

ICANN

**Moderator: Gisella Gruber-White
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8:00 am CT**

Coordinator: Good morning, good afternoon, good evening. This call is now being recorded. Please go ahead.

Allan MacGillivray: Thank you. To quote the good lady, good morning, good afternoon, good evening. This is Allan MacGillivray. This is the meeting of the CWG RFP 3B Sub Working Group.

I think that we'll follow normal protocol in that I will take it that everyone who is in the Adobe chat room will be recorded as being present.

I have noted two individuals having said that they're only available on the audio. One was Robert Guerra and I believe the other voice was Eduardo Diaz.

But I'll let Eduardo speak for himself and ask if there's anyone else out there in audio land that would like to note their presence?

Hello?

Woman: Yes we can hear you.

Allan MacGillivray: Well I was just looking for Eduardo to confirm that it was him so and if there is anyone else.

Cheryl Langdon-Orr: Allan, Cheryl here. Those of us who know Ed well those dulcet tones very well can certainly confirm it is him. So rather than wait for him to find his un-mute button in probably a noisy environment let's just move on.

Allan MacGillivray: Great. I see that Staffan is saying in the chat that I'm sounding a bit muffled. Are others having a problem with my sound?

Cheryl Langdon-Orr: It's slightly better just then because you certainly were a bit muffled before yes. Whatever you're doing now is better.

Allan MacGillivray: Okay. I guess is my mother would say speak up. All right well as I said, welcome everyone.

I've put the agenda in the center of the chat because I wanted us to kind of understand what we hope to accomplish today.

The point of departure now -- and I think we shifted gears a bit -- and this flows from the discussion we had at the full CWG meeting yesterday where the Singapore ICANN meeting represents an opportunity for the CWG to engage with a lot of people in the native community to discuss the options that are on the table and where we are.

And so at the CWG call it was decided that we should produce a so-called discussion document for Singapore.

So what I hope to accomplish today is just to have a brief discussion about what that document will look like and in particular to have a good discussion of the so-called outer proposal.

And our friend Bernie Turcotte is right now trying to draft the so-called discussion document. And he sent me a rough version of it.

And what I did was I basically dropped outer proposal into the chapter that would deal with the so-called internal ICANN option.

So maybe I'll just turn it over to Bernie for a moment so he can kind of explain where we are with respect to that discussion document. We can pause for some questions and then turn it over to Paul Schindler to walk us through the other proposal.

I'll just leave us with a question. I think at the end of the meeting we're going to have to make a decision about what internal ICANN option goes in that draft document.

That is to say is that the outer proposal or we - will we need to try and perhaps put something a little more generic together as a substitute?

So I'll just kind of leave that question with you. And now if I could - I would let Bernie speak to where we are in that discussion document. Thank you.

Bernie Turcotte: Thank you Allan. I hope everyone can hear me okay. I'll take that as a yes.

Man: Yes very clear.

Bernie Turcotte: Excellent. Viva Adobe. So at the request of the Leadership Team I'm trying to assemble a comprehensive document of what is the current state of play I guess is the right term.

So basically I'm gathering the results of the administrative stuff basically how many meetings were held of the CWG and all the subgroups and a general update of where we are, the update on what the core points of our draft proposal was for public consultation, the - a summary of the results of the public consultation, discussion of the intensive work weekend, some of the results of the surveys and trying to sort of assemble all of that into one coherent package to generate major points of agreement and key questions that remain.

The general approach after the pro forma stuff of which meetings and what we did where is basically to attack it following the structure of the draft proposal meaning we assemble the various inputs versus Contract Co, MRT, CSC, IAP. And then for good measure we've thrown in ICANN internal option after that.

So we've got as (Alan) said a first draft out that is if you will the foundation stuff. And I'm hoping to get the next version that has some of the summaries and retune it so it's more general usability document.

Right now there's a lot of - it's just a sub sections where we have crammed everything in. Once we've got that done then hopefully we can use that to generate slide decks to speak to when we're in Singapore which will explain exactly that we haven't been quite sitting on our hands, that we have moved ahead on quite a few points but that this is complicated and we still got a few questions to get answers to.

I think that's sort of sums it up. Is that okay Allan?

Allan MacGillivray: Thank you Bernie. But I would kind of turn to others to see if they have any questions for you on that.

I would note that in the piece that I send out to the whole community I'll call it a mockup of this. In other words it's taken what Bernie has done and put this in just to give everyone a flavor for what the document would look like.

But I would just pause for a moment and see if there is any questions and because next I'm going to turn it over to Paul Schindler to walk us through the other proposal.

I see no hands up in the Adobe so and the chat is pretty quiet so I think without further ado we can turn this over to Paul Schindler from auDA.

Paul I believe you have scroll control if you just want to move through that, the document itself okay? Are you - I'll turn it over to Paul.

Paul Szyndler: Thank you Allan and good evening good morning all. Thank you for the opportunity to elaborate on the proposal we put forward.

I didn't actually want to scroll through it in terms of working through the document clause by clause. I wanted to start prefacing this with my favorite acronym IANAL, I Am Not A Lawyer.

So I must just advise everyone that I'm probably not in a position to respond to specific legal questions about will this work or will it not.

This proposal has been developed as have others in the past as a potential solution. And it is just that at the moment, a potential solution.

I actually want to work from back to front in terms of some of the elements which are not that contentious.

That is we have in our proposal and if I do have scroll control -- and yes I do - - working from the back we have no concern, there was no particular concerns about an independent appeals process.

I believe that has for the most part been agreed by next to everyone. And I don't want to spend too much time discussing that.

We also have absorbed to date pretty much everything that was described as a CSC. So customer service or Customer Standing Committee would be a key element of our proposal which would be the only standing body that would exist for an extended period of time would continue to work throughout whereas other elements as we work further up in the food chain so to speak would only be activated as required.

Above that this is where there's a few points of differentiation. And that is we've use the term Guardian or is something that we've used that could be used interchangeably with what others have described as the MRT. But we've only call that a guardian because that is some familiar language when it comes to the concept of a trust.

And that is the apex of our proposal. That is the top part. And that is that when it comes to the function this is something that ICANN would make a declaration of trust.

That is ICANN does not hold the IANA function as something that it owns or it controls but would rather make a declaration of trust with regards to it and therefore it becomes the trustee.

It simply holds they function in trust for the benefit of the community. And the Guardian would be the consumers.

And that would be and again this gets back to the same discussions we've had previously about who is this held in benefit for? And this would be predominantly TLD registries and also members from other SOs and ACs and other members but other stakeholders.

But I really didn't want to go into the detail of what - who the stakeholder groups, who the stakeholders would be as who would be the guardian, et cetera, but rather it's the principle of a trust we're trying to introduce here and trying to get an idea amongst the community whether there's any sort of support for that model broadly speaking.

That implicit assumption here is that you can internal to ICANN model. And I understand that is the purpose of RFP 3B.

I acknowledge that that wouldn't necessarily be something that's not discussed in RFP3 as an assumption. But we have proposed this as something that this subgroup so to speak would work forward from.

So I'd rather take questions I think Alan rather than go through it. Everybody's obviously read it. We've heard - we've seen lots of questions online about it.

But the key element is that we agree with appeals processes. We agree with the concept of the CSC. We've essentially renamed the MRT the guardian so to speak.

So there's a lot of commonality between what is in our proposal and what has already been discussed extensively.

The only different idea here is what is that - what is the apex? What is the pinnacle point? And the proposal there is that it would be a trust where ICANN is but the trustee but it doesn't hold the rights to it and that it can be moved from ICANN to another entity at the instruction of the guardian.

