contract that you're waving, Brian says that the only way that worked was very onerous, enforcement mechanisms with high costs. Do you have a response to that?

Richard: I don't believe that's true. I was in the industry then. I had one of those contracts. I don't believe there were onerous costs on me as an operator of one of those contracts. I don't think there was a lot of cost or time on ICANN's part.

Those registries behaved well and acted well because they were in a competitive marketplace. They didn't have market power and so they weren't able to do the sorts of abuses for which we have set up rules to protect ourselves from potential, not actual, but potential misuse of a playing with market power.

In my view there were not strong enforcement costs and they will not be with new TLDs. If a new TLD reaches the position where it achieves some sort of market power, then by all means, let's bring in these sort of enforcements and controls.

But let's understand what "market power" means. We can't have 100 TLDs with market power. If we have one or potentially more new TLDs with market power, by definition this also means that .com has lost its market power. We're really only talking about controlling a handful - potentially - of TLDs that have this sort of market power.

In my view the enforcement mechanisms and effort to control genuinely competitive TLDS is relatively low.

Peter: Thank you, Richard. Brian, you posed as the worst example of the harm that would be caused, the risk of data co-mingling, the insider trading, the ability to lookup all the traffic and then misuse that, and the monetization. Is there any evidence of that occurring under the previous regime? And if it didn't, what stopped it?

Brian: You'd have to look where there were integrated structures and for the large registries that we're talking about. We didn't own registrars back then so there wasn't the opportunity. To the cost of enforcement, New Star, where Richard worked, didn't own a registrar so there were no costs.

VeriSign on a registrar had there been any issues there costs would have been huge, potentially for VeriSign and both for ICANN in enforcing and going through the procedures to enforce. I think there's a clear distinction there that makes sense.

Peter: Again, you have the last one of the – Richard? You want to respond? Sure.

Richard: Actually, I want to talk about the data issue. Are we going to continue with that one or...?

Peter: Carry on.

Richard: Yeah, could you put my slides back on? Is that possible? I'd like to talk about this issue of data misuse. I'd really like to draw down on what it is we're talking about. Before I do that, let me move to one of my slides.

It's coming up. Yeap. Okay. Let's talk about this data misuse issue because it's been tossed around a lot. When we start to dig into it, I think the allegations start to evaporate.

First of all, what data are we talking about here? We're not talking about registrant data. Registrant data, WHOIS data, is public. Everyone has access to that data. Everyone in this room has access to registrant data. So we're not talking about some special access or misuse of that data.

Transaction data, a number of ads, deletes, transfers, renews, etc. We're not talking about that data either. That data is also public. Many companies run sites that can give you detailed statistics on registrant or activity for each of those forms of transaction on a TLD basis. That data is readily available to the public as well.

DNS lookup, DNS tracking data, lookup data. A registry sees at a maximum 20 percent of DNS lookups, due to the distributed nature of the DNS. A registry only sees a small portion of actual queries for registered names.

Let's look at this model I had before. Let's take this scenario where in fact none of these registrars are owned in any way by the registry. They're all completely independent registrars, all five of them here. Number four is independent from the green registry.

The registry, to whatever extent that registry is seeing data, and Brian mentioned a lookup, a query data so a check command for a name. Is this name available? The registrar checks the registry, is this particular name available? It may not register it right now. The registry sees that. That is a form of data that the registry sees.

To the extent that any of this data is available to a registry, the issue of vertical integration is irrelevant. If a registry that is not price-capped as all new registries will not be, if a registry sees some of that data from all of these registrars that it could use, for example, to raise prices, it may well do so.

The issue of whether that registry owns a registrar or not, is entirely irrelevant to how it may or may not use that data. Every registry today sees the sorts of data that we're talking about here. To the extent that they may misuse that data in some way, it's happening today.

The addition of that registry, owning a registrar in no way adds any additional ability to misuse that data.

Peter: Okay. Thank you. Brian, what do you say about that? That's obviously not who is [inaudible – 0:57:17.6] because as Richard says that's available. So there's checked data. The registries are already seeing that. Why would we be misusing it now? What do you say to that?

Brian: Sorry, Peter. I didn't mean to interrupt. No. The point is that the registrars don't see the entire universe of data. They don't see all of the lookups from all of the registrars, all the check commands for available and unavailable names. They don't see the ones that are queried the most, which names are queried the most in that TLD.

