

ICANN

**Moderator: Gisella Gruber-White
January 14, 2015
3:00 pm CT**

Allan MacGillivray Okay. So welcome, good afternoon, good evening, morning to one at all.
This is the first meeting of RFP3B.

This is my first time chairing so if there are any rough spots on that show there will be I beg your indulgence in advance. And Grace you are there to yank me if I get out of line please.

So I think we'll follow the same procedure we do in some of the other CWT groups which is to use the Adobe Connect list as the roll call.

It will cause anyone who is not on Adobe Connect to announce themselves as being present over the audio line.

Okay I am not hearing anybody. I'm not hearing anyone so I guess everyone is all in Adobe Connect. Thank you.

So I spent a couple of minutes and I put together an agenda a proposed agenda for our discussion today just looking at (unintelligible) message.

Grace do I have control of the - if not can you just put up...

Grace Abuhamad: Sure.

Allan MacGillivray ...the agenda, Page 1.

Grace Abuhamad: I'm going to go ahead and promote you to present your Allanso that you're able to click through but I'm happy to do it for you if you'd like.

Allan MacGillivray: Well I could do it but I don't know, my head would swell if I (unintelligible) promotion.

The - shall we get it up there? Oh there it is. Thank you.

So what I am hoping to do today is just to kind of put some parameters on what we're doing, try and build some consensus on the scope and the focus of the group.

And I even have a couple of tentative ideas that we could maybe thrash through if we get that far along today.

So and really I have kind of set out what I propose to do right here on the agenda page but let me pause to see if there's anyone has any other different ideas about things or can you help me start walking through this?

Well thank you, so far so good. So let's just move down to background and what we're doing here which is the fact that a number of the submissions made to the CWG, the comments on the proposal from December had specific concerns about the so-called contract proposal.

And at the same time there were at least two submissions I think from AUDA and ALAC that specifically proposed a variant, proposed that a variant be developed that did not include Contract Co.. So that is kind of the jumping off point for as I see the work of this group is that.

So I propose the purpose of the group is to develop a variant on the CWG December proposal which I'm going to call the Frankfurt proposal because going forward we'll see how and we have to re-label things and that would be the focus of our work at least for the moment.

And for reasons I'll explain later I propose to call this the internal ICANN variant and I - we'll try to use the acronym RIV I guess because I want to invent an acronym so I think as well as being promoted I have invented an acronym.

So just stepping back for a moment, the Frankfurt proposal had four central elements, Contract Co., CSC, MRT and the IAT. And I think most of us on the call are fairly familiar with all of those.

The work of RF3P - RFP3 is continuing to elaborate on all of these elements. So what I would like to figure out is how do we avoid any duplication of effort relative to the work that continues to be ongoing in RFP3 relative to what we are doing?

And so what - the way I propose that we approach this is that we leave the discussion of Contract Co. itself as well as CSC, MRT, and IAP with RFP3 itself except for any changes to these elements that would flow directly from the variant that or variant of variants that we could develop in this group.

So and for example I note that the outer proposal has some suggestions on well they didn't call it an MRT. But certainly one of the operative groups that they were proposing they would have it be comprised principally of TLD operators.

And I see that is an issue dealing with composition of the MRT. And I would prefer that at least for the time being that we discussed at RFP3 so I know that.

So I think this is a good time to pause. And I see that Alan Greenberg's hand is up. So why don't we let Alan speak. Thanks.

Alan Greenberg: Thank you very much, Allen. It's convenient to use the same terms as the Frankfurt proposal if that's what were now calling it, the Contract Co. proposal is using. But I think we need to exercise just a bit of care.

Some of the constructs -- and the MRT is perhaps the best example -- were created to address certain needs of the - of that proposal.

That is a group that was not ICANN that would have multi-stakeholder representation similar to ICANN.

Once we're looking at something that is internal to ICANN we may not even need an MRT at all. It could devolve to simply decisions of all of the ACs and SOs, you know, as a group or there could be a very skeleton MRT but a very different composition than what is needed in the other proposal.

So I don't think we can leave it to them. I think the MRT along with the overall design process of the internal ICANN is going to be a very substantive

thing. And I think that's going to be - that may well be one of the major simplifications we have over that one.

So I would caution although it's convenient to use the term let's not be locked into replicating what they're - what they need in their other - in their other proposal. Thank you.

Allan MacGillivray: Thank you Alan. I think what trying to say is that at least for the time being let's focus on what it would - what things would look like without Contract Co.

Then we can move on to looking to what would happen to get the MRT functions. Because I think there was a measure of consensus around the need for them or some kind of equivalent of them regardless of whether there was a Contract Co. or not.

And hopefully by the time we get to those aspects of the proposal there might be a little more clarity of RFP3.

So let me turn now to Crocker, Steve please.

Steve Crocker: Thank you very much. So I've been watching this and giving it a bit of thought. The - when I step back and try to make sense of this in my mind -- and bear with me for just a second -- it seems to me that there are four pieces to the puzzle generally of the separability.

The last piece is what mechanism should be used. And that seems to be the huge focus for RFP that most of the work in RFP3 has been devoted to. And this group is looking at alternate mechanisms. But let me back up for the other three because I think they're relevant.

I think there's as best I can tell there's confusion or lack of clarity as to what the definition of the IANA function actually is. And I'll come back to why I think there's confusion and why I think that's quite important in this.

Number two, what would it mean to separate that function? There's a lot of talk about the separation being important and so forth. But I haven't heard anything that gives clarity about what would it actually mean after there is a separation.

The third part is what is the criterion which would trigger a separation? What are the standards that are going to be used?

And then the last is as I said what mechanisms are going to be put in place? And I think that really is the last to be considered as opposed to the first.

When I talk about definition of IANA the - there's a range of possibilities. In principle in my view IANA is a very simple clerical operation and does not involve policy decisions or very much in the way of judgments except in the very narrow range of the technical operations of the root zone and in particular the extremely contentious decisions about whether to put something into the root zone or not whether to do delegations, or re-delegations are in my view completely outside of the IANA function even though they are intimately conflated in the existing IANA contract.

And this is important because if we're going to talk about under what circumstances we're going to separate that IANA function I have a feeling that a number of people in the conversation have in mind that this is a tool to use if they don't like the policy level decisions that are being made elsewhere. And I think it would be helpful to get that clarified.