That in a nutshell is the proposal. I know that there are very many questions around that but I'd rather facilitate a discussion rather than a lecture from me.

So I'd like to leave it there and perhaps take questions or facilitate a discussion I suspect.

Allan MacGillivray: Okay. Well thank you Paul. I actually have a number of questions. I note that Matthew Scheer's in the chat has asked whether there's an assumption in the paper that this first in terms of (I capital) largely came from ALAC.

I mean I'm - I don't want to engage in the genealogy of this. I'm not sure that ALAC would suggest that this is - that the outer proposal is what they particularly have in mind.

So this is certainly I'm not trying to represent this as a variant of the ALAC proposal but it is an internal to ICANN proposal and I think that's what ALAC was proposing as well.

As I said in the introduction I think we'll have to come back at the end of the discussion of the outer proposal to have a more general one about what should we say in this discussion paper both internal to ICANN options.

And there may be some other kind of variance that we could put in perhaps a little more generically.

But for the moment I'd like to just try and understand better the outer proposal. So I see I have a couple hands so I'll ask Cheryl, please go ahead.

Cheryl Langdon-Orr: I've taken my (unintelligible) as (Alan) goes so just I'll come towards the end of the queue. Thanks.

Alan Greenberg: Okay it's Alan Greenberg speaking.

Allan MacGillivray: Alan please?

Alan Greenberg: Yes. It's Alan Greenberg speaking. We made it pretty clear in our proposal that we weren't tied to a lot of the details.

But we were looking for something that did not involve creating a lot of external bodies with complex communication schemes that we thought were fragile and untested. And this proposal seems to address those concerns.

So at this point ALAC and At-Large has not formally had a meeting at to talk about it but I can certainly say that I support it as stands.

I can see a number of changes that I would like to see. And I can imagine a number of changes that if made would take our support away. But at this point

we think it's a good base to work on or at least I think it's a good base to work on.

And the other At-Large people I have had a chance to talk to, very few of them tend to agree.

Allan MacGillivray: Thank your Alan. Cheryl did you want to...

Cheryl Langdon-Orr: Yes I'll...

Allan MacGillivray: ...jump in here?

Cheryl Langdon-Orr: ...I'll step back in now. Cheryl Langdon-Orr for the record. And of course it is always good as the chair of the ALAC and respond on behalf of the organization they run.

So that's why I thought oops if Alan's hands up I'd better step back from (unintelligible). As you know I have a little bit of experience in the wonderful world of ALAC however.

And certainly I want to support exactly what Alan said. I am of the view that there is a lot in. And I'm going to ask you Alan (unintelligible) to not - to let's stop calling it hopefully by the end of this call the outer proposal.

I think it's a proposal that with a little bit of review, tweaking perhaps spit and polish we might be able to start owning as a 3B alternative proposal.

So that's what I'm certainly going to be putting on the table that this is a document now that as I see it picks up most of the how to be palatable for everyone's diverse view.

And if you're not wedded to a Contract Co you should be able to find something in this strawman that makes you feel comfortable and indeed that you could support.

I think it's got enough in it that for those who are wedded to be that the Contract Co for the meaning of what I think at least the rationale of those who want that type of bottle are also likely to find enough in this subject of course to going through just like the Contract Co model one a external legal or not external but expert legal advice.

I think we need to perhaps a little bit of time on what it would take for the various communities who those of us in 3B are representing to have a look at this and see what feedback that can be brought in.

But I've spoken to (Scott Dwis) or had coffee with during the recent Frankfurt meeting of the CCWG with a fairly diverse number of people both that could be considered in "ALAC/At-Large" or not.

And whilst as Alan said if there are some changes to this strawman that go in a particular direction that might be problematic.

Equally if there is enough of the what I think merits in the trust proposal agreed to I think this is a very viable basis for a 3B.

So two things I'd like to spend a good wake up time today chewing over this and rather than have it as a (intera) victory process with Paul of this questions on for example some of the terms we tend to be using trust, trustee and guardian as interchangeable I think that needs to be - the language in there, use of the language needs to be looked at fairly carefully so we don't confuse

our self that we may be able to fast track this as the basis of an output from 3B. And that's what I'd be proposing by the end of this call.

Sorry I've taken the floor so long but I have been traveling basically for the last 24 hours back from Frankfurt so much of what I would have said in chat I just haven't had the bandwidth naturally or human to do it. Thank you (Alan).

Allan MacGillivray: Thank you Cheryl. What - actually I'd like to respond actually one of your comments on - actually I see a couple comments in the chat.

I'm - in the use of a term ALAC proposal or (arta) proposal that's simply a short form so Eduardo can understand what we're talking about.

I think what - I think we all have the same objective of trying to put together and internal to ICANN options for inclusion into the sessions here that is circulated prior to Singapore.

And I think that's where we are all are. That's certainly where I am. And I hope that clarify things. So I'd like to turn the floor over to Staffan Jonson. Staffan?

Staffan Jonson: Thank you. Well yes, I'll actually just want to echo some of the point already been said now. So I'll take it very briefly.

I think it's a fairly optimistic proposal since it includes a separation of guardian and trustee. And of course that raises issues about if ICANN is pronouncing declaration of trust it will that - how will that work in legal terms?

So I hope we didn't miss the train by this proposal. But it's in general terms optimistic.

There is also a second aspect as (Robert) also mentioned in the chat is the possibility for separability how may this be included in the proposal. But in general terms I think it's a - taking a nice turn. Thank you.

Allan MacGillivray: Thank you Staffan. Before turning the floor over to Alan I'm just - I'm going to put Paul on notice that I have a number of questions about how this works.

And so I'm also not a lawyer so I think fairly shortly I'd like to kind of just try to understand how this proposal would work mechanically. So Paul if you're ready but now I'll just turn this over to Alan Greenberg. Alan please.

Alan Greenberg: Thank you very much. I supported breaking off 3B so that we could have a core group to discuss it both of supports of the concept and perhaps those who are not quite supporters but were intrigued by the idea or wanted to hear what was going on.

It would be interesting to understand from this group which is clearly a biased group related to internal to ICANN to understand to what extent the what we're calling the out of proposal is more acceptable than the ALAC proposal and vice versa.

In other words are we closer to something which might be salable to the whole CWG or are we moving farther away?

That's not a definitive statement of how it's going to go but it would be really interesting to understand if we're moving in the right direction or not. Thank you.

Allan MacGillivray: Thank you Alan. And I think speak for a number of people when I say that's certainly my objective today is to better understand this proposal that's on the screen in front of us.

So and it's only when we've kind of looked at this and tried to develop are we in a position to assess which may be better.

So Greg Shatan please?

Greg Shatan: Thanks Allan, Greg Shatan. And I'll say that while I'm a lawyer, I'm no trust lawyer. And trusts are a dark and mysterious art after a certain very basic point let to trust lawyers who dazzle you with - or baffle you.

But my first question is not really a lawyer question. MTIA, you know, say that they were turning this over to the - they wanted to transition to the global multi-stakeholder community.

What I see here is ICANN taking ownership if you will of the right albeit in trust for the community or for the registries. I'm not quite sure which.

And the CSC being composed primarily or entirely of registries being the only standing body. So if there's kind of two questions which is that - or more that there seems to be a little light on the multi-stakeholder aspect.

And secondly when you say that the guardian would only be formed as needed is it your vision that it would be formed newly each time it's needed or

that it would have a standing roster but would only meet when called on?