So, no, they don't see the entire universe and I would replace Richard's – they may take advantage of the data. Some will, without a doubt. It's not about ownership again. I don't know why we spend time on the ownership question. It's about prohibiting the registry from selling in its own TLD and we believe that that is the enforcement issue which addresses the problem.

I'll also add there has been – some have suggested that registrars in the new round may get together or aggregate, try to get access to the entire universe of registry data and then couple it, combine it and share it, something of a data sharing club, and that that's likely to happen.

We've heard that scenario. We would say that first of all, is that behavior that ICANN should be encouraging? Is that behavior that we all should be encouraging? What might be the legal issues around sharing that type of data?

We think this will happen and we're not saying that all registrars are doing it. But we say it will. There are simple mechanisms to address it.

Peter: Brian, can I just – I'm going to take round back because you actually answered that question as if it was about a registrar seeing all the data. Richard was actually saying that registry already sees that data and could already use that in an unkept environment, put up its prices and then misuse it. Don't seem to be doing that.

You responded in relation to a registrar...

Brian: I was thinking of the new TLD round for a new integrated registry and registrar.

Peter: Richard says that a registry owning a registrar makes no difference to its potential ability to misuse that traffic, that check data. Why aren't registry...?

Brian: We're not selling direct in our own names. We don't own registrars. We don't have the sales channel. Perhaps I'm missing the thrust of the...

Peter: Oh, I think that's a ...You wanted to respond?

Richard: Yeah, just to add. The concern being expressed is that the registry will exploit that data to increase the price in some way. My simple point is that the registry, an un-capped price registry can do that, whether it owns a registrar or not.

Will registries do that? Separate question from the whole debate about vertical integration. In my view, it's not going to happen very much. These TLDs are going to be competitive. If I've got my .charity TLD and I think they're worth \$8.00 per name, I'm going to be competing with other TLDs in the marketplace. Should I see data as a registry that induces me to increase price in some way?

I guess that's called "supply and demand". Maybe if I see a huge amount of interest in .charity I'm going to raise the price from \$8.00 to \$10.00. But again, the issue of whether or not I own a registrar has no bearing on my ability as a registry to increase the price.

Peter: Okay. Let's move to the last two quick questions. Brian, what's the worst aspect of their proposal?

Brian: I think the core of it is the access to data and the potential risk to the registrant, full stop. I mean, we're on the cusp of changing the policy, establishing new rules, providing access. We created the grace period and didn't anticipate tasting, but it happened.

Peter: Yeap.

Brian: And we had to address it at the end of the day. We feel strongly that timely detection of these types of behaviors are important to ICANN. ICANN has an enforcement job to do. It's a difficult enforcement job. We think making it more complex and not establishing mechanisms that provide ICANN with early detection is really not the smart way to go.

Peter: So, you think there'll be a lot more enforcement in checking and reinforcement work that ICANN would have to do to police this new backup.

Brian: Well, yes, and also maybe the inability to detect in time or detect at all.

Peter: Okay. Well said. To you, Richard, what's the worst thing about their proposal?

Richard: I think that the worst thing about their proposal is the notion that we're going to try and hobble new small, highly competitive little TLDs with a set of rules that we designed for a huge market leader.

My great concern is that we're going to hobble potential competitiveness at new TLDs by putting rules on them that we really designed for the giant. We have tended to do that in the past with new TLDs. I believe that's one of the reasons why we haven't seen as much success with the previous round of new TLDs as we hoped for. Let's not make the same mistake with this round of TLDs. Let's allow these new TLDs to compete openly in a competitive market.

If some of them happen to get this sort of pay out and market share that may concern us, then let's introduce rules then. But let's not put the rules before. Let's not put the cart before the horse in terms of encumbering these small competitive TLDs with a set of rules that we designed for .com.

Peter: Okay. So that's – let's say we comment a little closer than the worst of each other's proposals. What compromise might there be between your position and Brian's position? Brian, I'm coming to you with the same question in a minute. Richard, what possible compromise is there, between these two positions?

Richard: Brian could get in.

Peter: Brian could what?

Richard: He could get in.

Peter: Brian, have you got an equally helpful compromise to suggest?

Brian: I thought we headed that one last night, Peter.

Peter: Let me try another one. I think a very sensible and well-thought through compromise was put on the table in March of this year, a discussion forum we had on this issue. We've been debating this issue for about, almost twelve months now. A very effective compromise was put on the table which would limit the ability of a registry-owned registrar to sell names at a certain threshold, which was 100,000 names.