Then equally if one were to really think about what separation would mean consider the situation in which the decisions about what goes into the root zone continue to be made by ICANN.

And it's only the administrative group that is actually putting those things into the root zone putting those entries into the root zone that that is done somewhere else.

Does that - is that meaningful? I have strong personal opinion about that but at least for the purposes of this group let's take that as a neutral question.

And then again if one is going to take seriously the whole notion of separation and try to postulate various mechanisms it's also I think requisite to say what are the key requirements, what criteria are going to be used to make that judgment?

And so it's that model that I want to bring to attention. And then within that I think this group has the option of trying to bring some clarity to that and ask what is the minimum required proposal to make sense out of all of this? So that's what I wanted to say. Thank you.

Allan MacGillivray: Thank you Steve. Could I just ask you a brief question before we move on to Christopher Wilkinson?

You said you made a distinction between ICANN and the admin group. I having read the IANA functions contract don't see that distinct contract.

So in your mind decision will continue to be made when you say ICANN did you mean the ICANN board or ICANN staff is separate from the so-called IANA main group?

Steve Crocker: So I used the term admin group to really meeting IANA group just as a way of emphasizing that it's a clerical or administrative function.

The IANA contract so-called that NTI has is a unholy mixture. And it's a source of some confusion I think.

The contract attempts to say that there will be a very clean distinction between policy and implementation and at the same time it rather awkwardly conflates the two by putting them into the same contract and sort of avoiding the clean separation and making it hard to understand what's going on.

But one of the things that absolutely has to happen for the benefit of everybody -- it's not just for ICANN or for the ICANN board or anything but for everybody -- is to arrive at a much cleaner distinction between the kinds of transactions that involve value judgments and the kinds of transactions that require execution.

And I would've state very strongly that the - what the community needs with sort of absolute certainty is that once decisions are made about what goes into the root zone or what changes are going to made that they get executed, they get executed quickly and with extreme fidelity, accuracy.

And that's where confidence is needs to be. That's with the community has to have confidence that it's going to happen that way and that it can't be tampered with.

The upstream decisions necessarily involve a lot of judgments and there may be contention. And they have to be sorted out in I'll just say the ordinary way that those things get sorted out.

But once those decisions are made - well and I guess the point I'm making and those things should not be viewed as IANA decisions. Does that help?

Allan MacGillivray: Okay thank you Steve. Yes thank you. I appreciate understanding where your thinking is on this. So maybe we'll go to Christopher Wilkinson now.

Grace Abuhamad: Hi Allen. This is Grace Abuhamad. We're dialing out to Christopher now so it may be a few minutes. We may want to come back to him. Oh but there's no one else in the queue is that correct?

Man: Yes.

Grace Abuhamad: Okay.

Man: (Becky)'s here.

Allan MacGillivray: Wait.

Grace Abuhamad: (Unintelligible) back to Christopher afterwards.

Allan MacGillivray: So (Becky) do you want to...

(Becky): Yes. I just want to sort of follow-on to what Steve was saying. I have been puzzled throughout this process by resistance to the, you know, to the notion that IANA functions were really operational and that all the policy

development that, you know, precedes the operational part of it is work that is clearly assigned to ICANN through the policy development processes.

So new gTLD policy is clearly assigned to ICANN and decisions about what names go in the root are clearly the result of ICANN policy.

Similarly the ccNSO develops policy through the ICANN policy development process. And obviously working with the GAC on those kinds of issues and that, you know, but the issue before the group in terms of the IANA functions accountability which is not to say the accountability issue period because I believe that there is a big overarching accountability issue that we all want to get resolved as well but that in fact we were overloading the IANA transition process with all kinds of processes and groups and organizations that were appropriate for a policy body but not for an operational body where something much more like, you know, sort of the delivery of user services would be reviewed and would be the accountability issue and concerns about were the services being delivered in a timely and competent fashion?

So it's - I mean I have to say I don't - I hadn't really attributed using leverage over policy decisions, you know, using - I hadn't really perceived what I think Steve is talking about as a desire to use the IANA, control of the IANA functions contract as leverage over the policy things. But I would certainly agree with him.

I mean peculiarly that leads me to a different outcome in which a light user Contract Co. makes a lot of sense to me.

But I do want to express my clear support in agreement for that concern about, you know, confusing what belongs to ICANN as the policy body and what is an operational function?

Allan MacGillivray: Thank you (Becky). So I guess I think that Christopher Wilkinson is available now so will let Chris speak. Thank you.

Christopher Wilkinson: Good evening everybody. This is Christopher Wilkinson. Can you hear me?

Woman: Yes we can.

Woman: Yes we can.

Christopher Wilkinson: All right thanks. Very briefly Allan with reference to Alan Greenberg was saying for the sake of argument in terms of an internal ICANN solution I don't see a big difference between the MRT concept and the specific new ICANN supporting organizations for the IANA function.

Maybe I've got something wrong here but just to situate the argument I would say that we're talking about something like a new supporting organization.

In terms of the control of and oversights I've already proposed in a previous posting nearly a year ago that the IANA function should be overseen by a body with at least the same autonomy from the ICANN board as the current nominating committee. Now lawyers can look into how to draft that.

But I think we need a focus of which is clearly autonomous to a high degree from the ICANN board but mutatis mutandis of the existing nominating committee has some of those characteristics which could be carried over.

In relation to what Steve and (Becky) have just said of yes okay. But of we've been here before 15 years ago and my assessment is that the only possible

justification for the vast energy and interest that has been put into the concept of Contract Co. and separability is precisely that the ambition is to separate IANA policy from the existing structures.

I don't agree with that. I think I'm on the same line as (Becky) is. But 15 years ago we were dealing with that. There was a very well-funded pestiferous lobby funded by NSI to extract the IANA function from the existing structures as they were then.

It felt to me at the time to oppose that.

I think we've been here before. I'm against it and I am not buying into it. So Steve I think the ICANN board needs to look into why it is that there's certain amount of skepticism in the community about the reliability of ICANN board decisions.

But (Becky) I think we need to modernize if I may say so where we were nearly 15 years ago. Thank you Allen.

Allan MacGillivray: Thank you Christopher. So...

Christopher Wilkinson: To mute this phone I believe Star 6.

Allan MacGillivray: Thank you. And so I guess we're back to Steve Crocker again. Steve please.

Steve Crocker: Thank you very much. Thank you Christopher thank you (Becky). Let me just say couple of words of clarification.