Thanks.

Allan MacGillivray: Thank you Greg. Paul I have a number of questions. Greg has posed a number of questions. I think we're going to end up diving in a bit.

So I think I have both Donna Austin (unintelligible) in the queue. I'm going to suggest that we sort of - that we accumulate a few questions and then turn it over to you. And maybe we can start by walking through this.

So but now I'll turn it over to Donna. Thank you.

Donna Austin: Thanks Alan - Donna Austin. So I guess this is a question for Paul and will not broadly affect everybody on the call so based on what Paul said at the beginning of his presentation is that the (IIT) be (share) say and what he's calling the guardian are all very similar context - I am having trouble thinking - are all very similar in form to what we've already discussed. And we are still discussing in the (RFP3) Working Group.

From a pragmatic point of view if that is the case I would like that discussion to continue within the (RFP3) and not get into detailed discussion here unless there is significant divergence between the road we were going down on the (RFP3) to what is in - what the thinking is behind this document. So if that is the case I'd like to leave the discussion around those three entities to continue in (RFP3) and the focus here to be on that, but the trustee - trusts relationship because I think that's where we're going to - that's where we need to get into a big (unintelligible) - get a better understanding of what it actually is.

So I think that's a question for Paul. If he agrees that that is the case then I would like to see us to continue the discussion of the other three in (RFP3B) and the focus here to be on the trust and trustee pilot.

Allan MacGillivray: Thank you Donna. I see that there's a lot of support for that in the chat and I'd like to add myself to those voices. So I think - why don't we take Alan Greenberg and then I'm going to ask Paul a couple of questions and perhaps he can start to try and answer even those that Greg was supposed (to) - (Alan) please.

Alan Greenberg: Thank you - Alan Greenberg speaking. I tend to agree in terms of what we're going to discuss today with Donna and I generally agree that we should not be discussing those details here until we understand the basic, you know, trust versus contract (code) difference and ensure its legality. But I will note that things like what is being called the MRT and here the guardian are substantially different and we should not presume that because we've halted that discussion here that we're likely to accept exactly what comes out of the other group because their premises are different and their requirements are different - thank you.

Allan MacGillivray: Thank you (Alan). Well I think I do have a few questions for Paul and I - and I think others may so I have approached this whole challenge - (what we're) doing from the discussion we had in Frankfurt. And I'm just - I still don't clearly understand what goes in the trust. I think some of us have a little bit of experience with trusts around like assets or money - etcetera. But the way - so Paul this is what I'll start with. I think you characterize the trust - it will hold the (IANA) function in trust so I really don't understand how it can hold the function that the function is has no, but it's certainly not a physical thing - if it is a right I don't see where that right exists so can you kind of start with

that like what would the trust hold? I think if we got some kind of clarity on that I would certainly understand it better - Paul.

Paul Szyndler: Thank you Allan. It's a little bit difficult to describe, but I want to take a step back first and say, I agree with what others have said with regards to not going into extensive discussion about the other elements of the proposal because what we've proposed doesn't vary greatly from what (RFP3) is discussing at the moment. We won't take that as gospel, however, it's not significantly different. However, in developing this proposal what we thought to do was try to work out the issue of how - what is the peak document - what is the peak understanding - what is the - whatever it is that defines the relationship between ICANN and the IANA function.

And as it currently stands this proposal hasn't gone any further than describing any more than the IANA function as anyone will choose to define it and that's what I was hoping the group would discuss. That function would be held in trust by ICANN. We've had some advice and some discussions informally about what that means in the Australian context and I note that we've had different views as to - from New Zealand and others as to what could be held in trust. But it's my understanding that ICANN could be in the position with agreement from NTIAS - part of the transfer process, but it makes a unilateral declaration of trust.

And within that there is a trust document and that document defines and that precisely defines what it's talking about so we're not trying in this proposal to say it's equal cover X - Y and Z, but rather we're trying to propose a model and to see whether it's workable. The key issue we are trying to ensure that the IANA function going forward is not something that is given to ICANN, but it simply acts as a trustee. And therefore the guardian or the beneficiary or whatever terminology we're going to use is the community.

In our earlier proposal we talked about a golden bylaw - etcetera - that has certain ramifications or certain problems when it comes to California law. And I'm quite certain that this trust proposal has some issues that need to be resolved as it stands in California. But the issue is what we're trying to achieve is a separation between ICANN as trustee and it is not being given the IANA function, but rather it places it in trust and, therefore, it's not empowered to take decisions, but rather community use.

And then the community or the guardian or whatever it is becomes the MRT discussion so we don't have black and white - concrete details on exactly what we're talking about here. But it's a broad concept that we're trying to socialize within the community to see whether it's acceptable or not. We can certainly have many discussions about - and Greg brought up some issues about who would be involved in them and others have talked about - well it looks like registries only versus multi stakeholder. We're not attempting at this stage to get into that (depth) of discussion, but rather the principal. Is this the sort of principal that is acceptable to community? Is this something that we can start working with and start moving forward on?

And I'm not being intentionally vague, but I'd rather facilitate conversation on the principal rather than the details which could easily take up a couple of hours. (Alan) I'm going to stop for sec just - I need to allow people to ask questions.

Allan MacGillivray: Hello - Paul thank you - so I'm going to exercise the chair's prerogative. Certainly take the point that there's a different concept, but - and there are a lot of issues around participation and in the guardian for example and I acknowledge that. But I'm really - I haven't got over the part where what goes in the trust, but I can understand tangible property - I can understand rights in

the sense that rights sort of trademark - etcetera. But I don't understand how you put quote the IANA function in the trust - right? I haven't got past that point. Is this a document that would be executed by (unintelligible) to say, it will only accept direction from the trustee on changes to the (root zone)? I'm really trying to in a more general way - I understand how the mechanics of this would work with setting aside for a moment the governance of the trust and the trustee on the guardian. Can you help me on that because really that's my basic question?

Paul Szyndler: It is a complicated issue, but in the simplest terms what we're seeking to do is propose an idea where - look (NTIA) would approve of what is - as I said before - unilateral declaration by ICANN of its intention to hold the IANA function in trust. And it's not necessarily - the definition of what that entails is something that we can discuss. The key idea is that ICANN does not have a controlling function here. There is precedence that this within ICANN - it's not dissimilar to the affirmation of commitment with a statement that ICANN made regarding its role. It's - we've not considered or worked them to granularity as you've described, but rather it was the broad concept.

The function as it currently stands of the IANA would be identified in the document and it doesn't much matter to me right now what is included - what is not included, but rather it's the principal of this is the way it work. And that ICANN would be able to make a statement and then being bound to its community. It's not a particular asset that we're discussing - it is the function and it is everything that's currently encompassed in what would be broadly described as the IANA function that would be covered in the statement.

The declaration of trust could include or exclude pretty much anything a community wanted to and that's subsequent discussions that we can have. It was just the broad principal that we were working towards at the moment.

Allan MacGillivray: Oh I don't know if I should (deliver) this, but I see every comment in the chat about the internet trusting - I appreciate that the (ITF) has a trust, but that trust holds to (property) like associated with - as I understand it - the protocols in the (RFC's) that are produced by the (RFC). So in other words I can understand that conceptually that it's a right to (display), but I'm - I really don't understand what is in the trust. I understand there's holds or arrangement around the trust, but for me this is a fundamental obstacle, but maybe I'll do is - can speak to others who understand it so I'll go Cheryl or (Unintelligible) - Cheryl please.

