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GISELLA GRUBER: Good morning, good afternoon and good evening to everyone. On today's At-Large Capacity Building Program 2015 second webinar on the topic IANA Naming Functions Stewardship Transition, on Wednesday December 10<sup>th</sup> 2-14 at 21:00 UTC. We'll not be doing a roll call as this is a webinar, however we have French and Spanish interpretation on this call, so if I could please remind everyone to state their names when speaking, not only for transcript purposes but also to allow the interpreter to identify you on the other channel. Could I also please remind you to mute your microphones when the presentation is happening, and if you happen to be on the audio bridge as well as the AC, please do mute your speakers. Thank you very much and over to you, Tijani.

TIJANI BEN JEMAA: Thank you very much Gisella. Good morning, good afternoon and good evening. This is the second webinar of the series of 2015 capacity building program webinars. The first was about the three IANA functions, and Patrick kindly made a very good presentation and also went into the transition – he tried to explain the transition. Today this webinar is about the transition of the naming function. As we know, the CCWG on the IANA naming function transition has five Members from our community, and this CCWG had a face-to-face meeting in Frankfurt, and after that there was a proposal on the table from the CCWG.

Our Members and the At-Large community has a lot of comments, a lot of concerns about this proposal. Today, Olivier Crépin-Leblond will make a presentation about the transition of the naming functions, about the

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*Note: The following is the output resulting from transcribing an audio file into a word/text document. Although the transcription is largely accurate, in some cases may be incomplete or inaccurate due to inaudible passages and grammatical corrections. It is posted as an aid to the original audio file, but should not be treated as an authoritative record.*

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work of the CCWG and the proposal on the table. I hope that at the end of this webinar we'll have more ideas, so that the point of view of At-Large will be formulated very soon – it's already been started to be drafted by Alan and others – so this position will be perhaps enriched by your point of view, after listening to Olivier's presentation. Olivier, the floor is yours.

OLIVIER CRÉPIN-LEBLOND: Thank you Tijani. What we have today is a small presentation. We have divided it into several parts. First we'll be giving a brief explanation of the current proposal of the CCWG on IANA Naming Issues. The other issues, which were the IP addresses and the protocols are dealt with by other communities. The ICANN community only deals with the naming function part. Then we'll be looking at an explanation of the concerns expressed by the ALAC Working Group on IANA Issues. The ALAC has a Working Group that follows the work of all the different component parts of these functions, and the overall progress of this transition.

Then finally we'll have a presentation of the proposed ALAC statement, where Alan will take us through what's been drafted so far. It's pretty important that you have access to this presentation, because if you don't it will be hard to follow. This whole process is possibly one of the most important processes taking place at the moment in the Internet governance space. On the 14<sup>th</sup> of March earlier this year the US Government announced its intent to transition the stewardship of the IANA functions to the global, multistakeholder community. The IANA functions, as far as naming issues are concerned, are very restricted.

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One could call it even a rubber-stamping issue of looking at the work of the organization that deals with maintaining the root of the Internet – the root being where all of the TLDs are contained, and effectively what has the power of life and death over any gTLD or ccTLD. These are all run and transferred and modifications are made according to certain procedures and what the US Government does is just make sure that these procedures are adhered to and followed. At the first step, the US Government asked ICANN to convene global stakeholders to develop a proposal that would provide details of how it would transition the current role that's played by themselves.

ICANN was asked to serve as a convener, because it was the IANA functions administrator since its creation in 1998, and also the global coordinator of the Internet DNS. The multistakeholder communities – and I'm saying communities because we're dealing here with not only in ICANN but also in the other functions – has been setting the policies implemented by ICANN for more than 15 years. If you're not up to date on all the IANA functions, as Tijani said, Patrick Fältström did a webinar last week on standards, naming and numbering. There's a link on this presentation that will take you to the webpage that has details of this webinar; the recording and the transcript and the presentation.

What we're going to be focusing on today is something a little different and perhaps a very special webinar, in that we're linking this directly to a 21-day public consultation that's now been opened by the CCWG on IANA Stewardship Transition and Naming Issues. This Working Group has met in the past months and produced in a meeting in Frankfurt a few weeks ago a 100-or-so-page document that is the first draft of the proposal from the naming community that will ultimately feed into the

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overall report and proposal that will go to the USG. There are two links on this page.

The first is the At-Large CCWG on Naming Related Functions draft transition proposal workspace. It's a bit confusing a name on this. It's the page on which the ALAC is building its statement, and this is where the ALAC will have its final statement just before it goes to voting and then goes to being transmitted over to the PCP. Then there is a second link and that's a set of webinars that have been arranged in the past week, in fact last week. That was webinars done by the CCWG to explain its work on the naming related functions, and providing the further details for the public consultation that's now taking place.

If you look at the proposal of the CCWG it's divided into six sections. The first is a description of the current community's use of the IANA functions. All these sections have been done by sub-groups of this CCWG and the At-Large Members of this CCWG, who are Fatima Cambroner, Eduardo Diaz, Suen Ojedeji and Alan Greenberg who stood in for Fouad Bajwa who unfortunately couldn't make it to Frankfurt due to travel issues, and myself of course. We were in Frankfurt to build those different component parts of the CCWG proposal. The first three parts are quite uncontroversial in that the description of the community's use of IANA functions is more just hard work in finding out how the IANA functions are currently being used by the community. Section 2.A is looking at the pre-transition arrangements and has catalogued all of the policy sources for each one of the pre-transition arrangements. Section 2.B has looked at the overall current mechanisms for oversight and accountability; so what's going on at the moment with the USG currently assuming its functions.