(Becky) referred to the policy development process. I guess I want to make a three part distinction.

There's a policy development process whose output are various policies. There are specific judgments that are made for particular transactions, the delegation, re-delegation decisions being the primary ones.

And I'll stay out of the cc arrange area for a minute. Decisions about say Amazon or (wine) are - or several others -- Triple X or whatever -- are highly contentious and aren't policy developments but they are policy decisions if you will or at least value-oriented decisions. And they are not as I was trying to say earlier IANA decisions. The IANA processes after those decisions are made.

So I think it would be helpful to put things into three buckets, the policy development process, the specific decisions within policies and then the execution or implementation that goes out to IANA. The - and so I kind of wanted to draw a line there.

With respect to independence from the board that you spoke about Christopher I actually think that's an excellent idea and I've been very strong proponent of that.

There should be some group. And I in the other discussions I propose that a limited form of the Customer Service Committee, the CSC would be sufficient that has unfettered access to the operation and unfettered ability to speak about it would be highly desirable.

You mentioned the noncom. Another example in my mind is the way the root signing process is handled with trusted community representatives from all over the world who also are not beholden to anybody.

But whatever model you choose I think that sunlight is absolutely important and that we would have speaking for myself and I think speaking on behalf of my colleagues on the board we would have not only no problem but very strong support for that.

Allan MacGillivray: Thank you Steve. I see that Staffan Jonson has his hand up so let's hear from (unintelligible) Stephen please.

Staffan Jonson: Thank you Allen. Yes I would like again to echo actually Steve's first contribution and (Becky)'s as well. That's really important to this discussion.

There is huge importance in actually defining IANA functions. And I must suggest as (Becky)'s quite confused about this process due to what we're actually talking about.

As someone else also said there is a need for a clean distinction between operations and functions of the - or the IANA function with one side and the policy on the other side because they are - they need to be a more separate. And in order to do that we need to define them better. So definitions is still needed to have a good contribution.

So the term policy in itself is very blurred right now. It's - and but it's generally outside model as has already been said already.

So I've argued for it and written for it before I'll say it and all is well. There is a need for a minimalistic solution for this.

This transition of the IANA function can't be this complicated. It is too complicated. We heard it from many remarks on the first proposal and we need to focus on first of all first and foremost the definition and then the minimum required functions, what is actually needed and what is fear of the game itself. Thank you.

Allan MacGillivray: Thank you Stephen. So there are many, many let's call them alternative options and proposals that have been (moved) on lists and around the Internet.

And what I was proposing that we do in this working group is to take one particular proposal which there seemed to be some commonality between AUDA and ALAC on this point and to try and focus our work on this for the time being.

So I don't think we have enough time to make this the working group of all alternative proposals that exist.

But certainly to the extent that we can get some analysis done and some work done we would have the opportunity to potentially look at others as well.

But as you see what I have laid out today I've - I'm proposing we look at one particular variant which focusing - focuses on what happens when there is no Contract Co. And in effect the legal hook to bind in the future would be through the ICANN board.

And that's really what I am proposing that we do as a group. So I think it's important that we pause here and get some buy-in on that point otherwise I think we'll be coming back to everyone's favorite alternative proposal and

what I fear is we will make no progress. So I wonder if I could get some comment on that please? Thank you.

Well I'm okay here we go. (Becky) please thank you.

(Becky): I think that is a sensible allocation of our work. And we're - we shouldn't be revisiting all of the other things.

I would just note that I think that the elaborateness of CFC and MRT and IAP and all of those things are a reflection of our not getting this, you know, policy execution on the one hand.

And I'm using the word execution to refer to those kind of middle ground, not policy but judgment calls about policy that Steve is talking about on the one hand and then the straight operations on the other.

And so to the extent that this group actually does spend time thinking about the distinction between, you know, policy, policy execution and on one hand and operations on the other we could help simplify the rest of the work.

Allan MacGillivray: Thank you (Becky). I'll turn to my colleague Alan Greenberg. Alan please. Thank you.

Alan Greenberg: Thank you. Just a couple of comments about what's referred to as the ALAC proposal, it does have a lot in common with the Frankfurt proposal, the draft proposal that was published.

A significant part of that was not because we believe that level a detail and complexity was needed but that seem to be what was needed within RFP3 to

try to get people to at least look at the content. And I'm being rather blunt here.

The preamble to the final submission we made in the public comment forum makes it rather clear that we're looking at a number of principles.

And although I have no problem with what we're saying being a base construct take with a grain of sand the fact that there are things there which were not particularly important to us but were included to make it more palatable, more salable to people who ultimately were not buying in general so but has caused this group to come into formation.

So and I think that to some extent is true with the outer proposal as well less - they were certainly less bound to the mainstream proposal as it were.

So although I have no problem with using ours as a base don't take it as gospel. The overall principles that we were looking at were far more important than the details. Thank you.

Allan MacGillivray: Thank you Alan. So I think what I'm hearing here is there are some concerns about the complexity of CAC and MRT and Contract Co., et cetera.

And what I am trying to suggest is we already have a group that are looking at those elements of the group and I really don't want this group to be discussing those at the same time that they are being discussed in RFP3.

Like I'm really trying to isolate what we do so that we really avoid any duplication. And that's why - but I wanted us to have this discussion.

I note that Christopher in the chat had asked Paul Schindler to outline the outer proposal. I really before we move to that I'd really like to come to a resolution of what the focus of the work that this group is going to be before we - getting into the details of one proposal versus another.

So maybe if I could I might ask Greg Shatan who is the chair of RFP3 proper just to speak about how he sees having a discussion of these issues that have been raised here and whether he feels we should be talking about them here or in RFP3? Greg would you be prepared to speak to that?

Greg Shatan: Greg Shatan for the record. Thank you Allen, I am. I agree with this approach. I think that by focusing on an alternative approach without a Contract Co. and by extension without a contract and by focusing on that alone may ultimately change the way we look at the MRT and the CSC.

Because once one form - once one point of reference changes the other points of reference may look different just like turning on a different light makes something look more or less attractive.

So I think that by focusing specifically on the methodology for replacing what Contract Co. and the contract itself rock to the party we may revisit thereafter the MRT and the CSC approach.

But I think that to try to deal with them all at the same time and in kind of a parallel process the RFP3 would slow down this group and I think muddy the waters as between the two groups what's being handled.