Cheryl Langdon-Orr: Thank you - there should be (something) guide on these. (Alan) I - let me go back - I see where people are tripping up on the concept here in terms of their own individual experiences of trusts if they have experiences at all. And I think we have to realize that just as a contract (unintelligible) the (law) that comes out of (3B) as any form of alternate and I still think this has (merit) as a basis for that has to be fully and rigorously tested and analyzed by experts so, you know, my concept and your concept and somebody else's concept may or may not make through that test. So that put aside I'm not going to get too nervous what may or may not be the property and inverted (commas) of such a trust model - etcetera - etcetera.

But I did want to share with you - oh sorry - this group how I found it easy to think about this model and possibly because this is the way I've thought about this model it's assistant with my record - development of a comfort and support with a lot of what it says. So I think of it as an internal through ICANN solution that by use of the trust and guardian construct ensures that the (hens) - the (IANA) function are not being looked after only by the fox - if I can (sublate) to term - foxlike - in it's mechanisms.

Let me take this a little bit further that in my mind it would be the guardian that would be able to respond and say, right (CCSE) has pushed up an issue that it has nothing I would remediate - we need to put out a request for tender. So it would trigger the capital reviews of the IANA functions that ICANN was continuing to perform. It would be the entity - notice I'm not just using it in singular because I think in my mind too the guardian could be almost - for those of you who were able to look at what (Rolof) from the (CCT) or (D) community put out some meetings back again at the (CCWG) - almost in the roll of an (UBA) committee where it had broad scale community representation.

Obviously the key components of ICANN, but could even go beyond ICANN's (SI's) and (IC's) in terms of (unintelligible) at the guardian table. But that this guardian would be in the position to say, right the nuclear option is now going to need to be pursued. It wouldn't necessarily enact - in fact I don't think it should enact such a nuclear option if there was a complete point of failure that was not possible to remediate.

But it would be the decision point that says, right we now are going to have to take these functions - do requests for (quotations) and expressions of interest for running the IANA function as part of ICANN. And make sure that there's no (vacuum) of the functioning such a transition in that very unlikely - we hope - but end game that I think most of us are concerned about when we talk about the ability for separation - etcetera. So it would be an enabler in my thinking for separation and so I think should be able to give comfort if in deed it is legally possible.

And I've got my fingers crossed that it is because I think it is a good model if it works as I envision it - that we have the ability for should the community believe there's failure for the transition away from ICANN and basically to

keep the (buggers) honest by triggering and ending the recipients on behalf of the (wider) community of reaching reports and external audits - etcetera - etcetera. So I think it's a model that we need to look at. I think we need to agree that there's a whole lot that - for example; there's no reason that a (NRT) in the purest form as in the existing model that's associated with contract code could not still exist.

And that, you know, a wider - in particular (multi) stakeholder review team could still be not the guardian as such, but at the same token it could be the guardian as such. All that needs to be tested with legal advice and I think as Greg Shatan has said and it's good to see that he's following me - this is a bit like, you know, three witches going around the cauldron, you know, because when you get into trusts that's a honest (review) and I am not a lawyer. But my God I've been responsible for paying a lot of them over the years.

They can pretty much build whatever - if you've got a model of (size) that you just have to make sure that it is going to be a model that is robust and legally binding so that there are no loop holes. And that what is (envisioned) is actually what is then locked in - where it's domiciled - how the guardian entity is constructed and what its day to day functions are. And I would think it's more like an annual function or a, you know, quarterly function than a day to day one. I think we can probably make sure, but that'll come back to the community of the whole, but at this point we need to look at the concept.

I'm going to close now and perhaps come back later, but I think there's a lot in the construction of heading this at arms length, but powerful review entity and not that it would be making the reviews, but it would be able to (correct) - perhaps instigate the reviews - it could perhaps populate the equivalent of a (ATRC) - all that sort of thing so that ICANN (unintelligible) concerned of the purely internal solution - have a degree of belief that the audits and

functions and any triggering of solutions to such functions are done in a way that the community is aware - it's transparent and it's accountable. Sorry for taking the top of the floor so long, but obviously I've - I've had a lot time thinking about how I see this entity operating and getting the good terms we can build it.

I think it would be a very good way forward and you've - I think the parallels that it has with some of the aspects of this - the fairly simple solution (thing) put forward to the (ICG) from the numbering and the protocols communities is also attractive, but that's something for a little later on in the conversation - thank you.

Allan MacGillivray: Thank you Cheryl. So just let me say it's a given that the (remit) of this working group is to develop an internal to ICANN options so the debate here is not the outcome we're trying to achieve, but rather we actually try and look at the mechanics of how it works and to do some precedence on that. So I'd really like to focus a discussion on the mechanics of a proposal that's on the table to see if we can get a better understanding of how it would work mechanically. So with that I'm going to - I'll turn it over to Greg.

Greg Shatan: Thanks Allan - Greg Shatan again. Two questions - the first although Cheryl was referring to the guardian as an entity - and these are - I see questions that are also, you know, embedded in the document that is on the screen. It doesn't appear to me that it would in fact be a legal entity and thus the question to my mind is if ICANN goes rogue and the guardian needs to step in and discipline the trustee and the trustee does not agree with the guardian's instructions how does the guardian enforce these instructions?

One of the appeals of the contract code set up was there was a legal entity that could sue and act in court and that would also provide some level insulation

from liability. But the question here is how does the guardian actually take action if ICANN just doesn't agree with the guardian's actions or requests - demands? So that's the first question - the second is that you said a couple of points that the trustee was not empowered to take decisions, but my understanding is that the role of a trustee is actually to administer the assets of the trust and let's assume, you know, for the moment that what we have in the trust are - whatever's in the trust can be called the assets of the trust.

So there seems to be a contradiction in there that in fact unless I'm wrong and ICANN does nothing. Certainly it must continue to actually act as the IANA functions operator and would generally have - I would assume - other than the disciplinary function of the ICANN - of the guardian broad latitude within its, you know, legal rights to administer the trust. So can you help to, you know, kind of both resolve that contradiction and indicate how the guardian would be able to act outside of an internal to ICANN resolution which would require ICANN to be agreeable which it may not be if it's already gone rogue - thanks.

Allan MacGillivray: Thank you Greg. I'm going to ask Paul if he can try and respond to that - Greg's question before we go to Donna - Paul.

Paul Szyndler: Thank you Allan. Part of where we came from was - in developing this proposal was a very simple concept in Australian law which has some utility in other jurisdictions and we were sort of thinking about the concept of family trust or perhaps that's ironic given the environment we're talking about. But a simplified model where by the trustee is not empowered to take any particular action - they simply hold so ICANN would make a declaration of trust, however, it's not empowered - it's not the beneficiary - it's not the guardian - it doesn't have any control over - it's simply - makes the declaration because that establishes the trust.

However it's not the beneficiary - the power to make changes or otherwise resides with the guardian or the beneficiary and that would be in this particular case something like the MRT - etcetera. So that is that ICANN at no stage by making that declaration has empowered itself, but rather it's identified role for itself. And then from there if it goes rogue -- to use terminology I've heard over the last couple minutes -- the beneficiaries of the trust or the guardians would have the option of moving the trust elsewhere.

That in the simplest terms applies again with family trusts in Australia and other jurisdictions where you simply don't like the performance of the trustee it can just head over to someone else. It's all about who is empowered to take a particular action and those details could be covered in the declaration of trust while ICANN makes that declaration. Again, like a unilateral declaration much like the (IOC) was - it's not actually empowering itself - it's empowering the stakeholders below it or within it and they're the ones that have the authority to move it elsewhere.