The point being with that proposal would be that if a new TLD took off and was hugely successful, let's say it had a million names, hugely successful in a new TLD with a million names. The registry-owned registrar in that TLD would in fact be limited to just 10 percent of those names.

That was a compromise position, a cautious position that was put forward. We endorsed that position ten months ago. The debate has since then opened up again, but I believe that compromise is worthy of looking at again.

Peter: Brian, compromise?

Brian: No, that's not a compromise position. Allowing registries to sell direct up to 100,000 names is a change of policy. It's allowing to sell direct. Let's be clear. Let's also be clear that there is a lot of valuable names in that first 100,000 as we know from experience. Allowing the unfettered ability to sell direct in an environment where there would incentive to basically cream skim, goes to the concerns that we've mentioned here.

So, that we don't see as a compromise. I'm encouraged to see on the one hand Richard saying if the policy was consistent, he'd be okay with the prohibition going forward. But I'm discouraged by the notion of going back to the days of onerous codes of conduct and enforcement challenges that existed in the VeriSign arena.

Peter: Okay, so for 100,000 doesn't work, would 98,000, or 52,000? Is there a number somewhere that would work? I know you chaps have batted these numbers around.

Brain; I mean, there are some precedent. For example, I think .museum had a 5,000 ceiling. There was some precedent out there. Again, I think that went to the nature of the TLD. I think the Cray Report provided some good guidance here, that depending on the structure of the model, you can allow some type of integration because the risks aren't so high. I think that's where we should focus.

Peter: Okay.

Richard: Peter....

Peter: One quick one then we've got to throw the floor, the questions to the floor.

Richard: Just a point of clarification. In the .museum contract, there was an unlimited ability of the registry-owned registrar to sell names. There was no 100,000 limit. There was no 20 million name limit. The 5,000 names that Brian's referring to was names that the registry was allowed to own for itself, to register for itself.

A registrar that the registry owned could sell an unlimited number of names and that contract info, biz, name call, etc.

Peter: Okay. Thanks for that.

Richard: Peter...

Peter: Ladies and gentlemen, you've heard the kind of problem that the board faces, carefully articulated, clever, committed, passionate people putting forward contradictory positions. So, welcome to life on the Board and welcome to life at ICANN.

Of course, what happens in this process, the staff is charged with digesting this and presenting a recommendation to the Board. Welcome to their nightmare. They can never get that right. One side, or even usually both sides, depressed, feel repressed and discouraged.

So, you see how hard it is. We've got a whole variety of positions. We've got allegations that there should be no rules, suggestions that we need new rules, suggestions that we go back to our old rules.

The Board has to wonder, is the past conduct of Legacy-operators any guide to the conduct of future operators? What is market power? How would we recognize it? How often would we have to check? Can we afford it? What does that do to the prices?

If we move ahead, and we get it wrong, are we getting a genie out that we can never get back in the bottle? Let's have some questions. What I really want to hear from is people who are not connected to either of these parties. Now we're not going to do passport checks. I'm really looking for independent views on this. Let's start with the microphone.

Amadea, welcome to the debate.

Amadea: Hello. While I have some opinions, but first I wanted to explain something about the theory about historical example of mine, however, different situations. First about everything I've heard, everything's holds. Everything's true. But there's something about what Richard said that bothered me.

Look, vertical integration, at Veri Lee's house, an increase of prices. A certain regimes of prices will slide, not very significant increase of price. That's a fact. Except that for minority of US economists, which are a minority within the economic theory, economic thinking in the United States that became the majority of the US anti-trust thinking, the Chicago School.

But outside of that role, everybody else agrees. But that's marginal. The real problem here is that the copy domain is the real important thing. This works if, not only if there's market power, these work if vertical integration is good in general, there is a high cross of elasticity of demand. That's a real important thing. Not supply, demand, that is.

If the consumer perceives those goods are for a different vertical integration charge asks highly intangible. I would submit that this is not exactly the case in the TLD space, in the DNS. Registries are convinced that they could compete one against each other. The consumers are mildly convinced that the registries compete or the products compete. To take your example...

Peter: Amadea, I'm sorry. I'm just going to have to –

Amadea: Yes?

Peter: Suggest that we have time constraints.

Amadea: Sure.

Peter: There are fourteen people already in the queue. If I gave you ten minutes each we would run out of time.

Amadea: Okay.