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Section 3 is the one that really is the meat of the main component part of the proposal, and that's what we'll be focusing on today in particular, because that's what's being proposed when the USG will transfer its functions. Section 4, transition implications, hasn't yet been completed by the CCWG and therefore the work is ongoing. It looks at the implications if the USG steps away from its role; what happens with the functions. I think it will also include a number of scenarios and what some people will call "stress testing scenarios" – what if a transfer of a TLD takes place against the will of one of the participants and doesn't follow procedure?

What happens then if the USG is not there to check a procedure was followed? Who's going to be following this? Who will have the ability to redress the problem? These are the stress testing scenarios that will have to be developed. Of course, I think I've also read that the USG itself will be subjecting the proposals to its own stress testing scenarios to find out if the proposals are workable or not. Section 5 on this document, which is also empty at the moment, is going to look at the proposal and find out if it fits the NTIA requirements.

Section 6 is a mention and summary of all the community processes to involve the community in the building of this proposal. In Section 6 the ALAC will be listing the webinars that we're having at the moment. It will also be listing the Working Group that we have that deals specifically with IANA issues and the conference calls we've run, etcetera. That's the component parts. Let's go now into number three, the D part of the pool. If you can't see this because the window is small, you can enlarge it. I've just done so and I don't know whether it's done it on your screen.

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We have various component parts. This is a diagram that's in the proposal of the CCWG and we're going to take you through these. I know there are several component parts to this and I'll ask some of my colleagues to say words and explain what the different parts are. The process that's currently being proposed, the main part really is a replacement of what the USG used to do, which is the path along which instructions go from a request over to the IANA functions operator, and that is being replaced by a contract.

Let's start with each component part and then we'll explain to you how this whole thing works together. Multistakeholder community – that's pretty much everybody and anybody, and that doesn't just mean people within ICANN – it includes people that are not part of the ICANN communities as such; anybody interested in Internet governance and so on. Then there's a Multistakeholder Review Team. The multistakeholder community selects Members to the Multistakeholder Review Team. That's a key component part. I'm going to ask Eduardo Diaz to take us through the Multistakeholder Review Team and what it does.

EDUARDO DIAZ:

This Multistakeholder Review Team is basically a multistakeholder body that would formally select representatives from all 11 communities. We don't know the exact composition of this Review Team but their main responsibility is to develop the details that this contract company is going to have. It's a body that's going to make decisions for the contract company, and will also conduct the IANA functions operator budget review, and it will address any [escalation 00:16:18] that is issued by the

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Customer Standing Community, which is at the end, and somebody will explain what that is.

It's a body that will escalate whatever comes from there, and from certain [areas 00:16:33] of administration within the IANA functions contract, and also will be the body that will in N number of years will set up to do an RFP process for the operation of the IANA function, and X number of years it will come up with an RFP to get proposals to become an IANA functions operator, other than ICANN. Basically, the Multistakeholder Review Team is a very powerful team and there are many things that [wouldn't know 00:17:24] the process is going to be... The people are going to be doing – this community – the policy oversight, the budget and support. So thank you everyone.

OLIVIER CRÉPIN-LEBLOND: Thank you Eduardo. You mentioned RFP – that's request for proposals. The IANA contract is performed at the moment by ICANN, and it goes into a renewal process every number of years. The default at the moment is that the renewal takes place automatically but one can issue – and at the moment it was the USG that was issuing these – the RFPs that would be looking at different companies, organizations, that would want to perform the IANA functions. We're talking about the IANA functions operator. At the moment it's ICANN. It could be any other organization that would fulfill the needs for the functions and so on, if it was to win a RFP.

Eduardo mentioned the Customer Standing Committee and I note there's a hand raised at the moment. I think we'll go through the whole

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presentation and afterwards take questions. The Customer Standing Committee is what Eduardo was speaking about a bit earlier. This is an organization that at the moment would be an organization or committee that would be proposed primarily of the direct customers of IANA. The customers are the organization that have generic and ccTLDs that need to be put into the database or taken out of the database, or amended and so on.

So primarily there would be the customers of IANA that would be in there, but there would also be – and this is still unset at the moment – some multistakeholder component part to this. It would receive regular reports from the IANA functions operator. At the moment the reports from the IANA functions operator are received by the USG and also published online for anybody to read. That Committee would look at those operational reports – how much time it takes to transfer a TLD from one holder to another, database maintenance reports, etcetera. Eduardo mentioned the escalation of issues.

If something goes wrong, and if this Customer Standing Committee finds out there's a problem with either the IANA Functions Operator or a problem that's identified in a report, then the issue would be escalated over to this Multistakeholder Review Team. That Review Team was originally called a Periodic Review Team. It was felt that it would only have to act if there was something that had gone wrong, but with time and with discussions it's now changed to a Multistakeholder Review Team that's an ongoing Review Team, that doesn't actually just come together if something goes wrong – it would probably have to meet on a regular basis. Reports to the public, as I mentioned earlier, those would be published outside.



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Let's go to the Independent Appeals Panel and then we'll finish with the contract company, because this is the more complex of the issues there. The Independent Appeals Panel, I think I can ask Fatima to let us know what that is, please. Fatima?

FCA:

Thank you Olivier. As Olivier was saying, I'm going to let you know what this new entity is about – this new entity within the system; that is the Independent Appeals Panel for policy implementation. In English the acronym is IAP. Originally, this Panel was called the Independent Review Panel, IRP, so you may find that name also in the draft proposal. We're speaking about the same panel. This IAP is an independent panel that would be available to resolve disputes originating in relation to the IANA customers and in relation to the multistakeholder community that Olivier mentioned, which we see on top of the diagram.