But it's quite a relatively simple legal concept in terms of a trustee or you can move your resources or your assets from one trust to another and ICANN is that trust for the time being and could be moved elsewhere so that is -- broadly speaking -- a concept that we're trying to convey.

Allan MacGillivray: Thank you Paul. And I think, but - so let me see if I understand this. We go ahead - this is (unintelligible) of the trust who have the guardian - the service level deteriorates to the point where the guardian follows the process and determines that it would be in the best interest of the community if those - if that function was performed elsewhere. Now, but ICANN believes that either the process that the guardian followed was flawed or so it doesn't accept that outcome so it continues the day to day functioning of IANA. Like,

you know, the IANA team is still there dealing with all those changes. What would happen in the mechanical sense? In other words to understand that the guardian does not incorporate it. So it's not in a position to initiate any legal action. So tell me what would happen? Like what would be the first step to, you know, I guess start the separation where it is intended by ICANN?

Paul Szyndler: Thank you Alan. It's Paul here again for the record. The fundamental concept we're trying to convey here is that it is not ICANN holding an asset. It is ICANN holding an asset in trust. And it is held in trust on behalf of the community. Therefore ICANN itself as an entity doesn't have the authority to decide this should be transferred or it shouldn't or we agree with the views of the community or we do not. It does not have the power. The fundamental concept here is we are disempowering ICANN. We are disempowering the ICANN board. All it is doing is holding this asset and yes this requires much definition and much discussion as to what that asset is. However, the function would be held in trust.

There would be various mechanisms for it to move. This goes back to the lower parts of our document where we talk about the CSC being the day to day operational body that manages the - whether the IANA - whether IANA is meeting into SLAs, etcetera, that there could be any number of triggers and what - and none of this is set in stone obviously but it could be individual complaints with regards to the function. Most of those would be resolved internally. There are of course many - there are occasional disputes regarding IANA performing functions that are resolved through mediation rather than be escalated to a higher body.

But the CSC would be the entity that would hear any complaints that come in either from an individual stakeholder or and this would again take further deliberation but a group of stakeholders, a certain percentage of members,

etcetera, would raise concerns about the function. The CSC would not be empowered to take a decision but rather it would be the bureaucrat. It would be the paper shuffler that would assess that application and then convene the MRT or convene the guardian because that is not the day to day body but something that rather appears when required.

It would then - the MRT would then consider the significant complaint that has been raised and it would then send out - having formulated all of the advice that's come in, it would then go back out to the community. So it would be the SOs, the ACs by some mechanism, by some certain percentage of votes, etcetera, that would come back and advise that we'd like to take a particular course of action.

The mechanisms are not something I really want to get very deep in. It was more the principals. We have some ideas established here but it - there would be various mechanisms that could be triggered by an individual stakeholder or a stakeholder community. The key issue is I don't want to get away from the focus on where the power to take action resides. It's - there's a lot of conversation going on about we - under this model what if ICANN chooses not to take a particular course of action? Our - the key principle that we are trying to propose here is that ICANN would not actually be empowered to do anything. It would simply act as a trustee or it would look after the trust. It would make a declaration of trust. And from there it's not for ICANN to decide how that trust is controlled but rather by the beneficiaries or the members of that trust. I've gone a bit too and fro but hopefully that provides a little bit of color and depth Alan.

Allan MacGillivray: Well thank you Paul. I have to say that I'm still left with a big question but let me turn it over to Donna. Thank you.

Donna Austin: Thanks Alan. Donna Austin. So I guess I want to switch - change the conversation out a little bit and not focus so much on the legal idea. I think I get the concept and I think we all would probably agree that in order for this to be an internal to ICANN solution we're going to run into these conversations that we're having now. So whether it's a trust, trustee we're still going to have to come up with some terminology and understanding of legal capacity and how that would work.

But I want to go to something else that was in the proposal that resonated with me. And I think this is important to the conversation that we're having about what does a trust actually hold, whether it's the IANA function or whether it's a thing or (unintelligible). In the proposal it says it is acknowledged that a number of additional structural changes will be required to ensure the validity and sustainability of the proposed model. The first key area would be to ensure an enhancement of the current levels of functional separation of the IANA function from the rest of ICANN.

A number of initiatives could be implemented to facilitate this including but not - I can't read that word there. A discreet reviewable budget of the IANA function's operator which I think is really, really important because a figure - a budget is a budget item. The cost associated with the IANA functions has never clearly been identified by ICANN. And dedicated legal advice is an independent legal advice for the operator.

So I think in order to understand what the trust would be holding or the trustee. I'm already confused on the terminology. I think we should also have a conversation around this work - additional structural (unintelligible) because I think the two that I - that have been identified are very important and I think there's perhaps a few more that we could come up with that might give some level of comfort around what we're actually talking about. So I just wanted to

put that out there and see if there's any kind of agreement along those lines.

Thanks Alan.

Allan MacGillivray: Thank you Donna. Alan Greenberg.

Alan Greenberg: Thank you very much. It's Alan Greenberg speaking. I guess I'm going to address the question of what is it that is in the trust and I think when it comes down to it the identical question needed to be asked and still needs to be asked for the contract co-version or anything else. If you buy land you have a deed. If you buy a toaster you have a bill of sale. If you claim a, you know, uninhabited island you put your flag there and, you know, simply declare you are the owner and international rights, you know, allow you to do it. If you, you know, bring up a ship in the middle of the ocean again there are international treaties which say you have it.

It is not clear to me and it has never been clear to me exactly what NTIA will confer upon whoever awards IANA 2, whether a contract co or ICANN or John. It's - NTIA has the rights, you know, akin to the, you know, the rights of a ruler passed on from father to son. It was passed something from DARPA and it now wants to give that something to someone else. I'm not sure if it's going to give a gold coin with the words - letters IANA engraved in it or a deed or a statement saying the U.S. government has been the traditional home of it and of IANA and now is allowing that responsibility to transfer somewhere else.

You know, what's it going to do to actually say it's picking A over B and I don't know the answer to it and I suspect we should have asked that answer - asked that question months ago at this point. But whatever it is that would allow contract co to do its work and not be challenged by someone else saying who made you king it would be the same thing in the trust. So I think we have

a very basic question that we've never talked about. And perhaps we need to. I know we need to but I'm not sure it's unique to this solution. I think it's a characteristic of all the solutions because we don't know exactly what it is that's being transferred. Thank you.

Allan MacGillivray: Thank you Alan. I acknowledge that - I think that's a very good question. I acknowledge within the community there hasn't perhaps been enough discussion of the so-called cooperative agreement between their assigning NTIA. I mean my understanding is right now the - any changes to the root zone can only be executed with the express approval of NTIA. And the MTA would be removed from this process. And therefore the question becomes who would be instructing VeriSign on the changes to the root zone after this is over? Certainly under I'll call it the Frankfurt option even though I know we're challenged with labels, I think what's accepted that the changes would be authorized by ICANN but only so - only for so long as ICANN was in compliance with the contract. So that's fundamentally what's going on.

So to turn this around and I think this is the question is under this model I would assume that ICANN would still be instructing VeriSign on a day to day basis. It's just that there would be a mechanism in place to remove ICANN from that roll with the whole question of separability. So that's how I understand it. So but I see that Greg's up next. So I'm sure he has his own questions and maybe he would share some - shed some light on the issue as well.