Peter: So you've ruled that list in two minutes.

Amadea: Okay. That's okay. Perfect. Let's imagine that the movie example you made, if I don't like the prices or the services of that vertical integrated system, I really don't move to shopping Chinese to .museum or the .com because of that. Because meaning has an importance of this is probably higher than the price and the services.

That is not perfect competition, but compete with all the others, all the others don't want to be each other perfectly. It's very imperfect competition. Secondly, [inaudible 1:10:00.8] registered and have [inaudible 1:10:02.5] to that registry if I am using my domain for the usual purposes, not just for special collections, so to speak.

That is, it's not true that from the demand side that there is high elasticity and therefore, there is not true that there is no market power from that perspective. Therefore your argument has to be taken with a certain care.

Now, the second example –

Peter: Amadea, I'm sorry. I'm going to have to stop you. I said two minutes and you've had four already. That's going to –

Amadea: Half of that was discussion with you.

Peter: How you use your time is up to you. Let's come to this, and please keep it brief. There are lots of opportunities. I don't really want people coming forward and reading statements. I really welcome questions of the panelists.

Sir...

Jeff Schmidt: Jeff Schmidt. You'll be happy to know I don't have any relations with either of these folks. I came here today only as a "wannbe" economist.

So, regarding vertical integration, there's two ways to implement vertical integration, through ownership, but also through contracting relationships. In this case, everything that I've heard here with respect to use of data and such, seems to be a code of conduct issue much more than an ownership issue.

So, my question to both panelists is, is the ownership issue a red herring in this situation? Is it much more a code of conduct situation, not an ownership situation? My book's in the wrong thing.

Peter; Have you got an answer?

Brian: Yes. It is a red herring issue. It's not about ownership, and it's code of conduct as an enforcement's perspective. It's a prohibition of selling your own data.

Peter: Richard? Is it a red herring?

Richard: That was a pretty fast exchange for me. I'm still processing, but...yeah, I'm not an economist. All I'm saying is if I own the registry, I want to be able to distribute names, whether that's through a legal ownership relationship where I own a registrar or I choose some contracted relationship, which is the alternative that you suggested. I'm fine with that.

Peter: Okay.

Richard: We want the ability to distribute names from our registry.

Peter: Got it. Let's go. Speak into the microphone.

Male: I really think we need to bring some context to this. What we're trying to do here is introduce new TLDs for both competition and innovation in the name space. I think there's two misstatements that Brian's made that I want to put out and then two small questions for Brian.

First, that this is always what the policy's been. I think we always have to take as Richard said the policy in context. We have a policy of separation that was made in the context of .com. It's a very specific market. This is a fundamentally different construct.

The second is around the threat of a small TLD cream skimming. In this new space, if there is a small TLD, 5, 10, 20,000 names, that doesn't cream skim, they will be broke, I would put out to you. They better be and that'll be part of the innovation that we will see in the name space and there's nothing at all wrong with that.

The two questions I have for you, Brian, first, it seems to me that this enforcement thing goes both ways. Enforcing 49 percent ownership restriction is going to be incredibly difficult as well for both ICANN and everybody else involved. Piercing the corporate veil may be in fact be significantly more difficult than enforcing some separation and equal-access requirements.

So, my question for you is, how would you address that when especially when we've seen ownership games played all over the place both in this space and others? The second is, boy, if I was Richard I wouldn't have talked about compromising at 100,000. I'd talk compromise at 1 million because I can't imagine where the data value comes – data value comes from scarcity in name space, where the data value comes from only 100,000.

I would ask you, at what level – at what level – do you really believe that there is value in that data for the purpose of this abuse of the end user that you're describing? Thanks.

Brian: Yeah, I think, again, the answer is – I know Richard's harped on this time and again, we don't view it as an ownership being an enforcement mechanism. We don't.

Male: I wasn't clear. How would ICANN enforce that the 51 percent that was owned in your sort of acceptable position by somebody else wasn't indirectly controlled by the registry?

Brain: It's not just about ownership. It's about control. I mean, it could be something other than a percentage of share ownership of an entity. That's important, because if you're going to have the prohibition going forward, it's you want to be careful for back doors, and you have to be able to address that issue.

Peter: Okay...that's enough on that one.

Brian: Point well-taken.

Peter: We've got to move on here. Let's go.

Daniel Shindler: Thank you, Mr. Chairman, I'll keep this very short. My name is Daniel Shindler. I speak in my personal capacity but as the former CEO of Central Net, I would like to give some practical feedback on this issue.