As Olivier said, this is the [unclear 00:22:55] multistakeholder community that includes not only the ICANN multistakeholder community. If a conflict arises between an IANA Member and any Member of the multistakeholder community, be it for a [unclear 00:23:13] action taken by IANA, this appeals mechanism will be implemented by this IAP. The CCWG's recommendation is that this IAP shouldn't be a permanent panel but it should work along the same lines as arbitration panels in the commercial or business arenas. It should work in the same way as the ICC, the International Chamber of Commerce, for example, or the World Intellectual Property Organization.

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So it should work along those lines, or else there should be a list of Panelists that may be called any time a conflict arises. Regardless of the mechanism chosen, the CCWG's recommendation is that we should have three Panel Members. Each of the parties to a conflict or dispute could choose one of the panelists, so we'd have two appointed panelists and then a third party would choose the third panelist. This IAP would make a decision. The IANA functions operator would make a decision, and any person affected by that decision – be it an IANA customer, a member of the community or an Internet user – can resort to this IAP so that the Panel can review their decision.

The Panel's decision will be binding on the IANA functions operator, and the IANA functions operator will be notified by means of the mechanism that will be chosen. This is a new entity within this new system. We in ALAC appreciate the fact that it's an independent entity outside or external to ICANN and to the IANA functions operator. I have two comments, in my personal opinion, regarding where the Panel would be based. This would be an online panel, such as the ICC or WIPO. We wouldn't have a fixed or permanent venue, so in principle this wouldn't create any jurisdiction issues. Also, we need to take costs into account.

This panel would imply no costs because it would be an independent panel, external to the IANA functions operator, and if an arbitration mechanism is put in place, in general that mechanism is costly and it requires people that are fluent in English. So we need to analyze whether in practice this is not very costly for an Internet end user. I'll stop here and give the floor back to Olivier. Thank you.

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OLIVIER CRÉPIN-LEBLOND: Thank you Fatima. Now the last part of this whole diagram that you're all probably asking about is the Contract Co. What is that Contract Co? I'm going to call on Alan Greenberg. I know you would know what this is. How does it fit in this whole scenario?

ALAN GREENBERG: I'm glad you asked me a simple question Olivier. That was a joke. One of the principles that was established early on in the process of looking at how the IANA transition should be taken, and one, as you'll find out as we go along, in general that the ALAC representatives disagree with, is a principle of separability. That is that right now NTIA could issue an RFP and award the contract to somewhere else other than ICANN. The current NTIA management has said, "But who else is there?" but nevertheless the theory is that it could be awarded somewhere else.

There are people in the community that feel very strongly that that potential for taking the contract away from ICANN and moving it somewhere else must be maintained, and to do that you therefore need some entity – since it's not going to be the NTIA and the USG – who have the ability of issuing a contract with ICANN initially, because everyone right now says they're reasonably happy with what ICANN is doing with IANA, and transferring the contract to some other entity, essentially separating it completely from ICANN. Since you need some sort of organization to issue that contract, the name that's being used in the proposal is Contract Co.

That is a company established purely for the purposes of issuing the contract. The company does very little on its own volition. Its bylaws

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and its articles of incorporation will be designed to say the Multistakeholder Review Team essentially feeds all instructions into Contract Co and the MRT is, to a large extent, the delegated or subcontracted thing that does all the work. It decides what needs to be in the contract, it creates the RFP. The RFP is issued by Contract Co, because it's a company that's legally doing things. It evaluates the incoming proposals and tells Contract Co who to contract with.

It handles complaints that IANA is not doing the job properly and tells Contract Co to perhaps find the IANA operator in breach or terminate the contract, in the extreme case. Essentially Contract Co is a... I won't call it a shell company, because it's more than that, but it's a stripped-down company that, according to the theory, follows all the instructions given by the MRT, and does very little on its own discretion. It's a company to sign contracts, but it doesn't have a lot of operational arms that are not subcontracted or delegated to someone else.

OLIVIER CRÉPIN-LEBLOND: Thank you. I was just going to add that so far the CCWG has not decided on the location of Contract Co, and of course that's important because it's a matter of jurisdiction. There hasn't been a choice made or even a discussion yet on that, and it's an important thing, since legislation might affect the way the Contract Co is set up. That will be covered later. That's the current system we have in operation. The ALAC Working Group on IANA Naming Issues has a number of concerns. We have a diagram now of some of the main problems and challenges for the different entities that we have here.

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Again, we've got the IANA Customer Standing Committee, the Multistakeholder Review Team, the IAP, the Contract Co and finally the IANA operator, which currently is ICANN. Let's start with the Customer Standing Committee. One of the problems that has been thought about is if there was no flagging on non-compliance. It could be caused by share default or complacency over time, and we'll expand on these later since the ALAC statement will detail those potential problems. As far as the Multistakeholder Review Team, which I'll remind you all is the Review Team that will effectively hold all of the par to declare the IANA operator in breach, etcetera, there are several concerns.

One is the lack of multistakeholder equity. If there is no balance of the different stakeholders, and again, the CCWG has not decided on the current make-up of the Multistakeholder Review Team, so we don't know if it's going to be heavily influenced by one type of stakeholder or another – then you might end up with capture. As with any multistakeholder team it might be slow to respond. There might be conflicting views on the Review Team so when things go wrong the Review Team might overwhelmed by the events that are taking place.

Finally, that Multistakeholder Review Team, depending on whether it would be an independent organization, which hasn't been decided, or whether it would be under ICANN or whether it would be another company – if it was totally independent it might be subjected to litigation by those organizations that would be directly affected by those decisions of the Multistakeholder Review Team; some purposes such as blocking the process or stopping a process reallocation. When looking at the IAP for policy implementation, that's probably the one that the ALAC Working Group on IANA Naming Issues is least concerned about.