But I think that if this group were in essence RFP3, the only RFP3 then, you know, obviously it makes sense to discuss them all.

But I think given that there is some ground here and I acknowledge what Alan Greenberg said that it's not that by putting our MRT and CSC to one side that doesn't mean that those are taken as gospel and that we're going to build towards the current representations of those.

But rather I think that by focusing this way we can then re-examine those (striatum) and see where they work and whether that examination - yes I think the idea is for this group to ultimately kind of branch back into RFP3 and to perhaps to have - whether and how those discussions take place after a kind of a replacement if you will or an alternative or a variant to the contract and the Contract Co. is kind of flushed out by this group is really irrelevant.

What's relevant here is to try to have a highly focused short-term productive discussion of a viable and substantial proposal that doesn't involve either creation of a Contract Co. or a contract with an outside party. Thanks.

Allan MacGillivray: Thank you Greg. So maybe we'll go back to the hands in the order that they're up. So it's Cheryl Langdon-Orr. Cheryl? Cheryl?

Cheryl Langdon-Orr: Hi. Just a very brief - based on something - Cheryl for the record by the way. In the chat I don't want us to get caught up with the naming. And we're already doing that in the chat.

I'm talking all about an naming a potential INSO and that sort of thing. I don't care whether we call these things apples oranges and apricots at the moment.

But I think we shouldn't get caught up in the nomenclature so much as the functionality. That's all. Thanks.

Allan MacGillivray: Thank you Cheryl. Steve oh, I'm sorry who it's Paul, Paul Schindler. Paul please?

Paul Schindler: Allen, I don't want to jump the queue and I just wanted to check, my hand was up with regards to a more detailed discussion of our proposal.

So if you're not yet ready to move onto that I'm happy to hold. and that's simply why my hand was up. So I'll lower it but at the time that you'd like me to go into greater detail about the proposal I'm here and ready and willing to do so.

Allan MacGillivray: Thank you Paul. And yes I'd really like to get some agreement on what the focus is going to be before we get into any detail. Thanks for waiting. So while we're - we'll pass again to Steve Crocker. We're hearing a lot from Steve today.

Steve Crocker: Yes. I'm sorry to be taking up so much time but I'm trying a bit to be helpful here.

Allan I thought I heard you say that the focus here in order not to duplicate work was on simply on a non-Contract Co. version of the existing framework that was put together.

And I think I'm not comfortable with that because the, sort of the not-so-subtle point that I was trying to get across is I think an awful lot of the discussion with or without Contract Co. is based upon very indistinct understanding of what it is we're talking about when we talk about the IANA function.

And if one steps back and gets some clarity about all that it's not going to be just a question of whether to have a Contract Co. or not but relatively quickly and efficiently I think one could come at the problem of what is needed and arrive at a much simpler solution. And that isn't limited to yes to have an internal or no to have an external version of the contract idea.

Allan MacGillivray: Okay thank you Steve. Greg Shatan please? Thank you.

Greg Shatan: It's Greg Shatan. I agree with Steve. Let me - and I think this is actually something that we've done once or twice in the past in the history of this group already.

But I think it's helpful to do it as we begin the work of this group which is to start with a functional analysis before we start with a structural discussion.

That's what we've we did when in Frankfurt and it's what we did again when we were kind of running up against certain questions about the structure of the MRT.

We realize you can't discuss the structure of a - of anything that's intended to do a function unless you know what that function is.

So we have to scope the function first and then the structure second. I think that's what Steve was saying or at least it's kind of congruent with what Steve was saying. Thank you.

Steve Crocker: I like it.

Allan MacGillivray: Okay then so Steve let me ask you what - how would that function and how would that functional analysis start?

Steve Crocker: Well starting from clarity about what the IANA function is then one can ask so what are the risks or threats or vulnerabilities whichever if those are all different. It's actually quite specific technical distinction.

But what could go wrong and then one could ask okay how do we protect against those eventualities either not having them happen or dealing with them if they do happen?

And in my view the only real issue is what happens if valid instructions to the IANA group aren't carried out or - and what I think would be bizarre and very unlikely what happens if the IANA group does something that it has not been instructed to do and how do you protect or deal with those?

And that's a very - that's a relatively well-defined and very restricted set of issues and I think could be dealt with very expeditiously.

And then when you come all the way down the line and say okay what structures do we need my guess is that a single structure of unbiased and unfettered people who have complete access to the data and complete ability to speak about it provide more than enough protection given that we don't have any work examples of things having gone wrong in the past.

So it isn't - I mean it isn't as if we have had terrible events that we're protecting against in the future.

Allan MacGillivray: All right. I'm going to ask Eduardo Diaz to speak and then have a couple comments. Thanks.

Eduardo Diaz: Thank you Allen. I see these functions as a two-pronged type functions. Like and I think Steve mentioned it a while ago.

And basically the way I see it is IANA is basically a clerical function. It takes instructions and they perform them.

And there might be some risk like as Steve said you know, what if they don't do what they are told to do?

But the other part that is related to the IANA function but is not performed by IANA is, you know, the people in the organization that may value judgment about to say delegations (unintelligible) delegations of about XYZ, you know, that's not an IANA related function the way I see it but it's related to the whole process.

And when we talk about supportability here or, you know, things going wrong I think it has to do mostly with the, you know, those value judgments that are done that would direct IANA to do something later on. Thank you.

Steve Crocker: If I might in the silence here that's where the big risks are. And other mechanisms have to be in place to protect or react to anything that goes wrong there.

But in the - I'll call it the cleaned up situation after the transition there should be greater clarity about where those decisions are made and what recourses or protections or both are available.

And I think it's in everybody's advantage to not have them conflated with the notion of what IANA is.

In the numbers area in the IETF area all the value judgments are made outside of ICANN.

In the names area we have all the judgments made within ICANN. But logically outside of IANA and going forward we should make it organizationally clean and distinct so that they're not viewed as IANA decisions or even except to the extent that we need technical information from the IANA group shouldn't be viewed as intertwined with IANA at all.

Greg Shatan: Okay so let me tell you I - how I have come to our work and I certainly take the points you're making Steve.

But we had I think there is something in the order of 50 written submissions in respect to the CWG's proposal.

There were - there was at least one specific proposal from the registries on specific changes that they would like to see in the proposal but it's still included a contracting entity.