My way of a short introduction and not advertisement, Central Net is one of the world's oldest registries and provides back-end services for its own portfolio of domains as well as for other TLD operators. It currently has gone in 2,000 registrars and resellers connected to the registry as well as providing retail registrations through its own registrar.

At no time during its fifteen year history, has this cross-ownership caused any problems. In fact, it has ensured extended choice and excellent customer service to its registrants.

Consequently and through specific experience in this area, I strongly advocate no cross-ownership limit is necessary for new TLDs, and also it allows smaller registries an opportunity to build out their offerings, where other registrars may choose not to make their registry's name available.

Peter: Thank you very much. Very useful data to add to the debate. Thank you. Let's come back to this side.

Jas Scott Evans: Hi, my name is Jas Scott Evans and I'm from Yahoo! I have to say that I think cross-ownership is a bad idea. I think that data sharing is about an idea. I was just in a meeting where we're talking about the fact that there's abuses and gaming going on with registrations not getting put back into the system.

That's problematic. We develop the redemption grace period to sort of help that system, but what's happening now is they just don't delete the name. They just keep the valuable names themselves.

So now we've already got an identified problem where there's an abuse of this system taking place. I just see this as another way of making it easier for abuse to take place.

This vertical integration, that all I am is Apple selling my computers at the store breaks down because the reality is Richard's buying his own computers. Monetizing his own computers. And if Apple was doing that, and creating false scarcity and auctioning off their own computers, I think the US government would have a big problem with vertical integration.

Peter: Thank you. So when we're talking about Apple, we're not really... [Applause 1:17:16.7] Apple computers is not comparing apples with apples. Thank you. Richard.

Richard: Yeah, so...

Peter: Quickly...

Richard: It will be quick. Yeah, I'm always quick. So once again, I asked the question, why would a registry-owned registrar do more of that than a registrar who is not associated with a registry?

What's the difference in being owned by the registry that makes you think that more of that is going to happen?

Why would a registry take its own names out of circulation? It doesn't make sense to me. I don't see the logic of why there would be an incentive, an economic incentive for the registry to engage in that?

Jas: Point click advertising is why they do it. On another issue, since I'm here – let me tell you something. WHOis information isn't publicly available to everyone unless you want to start sending me all of your privacy registrations? You just send them on to my enforcement department. We'll be glad. It is not all the data in WHOis is not publicly available.

Peter: Okay.

Richard: ICANN...You've got a cheers squad out there.

Peter: It's [inaudible 1:18:24.5] experts in the room. Let's go to...

Richard: I did have a response again, very briefly, if I could...

Peter: Sorry. Go ahead.

Richard: This is a very important point and it's hard to understand because it is complex. I can do exactly what you're suggesting with a registrar that's not affiliated with me. If I want to go and get every name in my TLD as a registry, I'm going to set the price of them all at #1 million. I'm going to go an unaffiliated registrar and I'm going to do a deal with them, where they have a .05 margin on those names. I'm going to buy the name from that registrar, no one else's. It's going to cost me .05 per name because the million comes back to me, and I'm going to do it.

Whether or not I have my own registrant doesn't stop that behavior. If we're concerned about that sort of behavior, let's look at that warehousing of names...my point is that the issue of vertical integration is separate to the issue that you're discussing.

[Applause 1:19:19.0]

Peter: Yeap. Thank you. Mike Plage, welcome to the microphone.

Mike Plage: Thank you, Peter. Mike Plage. First, I'd like to thank yourself and ICANN for this innovative format. I think it's positive as I think most of the people would agree. [Applause 1:19:34.7]

I'd also like to thank ICANN for last week holding a webinar on this very same topic where there were other aspects, just not this black and white or other shades of gray that we were presented last week.

My question here is we've had competing debates of who's right. My question to the panelists is, what happens if you're wrong and there is harm? What happens if you're wrong and there's potential harm? So, to Richard, you first. You're wrong. You're Mary Registry turns into the evil WalMart empire and begins to harm registrants. What is the consequence, and Brian, you're going to be up next.

Peter: Thank you, Mike. Richard?

Richard: Yeah, okay, so my micro response to that is if a registry assumes market power, which is what we're talking about, then there are national laws that will kick in that will address that sort of situation. I don't think it's ICANN's charter nor its expertise to be acting as a competition regulator in that sense.