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We haven't really found any weaknesses or litigation options, since there are no weaknesses we've managed to identify. Perhaps some of you on the webinar today might be able to see some potential weaknesses of this IAP. The Contract Co on the other hand has several big concerns. First, because it is a company it could be subject to litigation and that of course would be for any sort of reasons – the IANA functions operator suing, for various reasons, which is strange because if the Contract Co was funded by the IANA functions operator then how would it be able to fund it and sue it at the same time? Third parties deciding to use litigation to destroy the entity itself.

If the Contract Co holds the contract for the IANA operator, destroying the Contract Co and then the contract is void. What happens if the contract has to be transferred as well? Certainly a lot of questions and no answers on this. There's certainly also a concern about the country or entity in which the contract is signed; suing to [threat 00:36:11] for non-signing of a contract. There's what's called vexatious litigation, which some would call rogue litigation, where you just sue an organization to make its cost go up. There might be no depth to the litigation itself, to the lawsuit, but that will certainly cost this organization, this Contract Co, money.

There are several ways to mitigate. I'll just look at one in particular in the interest of time. That would be to say in order for it not to be subject to litigation, you could grant it immunity from prosecution. There is an upside to this, and that's directly related to the next problem we could have with Contract Co, which is to have a rogue board. If the board of the Contract Co decided not to follow the instructions of the Multistakeholder Review Team, then what would happen? Some ways

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to mitigate would be to have no board or directors, but that's unheard of in a company. You could have clauses in the bylaws but then those clauses might be changed by the board.

You could have a clause to not change the bylaws. You could have procedural checks and balances, or you could also threaten the Contract Co of litigation if the board goes rogue. That, as you can see, goes directly against the mitigation for non-litigation of the contract company. Here we're faced with a potential lose-lose scenario on this one. You could have rogue employees – same sort of problem as the rogue board - or the Contract Co could just not follow policy. As you know, here we have an IAP so independent appeals could overrule this. There could be periodic reviews by the Multistakeholder Review Team, and then you could also have clauses and bylaws for this. You could have aggravating factors in not following the policy, where the company itself just digs its heels in. That's a number of problems. Then of course the IANA operator, currently being ICANN, that also is subjected to a variety of threats, like going rogue. If the ICANN Board went rogue today or decided to abandon the multistakeholder system or whatever, then that's also a potential problem.

Alan mentioned that the use of Contract Co would be able to then cut the links with the IANA operator and reallocate the contract elsewhere. As you can see, it's not such an easy way forward. Let's go to the next slide. Here we have a first possible proposal by the ALAC Working Group on these issues. This diagram is the same as what we saw earlier but we've changed a number of things. First, the Contract Co that the Working Group has a major problem with, would be perhaps a

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committee rather than a Contract Co, that would be linked to the ICANN community via what we'd call the IANA Supporting Organization.

That could be a new supporting organization or advisory committee created under ICANN's umbrella – like the gNSO or ALAC or indeed on that occasion we could say a bit like the ASO, that has a little bit more independence than the other supporting organization and advisory committees. That effectively would be an SO made up of community members with special status with the Board of ICANN so it wouldn't have its decisions overruled by the Board one way or the other. That would then be able to appoint people over to the Multistakeholder Review Team on the one side, and it would have the MOU with the Contract Co.

Everything else in this diagram is the same – the multistakeholder community with the input to the IAP is the same thing. It would also appoint people to the Multistakeholder Review Team at the bottom of the page. The Multistakeholder Review Team would give instructions to the committee, who would give instructions to the IANA functions operator – that is ICANN at the moment. The reports to the Customer Standing Committee are the same as we said in the previous diagram. One additional thing we added was the adding of other stakeholders. This could be an option to add additional stakeholders to the Multistakeholder Review Team that are not just coming directly from the ICANN sphere itself.

Why do we have this? Because if you then go to the next slide and you add the other I-STAR organization, for example, they could fit very well within the same diagram. You can see without them and you can have



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them with them. At the moment, both the Number Resource Organization, that deals with the IP addresses, and the IETF that deals with the protocols, have indicated that they do not see the need for creation of new contract companies or committees or whatever. They just want stability and so they haven't addressed any additional organization that would be added in there.

They could all have an MOU to appoint people to the committee and to appoint people over to the Multistakeholder Review Team. That's a possible proposal. Another proposal that the At-Large Working Group on IANA Naming Issues has looked at is to get rid of the Contract Co or committee altogether, and effectively feed directly into the Multistakeholder Review Team and directly into the IANA functions operator. There is an issue of separation or separability, which would be dealt with by having the IANA Supporting Organization having an MOU with an independent IANA Supporting Organization.

That's the sort of scenario you currently have with ASO, which has an Address Council, and the ASO Number Resource Organization, the NRO, which feeds in all of the regional Internet registries. You see a similar system here with the IANA SO and the independent IANA SO. Again, all of that working with MOUs. The Internet is used to this sort of thing. The iETF has MOUs with the Internet Society. Most of the linking between the different component parts of Internet governance organizations are MOUs these days – they're not commercial contracts as such.

IANA functions operator, again, is ICANN at the moment, but it would be another organization. I've also colored here the Multistakeholder

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Review Team in green, because in effect this Multistakeholder Review Team could be the same organization as the IANA SO. It could be the equivalent and these two could be put together. The rest of the diagram is exactly the same as what we had before with the multistakeholder community bringing input to the IAP if there is a problem. Multistakeholder community also appointing people to the Multistakeholder Review Team and of course the Multistakeholder Review Team giving all the instructions and being the controlling body that gives the instructions to the IANA functions operator.

If you add the other component parts of the IANA world then you can add the NRO and the IETF also. All these organizations could have direct MOUs with the IANA functions operator, which also helps in the independence of these organizations. If the IETF wished to be having an MOU with another organization, then with ICANN to perform the IANA functions related to them, they'd be able to pull back, close the MOU and take away the person they've appointed onto the Multistakeholder Review Team. They'd be able to go and find someone else to perform these functions for them.