ALAC spreads considerable concern about a Contracting Co. And certainly Google was particularly concerned about some of the risks around Contract Co.

So and AUDA I think was equally concerned. So I think and I say and I'm from .TA there were a number of concerns in the CC community about the risks and understanding of Contract Co. and whether an alternative option has, you know, had been properly assessed.

So certainly my agreement to try and lead this group was based on okay let's try and really have a dispassionate neutral look at an option that would not have Contract Co. And that's how I'm suggesting we do our work.

And while I certainly take some of the comments that have been made as valid I'm really at a loss to do - what to do with them because they would imply that we sort of rollback and construct a whole brand-new option starting from scratch.

Now is that what I've been saying and if that's where we are I'd just like some comment whether that's what the focus of the group will be or whether something more focused as I have suggested. Thanks.

Steve Crocker: Well let me say yes to what you said except to make it feel much smaller more comfortable than you are suggesting.

You take Contract Co. off the table and you're a good fraction down the path.

So you could say okay we don't need a Contract Co. Are we done? And now you have to go out and say what would be missing?

And I don't want to - I mean it's for this group to figure out what's comfortable and what the answer to that ought to be.

But start with whatever problem it is with a clear statement of what problem has to be solved and then only postulate the necessary mechanisms to do that.

And, you know, and as I've said a few times an enormous part of the solution will be clarity about access into the operation and the ability to speak about it figuring out if something has gone terribly wrong.

I can't imagine frankly that the execution of the IANA function has gone wrong in isolation of everything else.

I mean it's a peculiar scenario to imagine that ICANN itself is humming along perfectly except for the small detail that it's screwing up the updates of the root zone.

Almost certainly a lot of other stuff would have to be out of control before you get to the point where that operation would be screwed up enough to trigger any of the things we're talking about.

So almost, you know, and anything I can reasonably imagine there would have to be heavy scale interdiction or intervention in the larger ICANN processes not just, you know, sort of a clean surgical, ah, removal of the IANA function and then saying everything else is okay.

Allan MacGillivray: Okay thank you Steve. So Alan Greenberg, Alan please?

Alan Greenberg: Thank you. I'm not going to - I don't have the background or the in-depth knowledge to know whether the kinds of changes that Steve is suggesting to, you know, the separation of things that should be in IANA and things that are there today but shouldn't be whether his separation is the right one or not. And I don't even think that's within our mandate to look at.

I will point out however that in the Contract Co. model it will almost - it would be almost impossible to make that separation later. Whereas what we're talking about, that is transferring the responsibility to ICANN it would then be something that with the support of the multi-stakeholder community we could do that separation and dissect the parts and end up with a much cleaner

operation and in fact something which could be divested or transferred somewhere else at a later time with far less impact than it would if we tried to do that today.

Allan MacGillivray: Thank you, Alan. Paul Kane. Paul?

Paul Kane: Thank you very much. This is Paul Kane for the record. I think we need to be - we have a duty to make sure that we investigate all aspects of any transition proposal. And that includes a Contract Co.

I personally would like to understand the ramifications of having a contract company.

The main goal of having the parameters under which the current operator who has done a good job in providing root zone management services to the ccTLD community the main parameters under which they would lose that right and how a transition would happen to another party if it was more technically competent.

So the reason for my interest in understanding the benefits and the disadvantage of Contract Co. is so that we can have an informed debate and we can inform the CC community and the gTLD community of the rationale as to why we took a particular path whatever that path is.

So I would think it premature to remove from consideration having a contract, having a Contract Co., having a mechanism where someone mentioned the nuclear option.

I think we need to consider all aspects to make sure that the IANA remains an independent body whether ICANN exists or doesn't in the future. That's irrelevant.

The IANA function is a technical function which can be clearly defined within technical parameters. I would just like to emphasize that ICANN staff who has been administering the IANA for a number of years have been doing a good job and long may that continue.

But they must remain servants of the community they serve. And should they fail to do that there needs to be ramifications for the IANA staff.

Allan MacGillivray: Okay. Thank you Paul. Greg Shatan, please.

Greg Shatan: Greg Shatan for the record. Thank you Allen. I don't disagree with much of what Paul Kane just said. But I think that the - it's a question of where and by whom in this process we do those other examinations?

I don't think that the remit of this or the purpose of this group 3B is narrow. But that does not mean that was not within the remit of this group has been tossed out of the plans for the Working Group as a whole.

We have RFP4 which is supposed to look at ramifications and stress tests and the like. And we have in terms of looking at scenarios that involve Contract Co. and the pros and cons there of which we have been discussing for quite some time, you know, we have RFP3 for that.

I think the idea here is if I may is to come up with a non-Contract Co. non-contract solution or proposition which appears as viable to those who are interested in Contract Co. solutions would find that solution to be.

So the idea is basically to see how good a proposal without Contract Co. we can build. That doesn't mean that is - that other things are off the table elsewhere. It's just that the focus of this group on a getting kind of a work product in a relatively short period of time need to pick a relatively discrete task.

Lastly I would say that the - we need to go back to I think the idea of a functional analysis which I think has kind of three aspects which are to make sure that we're all on the same page with regard to the IANA functions or maybe another way to phrase that is it would be tasks carried out by the IANA functions operator.

We need to be clearer with what functions are carried out by NTIA in its relationship with the IANA functions operator. And we need to be clear about what we thought we were solving for when we put Contract Co. and the contract in place. Thank you.

Allan MacGillivray: Thank you. Thank you Greg. I'd like to go back to something Steve said earlier if I could just take the floor for a moment.

And I think he said what if we take Contract Co. off the table, what's missing?

And I actually think that is a good focus for us to spend a moment with because without Contract Co. there is no mechanism by which ICANN is legally obligated to perform the IANA functions as it is now is currently legally obligated under the contract it has with the NTIA.

So that's the first element that I think we have to deal with. And, you know, the first function we have to replicate to use I think Steve's view.

And secondly we have to talk about what are the set of consequences for nonperformance of those functions or inadequate performance of the function?

And everyone has talked about separability. And so I think that is for me the construct and the playing field I think we're focusing on.

So perhaps now would be a good time just to have Paul walk us through what Eduardo was talking about because I think it speaks to both of these aspects of a variant to the Frankfurt proposal. Paul?