However, I would add [Audio skips 1:20:42.6] on the table six to nine months ago would adequately leave the 100,000 limit, would adequately address the concern that you expressed. Thank you.

Mike: Brian, the question is what happens if you hold all new registries to WalMart's standards, prevent innovation and potential choice?

Brian: If we're wrong, then I guess the rules on the enforcement mechanisms that we're proposing are applied to all players in the new TLD round. And contrary to what Richard said, they're on the record as being interested in bidding for .web. we're not talking in every case about small, new registries that we don't want to hobble, but we also believe that what we're putting forward creates more of an even playing field, from a regulatory enforcement standpoint, for all the players.

What Richard is putting forward is what we view as a symmetrical regulation. If you're going to put a symmetrical regulation in play for different parties in the marketplace, you have to have a rational basis. You have to have fundamental economic study and review and analysis of the impacts.

Male: Mr. Chairman, just a point...Thirty seconds...We've been participating in ICANN for over eleven years and we've been trying to advance the private sector leadership. I think what's very interesting with Richard's response is that if ICANN gets it wrong, governments are going to have to come in and get it right.

I don't think we've invested eleven years with the affirmation of commitments of trying to again advance the private sector leadership model upon which ICANN is founded. Once governments come in when we drop the ball, I don't know if they're necessarily going to leave.

Peter: Thank you for that. Miss Burr.

Becky Burr: My name is Becky Burr. For full disclosure purposes, I represent a variety of registries including on this issue. We've learned in this week, or at least I learned in this week only that Richard's proposal included this code of conduct, sanctions, limitation on self-dealing and information co-mingling.

That's very surprising to me because we heard the economists in Sydney say to us that absent dominance in the upstream or the downstream market, vertical integration is good because it produces efficiencies and allows for things to be cheaper and more innovative.

What Richard's saying, if I understand him right and I believe I do, is he doesn't want to get any of those efficiencies. He just wants to take advantage of the efficiencies, the ability to use the data to do all of those things. He is just really changing enforcement mechanisms, not policies. That is the assertion that I hear.

I guess my question is, if that's right, if we are not talking about achieving the economic efficiencies of vertical integration, then what we are talking about is what enforcement mechanism is simplest and easiest for ICANN to enforce?

Richard: Yes, so, we're talking about some safeguards. Let's put some of them on the table. They're not that complicated. There should be separate sets of books if the registry owns or the registrar - there should be a separate set of accounting books.

The profits, if you like, of the registry can't be used to support registrants. These aren't particularly complex safeguards nor are they ones that disturb us. We simply want the ability to be able for registries, new registries, to be able to distribute their product.

I don't think that those sorts of safeguards are going to eradicate all of the efficiencies and benefits of vertical integration. They are a little onerous. If they're what's necessary to get this policy movement the way we want it to go, then we're going to go with them.

I don't think they don't remove the benefits of vertical integration.

Becky: Could I just...I mean...I just have to say the chief efficiency is the information sharing. That's what you have said we'll foreswear. If you want to do true vertical integration, then you ought to – then you have to be thinking about why we even have this equivalent access provision in the contracts? I haven't heard that on the table.

Richard: Again, I don't know what information we're talking about here. The majority of information that the registry sees is public data. What information are we talking about?

Becky: I think Brian might...

Peter: I'll cover that. [Inaudible 1:25:34.5]

Brian: Mill DeMueller non-commercial uses constituency. By the way, I hope this debate doesn't preclude the one we have scheduled in our constituency day meeting, you're not completely sick of this by then we'll – You will tomorrow, Milton.

Milton: So, my question, and it is a question remarkably is, how would the public interest be harmed if we proceeded with the new gTLD round under current policy and practices regarding contracts, vertical separation, etc., and initiated a PDP that resolved these issues systematically in a year or two using the mighty GNSO?

Peter: Well, I think part of the problem – we're not quite sure what you mean by "existing policy" but let me not try and answer the question. Well, you've just had a turn. Brian, can you answer the professor's question? What harm would be done if we started under some current system and changed this at a slower pace?

Brian: Well, we don't think the public should be harmed if the policy were continued and applied to back-end registry services providers. That's our flat answer to your question. We think registrants continue to need to be protected. You have competition. You have lower prices. We think all the benefits are self-evident.

We have had some concerns about the process.

Milton: A bit about the back-end, is that a change? Is that just a continuation of existing policy?