Of course, the same thing is true for the naming – if we wished to find another operator then this link could be cut and it could move over to another organization. That's the second proposal. It's all in graphics. Now I'm going to hand over to Alan who'll explain the details of the first draft of the ALAC statement. If you want to look at the consultation itself, there's a link here to the current public consultation about these issues. Alan?

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ALAN GREENBERG:

I'm going to first make a comment. Could you put back up one of the previous slides? It's worth noting explicitly why the naming function of IANA is so different from the IETF or the RIRs. The IETF and RIRs are putting together proposals. They have a moderately easy job because in both cases the entities, such as the IETF, that set the policy and is going to be judging whether IANA is implementing it properly, if it does not, they could simply decide to put their parameters in some other database somewhere and say, "That's what we're using for IANA."

Because in ICANN the body that sets the policies are effectively the ccNSO and the gNSO, the gNSO and the ccNSO do not have the authority to say, "We're going to take out part of IANA out of ICANN," because there are subservient parts of ICANN, and we don't have unilateral ability to direct the Board. That's what makes this overall process so much more complex than the situation that the IETF and RIRs have to deal with. It's because the policy-making body is [unclear 00:48:43] into the current operator of IANA, and that's what we're trying to address – either a Contract Co or what you're seeing now. Thank you for that.

Yes. If we could have the PDF of the proposal up? It's seven pages long and we're not going to go over it in detail at this point. Olivier, how much time do you want to leave for questions?

OLIVIER CRÉPIN-LEBLOND:

Can you take about ten minutes on this?

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ALAN GREENBERG:

That's a minute per page! I can do that! The proposal is seven pages long. It is very much in a state of flux. The first two-thirds were written last night and the last part was written a few hours ago, and some of it has not even been proofread by anyone yet, so it's very much a document that's a work in progress. As I pointed out in the chat, there are things in this document that are not reflected in Olivier's charts, because Olivier froze his charts at about 2:00 am and things have happened since then. Very much a work in progress, and as a webinar you're watching things happen as opposed to being told history at this point.

The first page is really what Olivier has been talking about until now. We support strongly... When I say we I mean the general consensus of the people that have been involved in the ad-hoc group, working with the Members of the CCWG – I think we very well support the IAP, we support the Customer Standing Committee, with some reservations, and it will depend exactly what tasks are given to that. Right now that group is largely customers – that is registries – with some multistakeholder components, and as long as that group is purely reviewing reports then that's not really a problem.

If that group is given discretion over other things, as it may be in the proposal, there are some conflicting things in the CCWG proposal, then it might have to be much more of a multistakeholder group. The Multistakeholder Review Team, we support the concept but there are some real questions about who it is that convenes this group. Who is it that selects the Members? Who is it that decides how many there are? Who funds it? IN a world where ICANN is running IANA it's relatively simple. If you extract ICANN from IANA, or IANA from ICANN, it's not

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clear who takes over that responsibility and there are some major problems associated with it.

I'll be talking about some of the problems with Contract Co. There are so many potential problems with it and unanswered questions that we believe that to go forward with that plan is adding a huge amount of cost and complexity, with relatively little benefit for us. Let me now go and look at some of the detailed analysis. Handling them in reverse order, Contract Co. Cost is a major one. We're talking about setting up an organization. We are talking about issuing RFPs – all of these things are quite costly, they're time consuming, and if you consider the possibility of litigation there might be some very significant costs associated with it.

It's been proposed, but it's not part of the formal proposal, that whoever is the IANA operator would bear the costs. We don't know what that would be. Some estimates say it would perhaps triple the costs of IANA, and ultimately the costs of IANA right now are borne by ICANN, which means borne by gTLD registrants. It's not at all clear that that's an acceptable proposition. CcTLDs had in general said they could not be counted on to provide costs, and I don't think there has ever been any discussion with the RIRs or IETFs with them paying for their shares.

Jurisdiction, Olivier already mentioned. If this was a company, it's incorporated under the laws of some countries. There are strong pressures to say that if this transition happens it does not transition to another US-based company. There are some indications. The USG may not accept anything but a US-based company. So clearly there are

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conflicts there, and it's not clear how those get resolved. Capture is an issue that we've talked a lot about – what if someone captures Contract Co and decides to award the contract to someone who nobody thinks will do a good job? Capture of the company itself is probably unlikely. There are provisions that could stop that.

One of the types of capture, however, is nationalization. That is, if you're in a jurisdiction where the government has the ability to say, "You were a private company, you're now a national resource," there may be little you can do about it. Many, many countries in the world have a record of having done that, in the name of the economy or in the name of national security, or various other things. Again, jurisdiction can change that, and I'll note the US is one of those countries that has nationalized entities on occasion.

Litigation. Olivier talked about that a little bit. If someone sues Contract Co, someone is going to have to pay for it. The most likely lawsuit for real reasons, as opposed to vexatious or just annoyances is that somebody has lost the contract and feels it was inappropriate, or more likely, someone who bid on the RFP was rejected and is complaining about it. That is exceedingly common. In some venues, and certainly government venues very often, you can presume that whoever loses an RFP will sue. It may or may not happen in this case, but it's the kind of thing that one has to be prepared for.

Rigidity. That's a funny term. To make sure that Contract Co does not decide on its own to change the way it runs its business. In other words, if we're saying that Contract Co must obey whatever rules are set by the MRT, we need to make sure that the board of Contract Co cannot

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unilaterally change those bylaws, and therefore we must build a certain amount of rigidity into it. That same rigidity can be on the downside, if at some point the world is changed, and we need to change how this works. It's not clear just how you build the flexibility in when you want it, but prohibit it when you don't want it.