Paul Schindler: Allanthank you. It's for the record Paul Schindler here. Yes look I had my hand raised earlier because I was going to echo what turned out to be some of the comments that Greg made and Allan has just repeated there that my understanding was that there are other for other groups they can look at and can progress an option going forward assuming the construction of a Contract Co..

My understanding was that this group would be the avenue through which a non-Contract Co. model would be explored.

The final outcome of the group we can't presuppose. It may well be we find out certainly following relevant legal advice that such construct what we're proposing or investigating is it may not be possible but at the moment for the sake of balance all options need to be considered.

And I note that the CWG in their draft proposal spoke about they actually acknowledged and internal to ICANN or non-Contract Co. model but there

was no explanation or detail because no work can be done (unintelligible) that model.

So for the time being I thought this would be an appropriate forum to look at the alternative structure.

Quite simply the outer proposal which I will circulate to the group again given that we've discussed it at length already on this call is quite simple.

Elements of it I don't believe this group needs to get into because we went into a quite a bit of detail as to what a CSC could look like or what CSC functions or MRT functions could look like.

And we also had put forward quite a few ideas regarding what would trigger a rebid process in the case of significant failure of the current IANA operator.

So it is a proposal that covers the whole range of issues that CWG is considering but with regards to this particular group our fundamental tenet was it's been recognized by the CWG and others that the current operation of the naming functions in particular is generally satisfactory to its customers.

So everybody is assuming that the work being done -- and Steve's mentioned it a couple of times on this call -- is being done well.

We haven't explicitly stated it in our proposal but we share Steve's view that it is a narrow function, it's a narrow responsibility.

If you were to take that out the policy related functions would continue to exist in the bodies that they do currently so it - be it the GNSO or the ccNSO.

So I said we take that narrow definition of what IANA does and built on that we therefore assume that all chains should be -- and I think Steve said it again or perhaps it was someone else maybe Stephen said it -- we should take a minimalist approach.

You shouldn't - our main concern was that this huge construct had developed headed by Contract Co. and in the various sub organizations when essentially it looks like we're taking a sledgehammer to cracking a nut.

If we understand the issue at hand is a narrow one it's a specific one we could then with that assumption move forward proposing light models as minimalist as possible to oversee the current role.

The one part, the only part and I won't - there's no need for me to read through our entire proposal but the key option was that the only oversight of the IANA function be something that we're the ones that called it the nuclear option. And that has its genesis herein .AU. For a number of years and I was actually on the government side when this was established we have a nuclear option based in legislation over a critical failure of .AU.

So where we as the functions operator for .AU as a CC manager can only be affected by government intervention if we're grossly negligent or we - there's some sort of significant material breach.

In other words day to day options can't - day to day operations can't be interfered with by government or could not be interfered with by whatever this other entity would be but that there be some power that could be used in the case of gross failure takes these points that that is extremely unlikely but it still needs to be there.

Likewise the failure of .AU is extremely unlikely but the option still needs to be there. So as opposed to an entity we just we're proposing a power, an option where the operator is held to account and an intervention can be made.

And what's that by, who that's by what that structure looks like, what that group looks like well that's part of the broader discussions we're having.

But our fundamental tenet is that there is just some sort of power built in, a singular power that would intervene and therefore launch a rebidding process or again getting back to the example of Australia...

Grace Abuhamad: Paul?

Paul Schindler: I'm sorry. Go ahead.

Grace Abuhamad: I'm sorry to interrupt but I think people in the Adobe Connect room have lost sound. And so I think we need to reconnect.

I don't know if anyone is I don't know who is not on the audio line is able to hear you.

Paul Schindler: Okay. I'm sorry I stepped away for my computer so I'll pause for now until you advise otherwise.

Grace Abuhamad: Okay. One minute please. We'll get everything back on track.

Hi everyone. This is Grace Abuhamad for the record. We are back online. Everyone should have their microphones enabled again and we - the recordings are still going.

So we can go back to Paul I believe. If Paul you can start from the beginning of your comments I think we - that would be best because I don't know when exactly everyone dropped off.

Paul Schindler: So thank you for that and again please let me know verbally if there's - on the audio line if there's any more difficulties with the Adobe room.

For those that heard everything I have said already I'll attempt to be succinct in my second run through.

Fundamentally the outer proposal as it's called is something that I'll - I will first of all sure with the whole group. It's a very light read.

It is structured to look at all elements of the current CWG proposal. So there are aspects that are not relevant to this - not necessarily relevant to this group.

We address how the CSC function or what is proposed to be a CSC, MRT, et cetera. So those elements aren't immediately relevant.

We as a fundamental can take that the function currently is being performed well. It is as Steve just said a relatively simple and narrow function.

Assuming that definition we therefore believe any changes as others have suggested should be minimalist rather than a large construct which has potentially four different heads.

Again assuming that it's a narrow function we therefore propose that essentially all that's required is some sort of as we've called it a nuclear option or intervention in a case where the IANA operator is grossly negligent or in material breach.

Again as Steve has said previously that is incredibly unlikely. However the construction of some sort of mechanism to deal with that scenario should be developed.

Our analogy is the arrangements we have here in Australia where the Australian government has enshrined in legislation the powers to intervene if we at .AU is a ccTLD operator are grossly negligent in the operation of our role.

Again it's incredibly unlikely that we would do so or that that would happen however the powers are there.

And those powers allow for both the removal of the function from us as operator or for the government to direct us as operator to act in a particular way.

I understand that there is a significant difference between what we're discussing here and something enshrined in legislation. However the principle is very similar so that they're not - and we haven't proposed a specific entity or a body or a structure but rather it's the power somehow captured and defined that there be a mechanism for intervention and possibly rebidding.

The specific reference we made was to a golden bylaw in the - it is similar to the corporate idea of a golden share. And that means that there would be certain circumstances where ICANN would be required to put the IANA function out to rebid.

And then we're going to quite a lot of detail. We actually drew down further as to what that rebid process would look like.

But essentially when it comes to the oversight function we weren't proposing an entity per se but rather a power. And then who that power would be invested in, well that's the subsequent discussion by this group.

And at the risk of monopolizing the call Allan I'll stop there. That was the key and of our proposal as it relates to the discussions of this group.

Allan MacGillivray: So thank you Paul. Maybe I'll pause just to see if anyone has any specific questions of Paul on that that are perhaps germane to our discussion here.