Greg Shatan: Thanks Allan. I guess, you know, I'm still stuck on the issue of, you know, saying that you can just walk down the street and give the trust to a new trustee may work if the trust is say if the assets in the trust are in a bank account that you can remove the trustee and have a new trustee put in place. But here the assets and the activities really are under the unique control of

ICANN as they are the IANA functions, operations group. So how would you propose to deal with that issue since this isn't kind of an easily divisible asset if you'll call it. We'll call it an asset. Would you propose that IANA be structurally separated which, you know, as we discussed before would result in a lot of, you know, or could result in a lot of redundancies and issues? Or are you - I guess I'm just, you know, not seeing how again you force the hand when there's no kind of easily moveable asset.

Cheryl Langdon-Orr: Well I'm happy to react to that.

Allan MacGillivray: Please go ahead then Cheryl. Thank you.

Cheryl Langdon-Orr: Thanks Allan. Cheryl for the record. Interesting to have that as the last thing that is said -- thanks Greg -- before I spoke because I put my hand up to respond to some of what Donna was saying and to agree with Donna and to perhaps give some of my personal color and depth on how this guardian model could in fact in my view make sure that the interests of the community are continually looked over and served. But the particular point I also want to make is that Paul mentioned in response to one of the earlier questions convening and certainly convening the NRT or convening a review team, a significant external review team, etcetera, is part of the role I've been envisaging for such a guardian.

This of course means in my view and like what I think I heard Paul say, I see the entity, which is the guardian in my mind as not being something that is convened from time to time by these in fact continuing because it is the ability to respond to certain imports and trigger certain actions. So it would have to be an entity or a structure that does continue. And I think if I - once I've got that continuing in my mind that also helps because it also means that it can be a nimble and reactive situation should terrible things go wrong in the future.

But in terms of what Greg was just saying I don't see what the guardian in my mind does as any different to what NTIA oversight is. It's exactly the same mechanisms whereby from time to time a request for review of the contract and for the possibility of that contract to be put elsewhere can be triggered. So those mechanistic aspects of it shit happens what do we do or if we want to make sure that the ICANN as the IANA operator continues to improve in becoming evasive meets its client requirements, etcetera, etcetera. You know, this stick that we've all said as being terribly, terribly useful is the wielder of the stick in exactly or sticks in exactly the same way as NTIA is now but it's not locked to a single government or control.

So I have no problem once I start thinking of it that way. I also then have, like all of the models do, the issue of and now it needs to be tested in what is legally possible and how we structure it to make it robust and to do what we want. But I don't see one iota of difference between oversight that NTIA is functioning and oversight that the guardian entity would. Thank you.

Greg Shatan: If I could respond directly to that and I see Donna raised the same issue in the chat. The U.S. government has many resources and powers at hand and is a real entity whereas the guardian, unless I understand otherwise, is maybe a committee of some sort but has no power, no budget, no...

Cheryl Langdon-Orr: Well hang on we - yes.

Greg Shatan: To no - I don't see how it wields a stick. There's just - there's an element here that's missing. If ICANN says go away. You're bothering me guardian there's a rather different set of things that happen after that and I'm not even sure what they would be rather than if it says the same thing to the U.S.

government. That would - I think we can all imagine what would happen there. I figure what powers could be brought to bear. So I'm still troubled...

Cheryl Langdon-Orr: Thanks Greg. If I may Allan.

Greg Shatan: Yes.

Cheryl Langdon-Orr: Greg I'm - I've got the words of Steve Crocker in my ear about, you know, the uprising of the community happening, etcetera, etcetera. Exactly the same thing would happen if this was the case. I believe that a properly constructed guardian entity can be given and have ensured whatever powers are required. But the resources word is what I wanted to jump in on. I think part of the modeling in my mind would be an in escrow would be an amount of money that ICANN has to keep putting aside to ensure that the resources, capital R, are in fact there for the guardian to use and - in how it functions. So I keep thinking of it being as an arm's length entity.

So rather than a group of people sitting around the bar one day saying we're going to look over this oversight business and, you know, not having resources, it would be a properly structured entity empowered in some form of documentation that does meet whatever legal requirements that can make the magic happen basically to hold the sticks that we're talking about. But the resources to do all of that I think in the construction of it would have to be put aside, held in escrow, whatever -- there's ways of doing that -- just the same as a family trust, you know, can't operate without certain rights being - rights to act being given to various parties. The same rights to act, in other words the ability to hold the sticks, would have to be given obviously. But the resources I think that's something that can be managed and modeled as well. Thank you.

Allan MacGillivray: Thank you Cheryl. I'm going to go Alan Greenberg and then I'm going to do a - I guess I'm going to say just we just pause for a minute and take stock of where we are. So Alan please.

Alan Greenberg: Thank you very much. Alan Greenberg speaking. I am totally almost wordless except I'll try to put a few words to it. We are talking about something, you know, and Greg's recent comment says he doesn't want to rely on magic. We're all relying on magic. We often call them laws and we assume that laws and contracts are enforceable. And the same sort of magic applies in contract co or when you buy land or anything else. You're assuming if someone squats on your land you have pieces of paper and an audit trail that demonstrates why you are allowed to be there but they are not. It's the same for who owns your toaster and your car.

All of these things presume that we will find a legal construct which is - will be enforceable in court. And any of these things are going to fall apart. And at this point as I said in my earlier intervention I don't know exactly what it is the U.S. government will pass on to demonstrate that contract co has the right to designate who is IANA as opposed to somebody else. You know, it - whatever it is, is only as good as it can't be challenged. And I don't know exactly what that is. I believe we should have asked it a long time ago. It applies to all of the models. Let's move on and look at presuming this can be built. Does it meet the needs of those at least on this call? Because otherwise we're going around in circles with questions we can't answer and often the same questions that apply to the other model as well.

Cheryl Langdon-Orr: Across the board. Exactly...

Alan Greenberg: Let's do something. Let's use our time effectively please.

Allan MacGillivray: All right thank you Alan. So I think you're right. We seem to be going around in circles. There are - at least I have a lot of questions. I think others do about how this would work. And we're unfortunately not going to have the benefit of any kind of legal advice at least the TWG before we finalize our - excuse me, won't have legal advice in time to finalize the discussion document that we want to take forward to Singapore. I'll just ask Paul briefly if I don't know where - what resources you have but are - would you be in a position to try and get some elaboration on some of the questions here in the next couple of days? Because really what the objective is is to put something that we are - we have some confidence could work and obviously do a pro and a con on it. Do you think you can get any clarification to address some of the questions that have been raised here today?

Paul Szyndler: In a word yes. I can certainly provide additional detail with regard to the proposal. But I see you're asking in a way is could you please define what your alternative to contract co will look like within 24 hours and feed all that...

Cheryl Langdon-Orr: Which is ridiculous.

Paul Szyndler: ...feed all that detail in. The key issues that we are trying to identify here is that the trust that we're talking about will automatically place obligations on ICANN and it will provide protections should ICANN fall over. And it would legally bind ICANN to do the right thing for lack of a better term. I believe my handset is about to fail. I can try within the next 24, 48 whatever hours it is to provide some information but again I do feel what you're asking for essentially (Alan) is a summary within 48 hours that's the equivalent of what this BWG has worked upon for the last few months. But I can certainly do the best I can.