Contract Co misbehavior. It's fine to have bylaws and articles of incorporation, but what if the board decides it's not going to follow its own bylaws? It happens with many companies, and stockholders or other interested parties sue. That can become expensive, if it's frivolous, and, as Olivier mentioned, if we are trying to protect Contract Co by getting it immunity from civil litigation, that could stop us from stopping the company from going rogue – that is disobeying its own bylaws. These are conflicting conditions.

Lastly, there's an issue of risk. Any time you change things – anyone who has experience in large systems – there's a certain amount of risk. If we are changing from the current IANA, which at this point is working well, to a completely new entity – and entity that is untested and may not have access to the systems this one uses... And it's pretty much got to be a cold cutover. One day it's the folks in LA doing the work and the next day it's the folks somewhere else doing the work. There's a certain amount of risk to stability and the question is, is there enough payback to incur that kind of risk?

There are some people who are currently saying that unlike the NTIA, Contract Co must issue an RFP every end years, which is currently being talked about as five, I believe. That implies not only a certain amount of work, but there's an opportunity for change at every time. The question

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is, if all the customers are happy and nobody has any wish lists that are not being satisfied, do we really want to issue an RFP at this point and risk change, and risk the cost of doing it? In my mind, that's change for change's sake, and that increases the risk enormously. Those are the issues related to Contract Co.

Multistakeholder Review Team – we agree with the concept in general. The real problem is if ICANN is not the group that convenes it, who is, and how do we make sure that all the stakeholders are fairly represented? If you look at the IANA CWG for instance, it is indeed a multistakeholder group. It includes entities outside of ICANN, and the drafting time that wrote its Charter gave all of entities participating up to five Members on this Committee, and an unlimited number of participants. I've seen as least one proposal for the MRT that said a group like the gNSO would get four, I think, and the ALAC and SSAC and other groups would get two.

So decisions will be made along the way, and the question is who's making these decisions, who's convening it, who's paying for it? Because since we're putting all of the responsibility of carrying out the IANA function properly on the MRT, the composition of the MRT is absolutely crucial. It becomes the focus of everything related to "will this job be done properly?" and will it be truly multistakeholder or someone's version of multistakeholder. We've all seen the term "multistakeholder" used in many places, where when we look at it from an ICANN perspective, it's not multistakeholder. But that doesn't stop people from using the term.



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Customer Standing Panel, I don't think there's much to say. If its mandate is narrow, it's okay as it is, and it's not really a potential problem. We've already talked about the IAP. The only issue there is if one is going to use that as an appeal panel, that's normally an appeal after the fact. You may need provisions to make sure that you halt change until an appeal is heard, so you don't have to make a change and then undo it if the person appealing wins. There are some components that are missing or almost completely missing from the proposal as it stands. One of them is the day-to-day review of policy. Who's going to do it? At this point no one is identified as doing it, and that certainly has to be resolved.

It's been proposed that the gNSO should monitor gTLD policy, but there is no staff doing it and it has no standing to complain to Contract Co to ask it to take enforcement action. The other part that is a significant part, that has been discussed but has not been resolved, is the issue of right now, NTIA reviews virtually everything that IANA does. In many cases it's a relatively mundane review. But in the case of things like redelegations, which can be very contentious, and in the gTLD space in the future may be the object of significant financial impact, it's not clear that you can just ignore it or pass it onto someone to do a mechanical job. I don't have an answer to that, but it's one of the things that has to be addressed in any solution.

Okay, proposals. We have a number of proposals. First of all, we believe the creation of Contract Co has a huge amount of complexity and isn't needed. We believe that the contract can be assigned to ICANN; that just as the MRT is expected to give unilateral orders to Contract Co, we should be able to structure it that it can do the same to ICANN. It's

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unclear why it would work in one venue and not in another. There are a number of scenarios... Now, it's not within the scope of this coordinating group to build these accountability issues in. But this proposal does list a few possible accountability methodologies to demonstrate that it's conceivable that the accountability CCWG will be able to come up with working answers.

Again, enforcing the rule of the MRT on ICANN is one of them. Using an external arbitrator might be invoked, and in the extreme case the MRT could order the divestiture of IANA, just like companies often sell off parts of their structure. The same could be done with ICANN and IANA. We believe you can get pretty much all of the functionality of Contract Co without any of the complexity and expense of it. Part two is the MRT. Once you say ICANN is always going to be in this game, the creation of the MRT becomes almost a piece of cake. There's still going to be some controversy.

If you look at ICANN's creation of the transition CCWG, the accountability CCWG, and the IANA ICG, which have a certain degree of independence, they have funding. They are inclusive in that they have participants outside of the ICANN arena, we've demonstrated we can do it. So we believe the MRT could be created under the auspices of ICANN – not necessarily part of ICANN, that is to be debated – but under the auspices of ICANN, and that would simplify a lot of the issues.

Part three of the proposal is we need to look at the issue of the NTIA backstop – that is who does the critical functions. Right now it's been essentially that, "Yes, we need to look at that some time." We believe it needs to be looked at sooner rather than later, because with some of

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the players, how this is going to be done is going to be the deciding factor of whether they support it or not. Certainly on redelegations that is a potential for the whole thing blowing up. Last thing is the ability to honor, ongoing, whether policy is being adhered to.

It wasn't mentioned at all in this proposal, and when it comes down to it that's the crux of the whole issue. IANA must be following the established policy and it needs to be monitored on an ongoing basis. I'm done.