But I think he goes to the main elements or the functions to use Steve's word that I think we're to address here that is to say how do we bind ICANN to perform the IANA functions? What are the consequences for nonperformance? What's the process to determine if there has been a breach of that undertaking as it were?

And so that's really how I see it trying to do that that is to say trying to replicate what is being done with Contract Co. in a fashion that involves neither a corporate entity or a contract.

So with that I'll pass it to Steve Crocker again. Steve please?

Steve Crocker: Thank you. And I appreciate the summary of the outer proposal. The singular difference or single difference between the out of situation and the one we were dealing with is that there is a single government that is the natural superseding body if you will.

It's the essence of the environment were in that we do not have a single governmental organization or any other obvious thing. That's the - that's both

the challenge and the really positive aspect of operating a truly global operation that's multi-stakeholder.

There is just a lack of definition of anything at the top. And in fact the US government has been playing that role nominally and is stepping out not with the intention that it be replaced by something else but that it be replaced if at all by consent of the community through a multi-stakeholder operation. So that all sounds a little vague.

The concrete embodiment of that in my view is not to try to gin up substitute structures that are the other - that handle a contract or that have some new authority because that is just an infinite regress to exactly the processes that went into creating ICANN.

What would happen in practice if the IANA function went awry would be much simpler much more direct. And it would be simply revolution in the streets.

You would have an enormous community outpouring. You would have enormous pressure from all quarters and you would have some form of constitutional convention.

I think that it's not actually necessary and in fact a kind of a quagmire to try to define that process.

But I have 100% certainty that if the events that we're imagining took place and the IANA function came apart that there'd be no question that there would be enormous involvement, pressure action and things would happen pretty quickly.

The ICANN organization as it stands would never survive the kind of pressure that we - that I imagine we brought it.

And then in addition ICANN is not an insular isolated operation. IT's extremely porous that's the whole business of it being multi-stakeholder.

There would be people inside of ICANN up down in the middle, on the staff, on the board in the SOs and ACs all taking action.

So in some sense the lack of a very specific kind of judicial or contractual process is a feature rather than a weakness.

Allan MacGillivray: Well Steve I have to say that certainly as one of the people that lives in Frankfurt the - everyone that I talk to believe that the IANA functions are being executed in a very satisfactory fashion.

But I think maybe some difference of view is that many in the community see that as being a direct consequence of there being a contract in place, a contract that is periodically reviewed and renewed.

And that has been the point of departure for many in the communities. And what we're trying to do here is to look to say is there ways that we can preserve the dynamic without having a Contract Co.

And that's really the focus of what of the work I am proposing that we do. I understand where you're coming from but I don't think this is the working group to have that discussion.

Steve Crocker: Well I know it's going to be hard because we're all operating in the dark. But I think the assumption that the NTIA administration has been the source of

stability for the IANA operation I'll just say for what it's worth that I think that's completely wrong.

And the unfortunate thing is that their actions over the years have been in camera have been hidden and behind the scenes.

And one doesn't actually see what they have done. I've had a little bit, not complete but a little bit more access than many of the people.

And for what it's worth I'll tell you I think they've been more of a destabilizing force than a stabilizing force. But there is no reason why my statement carries any more weight than anybody else's.

But the assumption that their existence has been the safeguard and has caused the whatever improvements and stability in the IANA function is only an assumption based upon lack of information rather than it must be so because it's there.

Allan MacGillivray: Okay thank you Steve. Alan Greenberg.

Alan Greenberg: Thank you. I'd like to address some of Steve's comments and that I'm going to give a try to answer some of the core questions that were asked before.

I 100% support the concept that if something starts going wrong the first recourse will be there will be discussions, there will be attempts to fix it. And there's a good chance as has been in the past that the problem will be rectified. So that's number one.

Number two, I do not doubt that that kind of insurrection and riots in the streets that Steve is talking about might well happen if things went really awry.

But presuming they will happen assuming presuming that they will not only happen but the outcome will be satisfactory in my mind has too much of a trust me tone to it.

We're talking about this entity that is essentially managing the soul of the Internet, the root of the Internet. And I'm using the term in with multiple meanings.

And that may not be accurate but that is the emotional impact.

Steve Crocker: Well that's the emotional thing...

Alan Greenberg: Yes.

Steve Crocker: ...but one point of clarity. They're not managing in the sense that that word usually is used the content of the root zone. That's being done elsewhere.

They are executing instructions for making changes. And the point of the IANA contract is that that has to be done with a high degree of accuracy and efficiency and timeliness.

Management of the contents of the root zone is actually done back upstream where we were talking about earlier where the value judgments are being made to the extent that there are any value judgments involved.

Alan Greenberg: Steve I understand all that but this is an emotional discussion. And we have to accept that. At least I have to accept that.

And I believe what the community wants to see is a fallback path should all hell break loose and things that work.

Now it may will be that that plan never gets exercised and the riots in the street and the insurrection takes precedence over it and supersedes any plan that we put in place. But I think we need some sort of plan whether it actually gets carried out or not.

Steve Crocker: All right. So if I might all just playback what I think you said Alan that the community wants the emotional satisfaction of having a well-defined path for dealing with some disastrous situations should it ever happen.

And they want that not because that's the factually correct thing to do but because it will make them feel better to have something to find on paper now as opposed to left undefined.

Alan Greenberg: I would support that. And we're dealing to a large extent without people are reacting to this emotionally with a whole bunch of different motives.

Let's face it many of many people are going into this with specific ends in mind. That's a reality we have to deal with.

Let me talk a little bit oh but what the At-Large fore saw and how this would be handled. In other words how do we remove contracting from the solution because I think that's what this working group is supposed to be doing.

The presumption is that the IANA responsibility be awarded to ICANN that would have to be embodied in some sort of documentation.

Presumably there would be some bylaw changes and some other documents. And I'm not going to try to - I'm not the lawyer who will say what belongs in bylaws and what belongs in some other documents that will guide ICANN.

But it is essentially we need to make sure that there are is a breadcrumb trail which says why ICANN is now going to be responsible for what it was responsible based on for based on the contract. So that's part number one.

And part number two is to have handle the day to day operations. We may need some infrastructure that is different from what we have had before either because we've simply have learned something in the interim or we need to add an extra level of certainty to the community given that the NTIA is not watching over this in theory.

And lastly we need a process by which if all hell breaks loose than somehow the multi-stakeholder community can ensure that we find a new home for IANA which if ICANN has proven unable to carry out the responsibilities.