Cheryl Langdon-Orr: Allan can I ask you that from my point rather than having, you know, especially one person or a person, you know, who might interact with one or two other of us now we've had this discussion. You know, go off and become some subset of a subset of a subset that we already are. I think what we should be doing is seeing how much of this straw man has sufficient merit to make sure that many of the questions that we've been asking and talking about here are asked in the briefing from the wider group for the legal advice. Because a lot of this is the legal advice. Now I'm no longer a board member of AUDA but I served long enough on the finance and budget committee that, you know, if Paul went off and asked our general counsel and we had to pay because they're paying someone else, etcetera, etcetera, I'd get a bit narky.

So this what we're asking Paul for here. I think my personal opinion, and I want to put this onto the table for this subgroup to now perhaps discuss, is that there is sufficient in this that it will act as a basic, viable 3D outcome. And to that end whilst there are some structural questions and many legal questions about the construct that need to be asked, it should be able to go forward and be put through the same rigor and testing as an internal to ICANN solution. And so discussions as the client with the external legal advice that's been sought for all of what the CWG is doing should include questions that perhaps full rigor and review of this model or some suggestion along the lines of this model that the experts can come back with. So that's where I'd be wanting to see the end game here today. Because time is our enemy. Thanks...

Allan MacGillivray: Well Cheryl. Thank you. I couldn't agree with you more but I think you can understand my question of Paul. I wasn't forcing him to go and do this. I was simply asking an open ended question. Is there any way that you could perhaps get some advice on this? So if you can't, you can't and you can appreciate I think everyone saying we have some questions to be looked up and answered. I think those are saying that no proposal, including this or a

contract co or whatever, is going forward without more formal legal advice. I think that is a given for everything. I'm just trying to make sure that we have something that can be socialized and hopefully be a basis on which people can say yes I like that and I'd like to understand that'll work. So Greg would you like to comment?

Greg Shatan: Yes. I'm going off on a little bit of a tangent in maybe trying to answer some of my own questions which, you know, was requested in the chat. Maybe we all try that. In thinking about the issue of how can ICANN be forced to give over this set of activities to a third party since it's not so easily defined and moveable and the guardian may, you know, have trouble, you know, taking any kind of legal action.

I think we come back to one of the fundamental issues that we're wrestling with and that the CCWG on accountability is wrestling with more broadly, which is enhancing accountability mechanisms.

So, you know, one of the things that we haven't touched on, and maybe that is also that is I think more important in this proposal than a contract co-proposal but certainly at least as important regardless of proposal is if under the scenario I said before that if ICANN says go away, I'm not transferring these assets, not in the public interest; this is - I'm doing a fine job and I disagree with, you know, everything you say guardian is that there is, you know, some action that can be taken to hold the ICANN Board accountable and to review that decision and appeal that decision.

So we come back to maybe, you know, binding actions of - or some sort of binding appeal on the Board and one that unlike the current Board appeal process isn't focused on whether the action was - the decision was taken

through procedurally correct means but at least in this specific narrow case, you know, examines the substance of the action.

And I guess, you know, the issue is under this current model - and maybe, you know, it assumes the guardian is that actor. But it seems to me that we maybe need an even more internal to ICANN solution something that's in the bylaws, some way that, you know, that the - that for instance at least the - I think as was suggested before in some of the thousands of emails that went around that the Board would have to take a consensus against or a unanimous vote to reject the guardian's decision, which at least would mean...

Woman: Yes.

Greg Shatan: ...that if ICANN went rogue, it was doing it on that and not merely by a majority vote. But again, that comes back to the need to look at accountability structures that are not just part of kind of the trust framework per se. Thanks.

Allan MacGillivray: Thank you Greg. I mean you in raising that issue of more Board resolution you do open the door to the fact - like I think there were simpler ways to achieve what we're trying to do and that just through creating mechanisms through the ICANN bylaws with similar Board resolutions.

But - and that's I guess one of the questions whether we should explore those as well. So I see that - I see that Donna felt that we should be having a little more discussion on the structures a bit. So Donna, did you want to kind of rejoin that discussion or should we be starting to ask ourselves, you know, the big question. Is this the option that we want to take to Singapore or do we want to try and attempt to develop something a bit more - a big more generic?

So perhaps built around - more simply around the ICANN bylaws and resolutions? So - but I know I'm wandering a bit and I apologize for that. But Donna, where are you on this?

Donna Austin: Thanks Allan. I guess I just wanted to have the conversation around what additional structural changes do we think would be required. Because in my mind the idea of what's the tangible here. I think if we looked at perhaps structural changes in what we think would be necessary to build that wall around IANA so there is that separation would be useful.

I'm not sure that we've actually had that conversation more widely in the CWG. And I like the way that - well I supported the idea of, you know, it's important to have a discrete review of budget...

Woman: Yes.

Donna Austin: ...of what the IANA functions operator is. Because that's never been done. So it's important to understand what that is. And also, you know, dedicated legal advice and independent legal advice gives some measure of removal from - of IANA from ICANN proper although I have a - I'm a little bit more skeptical about how easy that could be achieved or how well that could be achieved.

So I guess, you know, in my mind we haven't had this conversation. I don't think we had it in RFP3. I don't recall having it more widely within the CWG. So I just thought it might be useful to, you know, get some tangibles around it and see where we see it.

Allan MacGillivray: Thank you. Thank you Cheryl. Greg, is that an old hand or (unintelligible).

Donna Austin: That was Donna just by the way.

Allan MacGillivray: So old hand. Well look. I think we have to take stock - I already put the question to Paul. I'm not going to ask him again. Can you see what you can do to do some elaboration of this recognizing the constraint that we're under? And perhaps we can rejoin this at the next meeting.

At the same time as I alluded to, I think there are simpler ways to get to what we're trying to achieve in (R3) - in the sub working group. That is to say building something around just a Board resolution and bylaws.

So maybe what I can do is try and develop something around that in a simple form. And we can try and come back to this very quickly. And that's why I wanted to talk about the time of the next meeting. So let me pause there. Is there any support for having that approach to the next meeting?

Cheryl Langdon-Orr: Cheryl here. Can I ask you to restate what your approach to the next meeting is? I mean obviously we might even need more than one meeting next week because, you know, this is a lot to do in a short amount of time. That your approach needs to be restated because I was confused by the end of what you were saying (Alan).

Allan MacGillivray: I'm sorry if I confused you Cheryl.

Cheryl Langdon-Orr: Doesn't happen often.

Allan MacGillivray: What I'm saying is I'm asking Paul to see what he can do to provide some elaboration and answers to the questions that we have now. Okay.

Cheryl Langdon-Orr: All right.

Allan MacGillivray: It won't be a surprise that I have done my own bit of thinking of what an internal to ICANN option might look like. But I've not yet sort of put it - that out in a fashion as elaborate as Paul and (Chris) have.

But I could nevertheless do something in that respect that we can look at and it isn't a secret if it basically turn around using ICANN Board resolutions and bylaws and then we'd obviously have to get legal advice to (vote) the ability of the Board to change the resolutions and the bylaws.

But - and that's really what it is. And I think so and if we had that approach and we had a meeting early next week, then we might be able to take a decision because I think this is - the challenge is really have to write a couple of pages on an internal ICANN option for inclusion in the discussion paper.

I'm hoping after the next meeting to make a basic decision on what goes in that document. And which doesn't mean this option or that option has been rejected but rather what's the option that we need feedback on. So Cheryl is that a bit more clear?

Cheryl Langdon-Orr: That helps me enormously. I'll take my hand down seeing as you've answered the question. It's Cheryl for the record. But what I wanted to then say is if I may now before I take my hand down.