OLIVIER CRÉPIN-LEBLOND: Thank you Alan. I guess that now we can give the voice to you all watching and listening to the proposals that have been put together by the Working Group. I'm sure not all angles have been covered and in fact there might be some new angles you might wish to bring in, or you might wish to contest some of the points that were made here. I hope this is going to be a good dialogue between all of us. I see Holly Raiche has put her hand up. Holly, you are the first person in the queue. I know there was someone who had put their hand up a little bit earlier. I will ask staff to put them in the queue automatically as well please.

HOLLY RAICHE: Alan, first of all, thank you for an excellent summary. I think my question is... I've been in favor of this proposal. I've never supported the concept of the Contract Co. My questions about it, on the list, as some of you have been aware, been answered badly or not at all. That said, what are the chances of our proposal being accepted, given that

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the other two communities also don't like the concept of a Contract Co?  
Thank you.

ALAN GREENBERG:

First of all, what the other communities want is explicitly out of our scope. Our proposal – that is the names community proposal – will go to the ICG, and they are supposed to somehow pull them together. I'm not clear how that gets done, but we've been – I'll be blunt – shouted down as the matter has been raised. That's not our problem. It may be the problem of our members on the ICG, but that's out of our scope in this particular discussion. Yes, that's a problem. The question is, will our proposal be accepted by the rest of the names community? That is the people who are involved in this CCWG?

The answer is it's very hard to tell at this point. Certainly if you look at the number of people who've spoken up within the CCWG, there has been a relatively small number of people who have been against the Contract Co proposal – at least that aspect of the proposal – and to a large extent we and they have been shouted down. I'll use that rather crude term, because I think that's close to what it is. There are players who've not really supported or been against this proposal. The GAC has said nothing at this point. If you ask me for a personal reading when we went into the meeting, the ccTLDs were not in love with this, but are willing to support it if it gives them what they want. They have some very specific needs and of course it doesn't cost them anything.

The gTLDs have largely been silent on many of the aspects of it, although there's been limited support by some of the participants. When push

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comes to shove it is not at all clear where these various groups are going to come out, which is why we're putting so much effort right now into trying to put out a clear statement of what the problems are we have, and what we believe the alternatives are. Bluntly, we are hoping to post this and get other people supporting it. It remains to be seen if they do or not.

HOLLY RAICHE:

If I can just reply to that, what I'm hearing from you is it's really critical that this is a very strong document, and that it highlights the concerns with Contract Co. it provides enough of an answer to say, "You don't need it. We can build the sorts of mechanisms that Contract Co was supposed to provide, and we can do that within ICANN with far less cost, far less risk," and the sorts of independence that is provided by Contract Co can be provided within an alternative structure. I think what you're saying is that really it's up to us to make this a really strong proposal that will win people over. That's what I'm hearing.

ALAN GREENBERG:

I think so. I'll be blunt. It's a lot easier to build certain protections into a company that you're starting from scratch on than to impose them at ICANN, which has been around for 15 years now, is somewhat set in its ways, has a Board that is used to having control and doesn't want to relinquish any of it. That's not going to be easy. On the other hand, I think this Board is going to be very flexible if it comes down to you get IANA or don't, depending on whether you accept certain controls. That's as blunt as I can be.

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Part of our challenge is that in this statement we need to hit the hot buttons of some of the other parties to convince them that there is reason to support this proposal over the other one that's being put forward by the group. To what extent we'll be able to do that is clearly a challenge we have right now. We're clearly trying to catch people's attention and convince them that we have something to say that matters to them. They're not going to support us out of camaraderie. Thank you.

OLIVIER CRÉPIN-LEBLOND: Thank you very much Alan. I just wanted to add that the ccTLDs have expressed concern about stability. In fact, I think the gTLDs have as well. Obviously they are the direct customers and they have an interest in having a stable Internet. They have also expressed concerns over costs of creation of these new organizations, but they've not gone any further than that so far. As we know, the ccNSO has often expressed concern over costs. When we meant ccTLDs, as you know, the CCWG had ccTLDs that were not part of the ccNSO – so the independent ccTLD operators that were involved in there.

Alan forgot to mention that the GAC has remained pretty much silent so far – at least that's my take. I wasn't quite sure, sitting in Frankfurt, whether the representatives agreed with the proposals, or whether they were just going along and things were going so quickly they would need to have feedback from other GAC Members to be able to comment on this. I expect that the GAC is working on this, and as ALAC said, the earlier we can get our proposal out there to the public comment, and of course point the other component parts of ICANN – I would certainly say

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the multistakeholder community – outside of ICANN, to our alternative... It's not really an alternative proposal; there are significant parts that we agree with, but certain alternative component parts – then we'd be able to gauge better whether there is support or no support from other people for our proposal. Certainly as far as the GAC is concerned, one concern that has been raised, but perhaps not publicized enough, is if a Multistakeholder Review Team holds all of the power and is created completely outside the realm of ICANN, then you have a question as to how governments would take part in this. ICANN has this unique thing called the GAC, that brings governments together, that can then have processes to speak with one voice. But outside of the GAC, government representatives are not able to speak for other governments, and therefore they'd probably not be able to take part, on an individual basis, in a Multistakeholder Review Team. That's an added concern. With the system that we have in our proposal, where there's an extra link far enough to be able to change operators, but close enough to be able to make use of some of ICANN's accountability structures and certainly structures themselves, the GAC would probably have a better voice. Also, governments, through the GAC, would be able to have a voice in that Multistakeholder Review Team.

ALAN GREENBERG:

Olivier, if I may interject, two comments. If you look at for instance Net Mundial, government people did stand up there and talk, and they weren't afraid of doing so. The issue is, nobody at Net Mundial said, "Only three governments can participate and they have to represent everyone," and yet on the MRT we are likely to have a restriction like that – whether it's three or twelve it doesn't really matter. Therefore

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Olivier's comments kick in I think in spades, that outside of the ICANN environment altogether it's going to be a lot harder to do that – at least in our judgment.