And whether that's done through divestiture, through a rebid, through going through a trustee who rebids under certain specifications that's something that needs to be talked about.

But essentially those are the major components that we're looking at. Thank you.

Allan MacGillivray: Thank you Alan. So I don't know where - we seem to be going in circles a bit today so I'm - I perceive the Swedes can contribute to this. Staffan you're up next.

Staffan Jonson: Thank you Allen. So I'd like to continue on Steve's reasoning as well when he says there is no judicial single superseding government with a judicial system in it. So that leaving to fear the capture of the functions of course.

But how to avoid this fear or capture well the various answers to take away the incentives, that is to depoliticize the functions themselves.

And I still think this is possible to do to take away these incentives. And then yes there is a good way to have a back for that plan as well. But focus must be on the definitions again, the definitions sort of actual functions and how we can make them as uninteresting for capture as possible. Thank you.

Allan MacGillivray: Thanks Staffan. Paul Kane and then I'm going to suggest a bit of a way forward if I (unintelligible).

Paul Kane: Thank you. This is really coming back to Steve's point. I would say that those of us that use the IANA and have used the IANA for significant number of years we are not interested in emotions at all.

We just want the IANA to work efficiently in a fully distributed manner as it used to do and unfortunately in recent times seems to becoming more centralized so that the proposal that has been put forward for automation of root zone management which is contained within the existing contract which ICANN IANA have been offering the CC community for some time but not actually delivering it I would urge that that moves forward and the distributed model is fully embraced.

And therefore it avoids the risk as Staffan highlighted of the fear of capture and the fear of the mechanism that IANA uses becoming centralized so therefore I think it can capture easier.

There are many parties that can do the IANA function. Certainly the CC community want ICANN to continue being the IANA operator but certainly do want to see the distributed and decentralized model using automated tools deployed as quickly and as efficiently as possible.

So no emotions. This is a simple technical function that should not be political and should ensure that the CC community is able to serve their community appropriately.

And so I'm interested in exploring all avenues including not having a Contract Co. But I do think one does need to define clearly the parameters under which IANA functions and what happens if and when IANA does not function efficiently and the community needs to replace the IANA operator.

Allan MacGillivray: So thank you Paul. So I don't know how much further we can take this today. This seems to be a difference of view of the scope and focus of the group.

I certainly hear that. Some people Steve, Steve Crocker I think you're even seeing the premise of the overall TWG proposal itself as you're certainly welcome to do.

What I've been trying to do is to scope and focus our work so that we could potentially produce, you know, a straw man option that focused on without a Contract Co.

And I think as Paul, as Paul Schindler alluded to this is going to turn on probably ICANN bylaws or resolutions. And a lot of those issues will involve getting some outside legal advice.

In other words if ICANN were to agree to something to what extent can it actually bind itself going forward? And there is some progress being made within the CWG towards getting that outside legal advice.

So I this is just a I guess a plea that see what we can do to move forward on this narrowly scoped piece of work so that we can develop some questions that we could put into the hopper to have some consultation with outside legal counsel on them. So I'm - there is a tight timing issue here.

I certainly take the point that we have to go back and look at the functions that are trying to be replicated. That point is well taken. I guess it's something I could have done in the past.

So maybe what I'll do with staff is to try and do that and have a discussion of that at the outset of our next call if people feel that would be a useful next step. I see Greg Shatan's hand is up. Greg?

Greg Shatan: Greg Shatan, raised my hand before your last statement so I'm not directly responsive but I would say that this call demonstrated that if we're not going to focus the task before this group tightly we will be at whatever our task is for a long time.

And that doesn't mean that those other tasks are without merit. It doesn't mean that they can't be carried out even simultaneously with this task but that there was a specific reason for which this group was created.

And the idea was to bring something back to the CWG in general that involved neither contractor nor Contract Co. because of interest in such a solution.

And that I think if we stick to that we can come up with something in a relatively short order. If we keep opening new roles for the group we're not going to get anywhere in this group in the time frame in which the core remit was intended to be taken care of. Thanks.

Allan MacGillivray: Thank you Greg. So I'm not going to repeat myself so I'm really proposing to end the call now and to return as I mentioned before with some kind of functional analysis and ask again if we can get a agreement at least pro tem on what the focus of the work of this RFP3B group could be.

Cheryl and Alan have comments. So Cheryl please.

Cheryl Langdon-Orr: I'm sorry, I was still on mute. It's not actually a comment to that last part Allen. It's a request that we close off after we've established if we need any flexibility for those of us who are entrenched in Frankfurt with the accountability CCWG next week or traveling to and from and when the next schedule call is. That's all. Thank you.

Allan MacGillivray: Okay. I wasn't aware of that. Well so let me ask you this Cheryl it's your - and I take it or maybe I'll Alan Greenberg to speak who is in Frankfurt.

I mentioned the link to the legal advice for which some steps are being taken. I think this is critical so we'll have to see.

And maybe I can ask Grace as well to comment on whether there's an opportunity for even a short call when everyone is in Frankfurt. Alan?

Alan Greenberg: Thank you. I certainly support what Cheryl said since I'm one of the people who is involved there. And there are at least a few others who are actively involved in the accountability process that will that in theory are participating in this group even if they're not on the call today.

What I was going to say is the analysis of what exactly IANA does I'm not sure that's going to - I understand several people have said that's important that we do that first.

But really we are looking at what IANA does today. And it almost doesn't matter what it is. We have to transfer that responsibility to someone. And I'm not sure why the detailed list of tasks alters the process of how to, you know, transfer the responsibility.

I mean yes at some point we're going to have to know exactly what it is so we can write it in documents but I'm not sure that our - we need to do that today to embody the concepts that we're looking for but I may be in a minority.
Thank you.

Allan MacGillivray: Alan this is Allan MacGillivray. I think it's relatively straightforward to do that to the extent it - that it could help some people to conceptualize what we're doing and why. I think it's useful.

I don't think it's a large effort. I'm envisioning a single page. So unless there's any strong objections I'm going to propose that we wrap things up today.

I'll have an off-line discussion with Grace and the support staff about how the conflict of the Frankfurt meeting of the Accountability Group would affect our work.

So thanks everyone and we'll be talking. Bye.

Man: Thank you Alan.

Woman: Thank you everyone.

Woman: Bye.

Woman: Thanks Allen. Thanks everyone. Bye.

END