Brian: Our view is that applying the policy to back-ends, that that policy already has effectively has applied, if you look at the behavior has applied to the back-end providers on the marketplace. If it were a question of implementation, we believe ICANN could address it as a question of implementation. We think there's plenty of precedence for that.

But the question of process is a valid one, Milton, and we've had our own concerns that we've put on the record on how the process has been conducted to date.

Peter: Your turn...

Richard: So, let's be clear. The proposal that comes from the registry constituencies is more restrictive rules than currently applied to .com. The back-end provision does not apply currently. The prohibition against resellers does not apply currently. Their proposal would put significantly greater constraints on a new small registry than we currently impose on .com.

So to answer your question, the public harm will be, in our view, that new TLDs will be far less able to compete with these rules.

Peter: Thank you Milton. Good question. Keith, I don't regard you as independent on us. Are you prepared to declare an affiliation?

Keith: Absolutely.

Peter: I think he was.

Keith Drasic: Keith Drasic with New Star. I obviously have a strong opinion on this and we've been working together with Affilias and PIR on the issue.

When talking about the issues with economic efficiency in the marketplace, which is really what ICANN's contract as economists have said is a critical consideration that economic efficiency in the marketplaces produces benefit to the consumer. There are differences in how – excuse me. The registries are currently required to provide service on an equitable basis to registrars, to all ICANN-accredited registrars.

The reverse is not true. In the Central Net example, they were not an ICANN-accredited registry. It was not an accredited-TLD. They were not required to provide equal access to a sales channel, of registrars.

Going back to the Apple example, Apple is not required by a regulator or a governing body to sell through a particular set of resellers. They have the ability to pick and choose resellers and to treat those resellers differently. There is an economic benefit, an economic efficiency to that.

So, my question is, if we're going to a vertically-integrated marketplace, should that go both ways? And, for new TLDs, if it comes down to a new TLD, if our goal is to make sure that the new TLD registries are successful in the marketplace, have access to consumers, should a vertically-integrated registry and registrar be required to offer all new TLDs?

Peter: Okay, Richard?

Richard: No. I think not. I think we're talking about putting more and more layers and layers of rules about the marketplace. The marketplace, absent market power tends to work. Apple doesn't have to sell its product through other sellers. If we were to accept the arguments that I'm hearing here, it would be absolutely in Apple's interest to not sell its product through Staples and Costco and whatever.

It sounds to me like if Apple could only solve through its own store, that somehow it could magically raise the price of MacBook and it could somehow dominate the market. You're exactly right. Apple doesn't have to use those other channels, but it does, the same way that all registries are going to want all registrars to sell their product, not just their own because registrars add value.

Peter: Okay. Just...

Keith: Just real briefly. Sorry, just real briefly. I think the key here is that Apple is able to pick and choose among its resellers. They are not instructed or required contractually to use a select group of registrars, resellers; whatever the terminology may be.

As a registry operator, it is inefficient to me to be required to use registrars and to treat every one of them exactly the same.

Peter: Okay. Thanks for that. Miss Cade...

Marilyn Cade: I'd like to declare an affiliation. I've affiliated myself because I am affiliated with all the registrants. [Applause 1:31:27.9]

I'd like to hear from these two gentlemen how the registrants are affected because I've got to tell you, here's what I've heard so far: competition for competition's sake. Potato chips, Taco chips, peanuts and candy bars are snacks. They're interchangeable.

The main names are interchangeable. I don't get it. I thought that we were here to talk about – and by the way, I read the affirmation of accountability of commitments and I think that I would like to ask these two gentlemen to tell me how ICANN's recent recommitment to act in the public interest has been taken into account and is reflected in their proposals, recognizing that "competition" is not a word that exists in a vacuum? It exists next to the words "consumer protection".

Brian: Peter...?

Peter: Brian, do you want to go first?

Brian: Yeah, thank you, if you don't mind. Thank you for the question, Marilyn. I think one of the frustrations I've had engaging in this debate is that many of the points we've been making about the potential abuses and the increasing of prices for registrants through these practices, the unavailability of domains, has been succumbed in this discussion of competition.

And oh, if there's a dominance, there's a problem. If there's no dominance, it's not a problem. There's no dominances, no problem. It misses the point entirely. These impacts on registrants and consumers are important from a consumer-protection standpoint. We believe that there is a discussion here that is separate and divorced from this competition discussion we're having.