The second thing I'll point out, as I scroll the document up to the top, look at the statement at the top. It says, "This statement may be revised to provide further clarity and detail prior to the end of the comment period. As both Olivier and I were saying, it's really crucial that we get closure on this statement very quickly – we're talking days. The comment period ends on the 22<sup>nd</sup>, and we'd like this to be there well, well before the end. So this is a case where perfection is going to be the enemy of getting something out.

We need to come to closure within the ad-hoc group that is helping us draft this, and the ALAC as a whole. But we need to get this done really, really quickly. We're going to have some things wrong, we're going to have some things rough, but we really need to get this out quickly. We need to focus not on the minutia but whether we have agreement on the major points. Thank you Olivier.

OLIVIER CRÉPIN-LEBLOND: Thank you Alan. I see Holly has her hand up?

HOLLY RAICHE: Just a suggestion. If you remember the stress tests that were put forward at the last ICANN Meeting and then have made their way into some of the discussions, just a thought – is it possible to at least have them in front of us, and perhaps as an addendum say, "This is how, with



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the structure we're proposing you can deal with all of those stress tests"? I'm just trying to think how you actually strengthen this document so that...

ALAN GREENBERG: Holly, are you volunteering?

HOLLY RAICHE: I sort of am.

ALAN GREENBERG: Then you're welcome to join us.

HOLLY RAICHE: The other comment I have, I think, would be... I'm thinking about the structure of this as well. My other comment is my understanding of the GAC would be to confirm... My understanding is they haven't reached agreement. They are groping. It may be very sensible to discuss with some of them what their problems are and address them in this document as well.

ALAN GREENBERG: If anyone has contact on the GAC, speak to them.

HOLLY RAICHE: Thank you. I promise not to talk again.

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OLIVIER CRÉPIN-LEBLOND: Thank you Holly and Alan. Are there any other questions or comments on this? This is a webinar. If you have even simple questions about what we've presented to you, these are welcome. We still have another six minutes until the end of this call, bar one minute at the end to close off the call. That gives us another five minutes of questions and comments. As Alan said, it's really important that we obtain your support and that we make sure that our own ad-hoc Working Group is not going in a direction that's contrary to the interest of the end users and of our community.

The Members of the CCWG, as Alan mentioned, were shouted down. I don't think it was "shouted down" as such, but were effectively made to feel as though we were rowing really against the tide of the interests of everyone else. I think that was somehow mischaracterized in a way. I hope that there is more than just the 15 or 20 people in our ad-hoc Working Group that think the same way as we do, and how we have presented here. So if you have any concerns over any of these points that we've made, or would like some amendments or would make suggestions for amendments, then you're extremely welcome to make them here or indeed after this call.

We have a Wiki page set up. It's linked to the Agenda, and you can make a comment there as well, if you don't think about them right now. Cheryl?

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CHERYL LANGDON-ORR: Thank you. I am very aware of the limitation of time here, and this strikes me it's an incredibly important thing. It's not only getting it right, but to be able to show in a clear and unambiguous way that the wider community, and the 28 of us on this call, are trying to represent best interest of, has had a sanity check opportunity for this. Now that we have the recording of this webinar almost done, and that we have the presentation materials and this excellent draft, which I note is a work in progress, I'd like to call for the ALAC to send out to the regional list the link to this material, to the recording, to the transcript, and ask them, within a limited amount of time, to push this out to their communities via the list and to call for any objections or concerns to come in.

This is one of those, "If nothing comes in, we assume we have support," systems. I think it's really important that we can stand up, hand on heart, and say, "We have gone to the edges of our community and they've not objected or meaningfully modified this document." I think that would give us an awful lot of [power 01:24:51] if we could do that.

HOLLY RAICHE: I agree.

OLIVIER CRÉPIN-LEBLOND: Thank you Cheryl. Alan?

ALAN GREENBERG: Thank you. I do support that. I do ask to give us perhaps another 15 hours or so to clean up the document a little bit. AT this point the last few pages I've written but I haven't even proofread yet or done a

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spellcheck on. It does need a little bit of work done on it, but I strongly support the overall proposal. I'll add one more comment: along the way, in one of the messages, where I was essentially supporting what we have here – although the words were different at that point – someone suggested that the reason the ALAC is supporting this kind of proposal instead of Contract Co is because we've found a nice warm, fuzzy home in ICANN, and we feel safe here, and we don't think we'd be welcome somewhere else.

My answer was very clear. It has nothing to do with that whatsoever. I appreciate the psychoanalysis and the empathy, but it has nothing to do with that whatsoever. We have used whatever skills we have, from our backgrounds, and we believe that what we're proposing is the right way to go forward, not just because we think ICANN is warm and fuzzy for users. I think we need to make that really clear. Yes, we want to ratify that this is supported by the users, but it's not a user-centric position – it's one that we believe is going to serve the worldwide Internet community the best. Thank you.

OLIVIER CRÉPIN-LEBLOND: Thank you for this Alan. Great words. I can't add to this. We are reaching the end of this webinar. I just wanted to draw your attention to the next webinar, which will be in January. At the end of January there will be a briefing on ICANN 52. There will be a presentation by SO and AC leaders and staff. Now, in accordance with the instructions that Tijani gave before he had to leave, I hand the floor over to Alan to close the call. Thanks to all of you for being here.

ALAN GREENBERG:

Thank you very much. We are now at 30 minutes after the hour, one and a half hours into the call. I love ending meetings on time. I thank everyone for attending, those of you who are still here. Tell all of your friends to read the transcript, listen to the MP3 and watch the AC in their own time. Thank you all for coming.

[END OF TRANSCRIPTION]