ICANN has a responsibility. ICANN created the anti-tasting policy or mechanism in conjunction with the registries. There's an absolute responsibility to address these questions, separate and apart from the competition discussion.

Peter: Okay. Richard, taking into account the public interest...

Richard: Yeah, in our view, competition is in the public's interest. We believe that new TLDs will compete with existing TLDs. I think the frame of reference that we all have and the way we look at our industry is very much affected by the fact that we've evolved from these monopoly or [inaudible 1:33:53.3] positions.

I think as we see more new TLDs that compete to Amadea's earlier question, it will be competition between TLDs. We think the shoe will compete with footwear. We think web will compete with .com and we think that .movie will compete with .roaming.

So we think that there will be competition between these and we think it will result in reduced prices. Let's be clear about pricing in .com. We're not talking about \$7.00 names. Some people buy .com names for \$7.00 or \$8.00 or \$9.00. The majority of people who buy short, meaningful .com names, spend tens of thousands or in some cases, hundreds of thousands of dollars.

We believe that new TLDs will significantly reduce the price for those consumers.

Marilyn: Never bottle up quickly. So could I ask you quickly, please, tell me, Richard, if your proposal will prohibit registries from taking an interest in high-value names? And either putting them into the market through other mechanisms, if I can assume that the proposal you're putting forward will put names out fairly and equally and neutrally in a wholesale arrangement?

Richard: Yeah, I mean, once again, the issue of whether the registry owns a registrar has no bearing on the question that you're raising. If a registry does not own a registrar, and it thinks that it can price its names at \$20,000 each, then it will simply do that, whether it owns a registrar to sell those names at that price is irrelevant.

If the registry wants to buy or reserve names, as existing TLDs like Asia and Moby and others have done, or auction names, they will do it. This issue of vertical integration is really separate from what you're asking me.

Marilyn: Actually –

Peter: Okay, sorry. I've got to move on. We're now officially out of time. So you said we may well be the last. I'm just checking with the staff to see if we have anymore. I'm sorry, Jonathan. You just get there just in time for the ax to fall.

If we have any more time, we'll use it. John, can you just check whether we've got another couple of minutes? In the meantime, sir, it's your turn.

Joe Katie: Okay. I hope this is a good question. Joe Katie, from SUG Interactive and Dot Brograms. It's a question regarding the – it's more around about the scope of the debate and encouraging or intriguing that the question of single owner or single registrant that the new gTLDs have dropped off the side. I'm wondering – and this is perhaps more for the room.

Is that to say that a single owner or that status or that category is when I say it is now a *fâit accompli*. It's something that we're not going to debate about anymore. Everybody's in agreement. It's a wonderful thing as long as these gTLDs don't compete in the domain name marketplace.

Peter: Brian, do you want to go first?

Brian: Sure. Well, if you're referring to the single registrant model that came from the Cray Report recommendation, my sense is that nothing is really set yet. I use that as a point of reference because Cray said, "Let's use the IBM model. If they're selling names just to their employees, are they really the kind of consumer harms that might be present and therefore you have to create safeguards and enforcement mechanisms?"

The answer is, "Probably not." So, you can go ahead and experiment with vertical integration for this type of model. I don't think that gets the full picture though. I mean, there's a lot of corporate brand players out there who are thinking about getting their own TLD who might service their employees internally but also want to sell to the public.

There might be some that sell to the public but they control the domain after the relationship with the registrant expires. I think there's a few iterations of that that really haven't been addressed by the models on the table. So, my answer is that this is not a settled issue.

Joe: Okay. Thanks.

Peter: No response. Well, ladies and gentlemen, we are officially out of time. Jonathan, I'm sorry. Ladies and gentlemen, we're going to put you in the position now out officially, you're the Board. You've just heard the presentations. You've got a set of recommendations from staff. You have to make a decision.

Heads up, all those who if they were on the Board, would vote for this position? Sorry, let's do it by voice – let's do it by sound. We need to hear you. Let's have a call and I don't want negative. All those who vote in favor of this position, please say, "Aye."

Many in audience: Aye.

Peter: All those who vote in favor of this position, please say, "Aye."

Many more in audience: Aye.

Peter: Hmm. There ya go. A tough one. Ladies and gentlemen, thank you very much. From your approval, we may well use this formula again. Thank you for your attending.

[Applause]

[Music]

Hostess: Ladies and gentlemen, we will be starting our next session in a few moments, Malicious Conduct and New gTLDs.