Does that mean that what we might be looking forward to in our next meeting is perhaps having as a white board for our Adobe Connect room some form of matrix because I think (Matthew) had a very good idea early on because there's a whole lot of stuff in this current review - bloody process - the (outer). I hate saying it is the (outer) because there's two of them - concept is internal to ICANN with a trust model concept.

There's a lot that it - that we can basically say is similar, is similar, is similar and that's across all of three whether it's coming from the three (B) or a traditional three approach. There are not - no main - major differences. And then there's another subset of the table matrix that we can look at alternatives.

And so you're going to be preparing for the next meeting (Alan) another way of looking at it in terms of the bylaw - the golden bylaw style of seeing and we can get down to the specifics.

And in the meantime someone is going to ensure - I think it came out of the chat with Greg that - yes. That's part of it that we need to now do a subset of that internal to ICANN matrixes. But that's what we can look forward to.

If we're going to do that then we need to make sure that we can park the - and is this legally possible and what the legal ramifications in terms of trust law wherever it is domiciled that those questions are going to be answered by the external legal advice that's being sought so we don't get - go down that rabbit hole at that next meeting.

And so we can just look at what we're specifically able to put out as text for the Singapore meeting. And I personally don't have a problem if we end up doing an Option, you know, A and a variation of A - even two variations of A. That's okay for the document. Thanks.

Allan MacGillivray: Thank you Cheryl. You'll see that Grace has put up a slide in the chat. This is something I had done after our last meeting where there was some part of looking at this on the basis of functions.

But since there were proposals in the chat for a matrix, this is kind of how I kind of visualized this. So maybe we can talk to Paul to see if, you know, we

can put that other option in here or something like this. But I certainly agree with the community we have to do this side by side.

But just to speak to the slide for a minute since it's up there. In my mind what I was conceiving was that we would have the ICANN Board pass a resolution and the content of that resolution would actually be the substance of the current IANA contract in terms of a service that (has to be delivered), et cetera.

So that would - and I think (unintelligible) I used work codifications. So those are the functions to be done. The CSG and MRT would be created by the ICANN by bylaws just as some or all of the SO/AC in the ICANN community have been created by the bylaws.

Changes to those functions would be done by the MRT and therefore the ICANN Board will have to agree to amend the resolution, et cetera. So and then to the all important issue of separation, there would be a process that would be initiated by the MRT. And once there was a decision to that, the - it would proceed to create contract (unintelligible), et cetera.

Now the issue - of course the fundamental legal question here is we have an ICANN bylaw, which would obligate them to cooperate in this process. And the fundamental legal question is under what basis under California law could ICANN change that bylaw or change those resolutions?

But - and I guess that's analogous to what we're talking about with Paul is what happens if ICANN contests the outcome of the decision to do separation?

Anyway, so that's kind of the thinking on this. And what I would propose to do would be to develop this in a little more narrative for our next call and maybe I could work with Paul to see if we could put - someone try and put their proposal on this and I don't know what we'll label. They're both internal to ICANN at least in my mind. So let me stop there. I see there's a few hands and Alan Greenberg.

Alan Greenberg: Thank you very much Allan. If I'm understanding you correctly, what you're talking about essentially is...

Man: (Unintelligible).

Alan Greenberg: Hello. Can people hear me?

Man: Yes.

Man: Yes Alan.

Alan Greenberg: Okay.

Man: Go ahead.

Alan Greenberg: Sorry. There was some sort of other intervention. I think what you're describing is yet another version of the ALAC proposal and the first (outer) proposal that is internal to ICANN and relying on sufficient accountability changes to make sure that the Board cannot ignore a decision to move somewhere else should something - some crisis happen. I certainly support that because it sounds close to what we were proposing to begin with.

he rationale for the (outer)proposal morphing into what you see today with the trust was to try to get the - close to the same effective solution but have a clearer division that would allow separability for those who are wedded to the - current wed to the contract co-model that shows a very easy to delineate single element that can make a decision and which the Board does to have the right to overrule because that entity has the ultimate control over whether the - in the contract code the contract is re-awarded or in this model whether the trust is transferred.

So I certainly support yet another model but I'm not sure why if the first (outer) one wasn't acceptable and the ALAC wasn't acceptable to certain people why this...

((Crosstalk))

Alan Greenberg: ...any more acceptable. I, you know, if you think you can do it, you have my blessing certainly. But the change was made here to try to appease the strong separability supporters perhaps not sufficiently. So time is wasting.

I have one more comment before I - I'll give up the mic just so I don't have to ask for it again. There's an RFP3B scheduled for February 4. I'm going to be somewhere over the Pacific by that time. I suspect other people will also. We may want to think of the schedule - rethink the scheduling of that one. Thank you.

Allan MacGillivray: Thank you Alan. And yes, just on the last point that's why I put the meeting schedule on the - for us to talk about that. I think we're going to need at least two more meetings to try and break the back of this.

So let - I think Paul has been dying to comment so let's turn to him and then maybe we'll start focusing on next steps and meetings and et cetera. Paul.

Paul Szyndler: Thank you (Alan). Perhaps the term dying comment is just a little bit - but look. The key point - given that we're obviously winding up this call, I wanted to bring this back to fundamentals. And that is that - I'm hearing a dial tone for some reason.

Man: Go ahead Paul.

Paul Szyndler: Okay. I wanted to bring this back to fundamentals. And that is the (outer) did in its initial proposal and that's something I'm quite happy to call the (outer) proposal suggests something such as the golden bylaw, which seems to be a lot more like what (Alan) is talking about, internal resolution, bylaws made by the Board.

We've already informally received a lot of feedback on that and obviously that is problematic. Anything that - how can an organization even - and possibly could but how could a California based not for profit pass the resolution or establish a bylaw that binds it that it could not rescind in future.

That is why in our proposal we've evolved it to something along the lines of a trust. We're looking at a different model. So I very much value the work of this group. I don't believe we need to get into the depth of discussion about what the CSC, MRT if you'd like to call the guardian - if you wouldn't like to call it a guardian, it doesn't much matter what those would do.

But we are at that absolute apex, the top level of what is this going to look like. I am worried about whether it can be done as a resolution of bylaws, et cetera. And given the feedback that we received to our initial proposal, that's

why we've evolved towards something along the lines of a trust model. But I'm happy to work with (Alan) and we can see where we can go from here.

As far as I'm concerned though, the next step for the most recent proposal we put forward would be some legal advice. It's as simple as that. I'd hate to waste time and resources working in a vacuum and not realizing whether this is doable or not. So happy to work with you (Alan) but there's a couple of caveats on that.

Allan MacGillivray: Well thank you Paul. Thank you. So there seems to be a measure of agreement that Paul will see what he can do to elaborate on the current proposal that they have circulated. And I'll see what I can do to elaborate on that (right hand problem) on the slide.

And Paul, I think it'd be useful if you and I could try and do a matrix between, you know, between those two if possible. So maybe you and I might have to schedule a call if possible. So it - unless there's a - anyone wants to speak to that, I'd like to turn a bit to scheduling and meetings if we could because, as I say, it's going to take some time to work through these.

So Grace, where are we on meetings? I think that we should try and have like two RFP3B meetings next week. I for one leave for Singapore early in the morning on the 4th of February. And I think we have - we'll have to have circulated the discussion document at the latest, you know, Sunday or Monday, the 1st or 2nd of February.

So I think practically speaking, whatever is going to get done is going to have to get done next week. And wouldn't like to do it Friday night and have to work all weekend on this.

It isn't a secret that Bernie has been supporting us on this. And it's not the only thing he has to do. That's the bulk of the document. So with that, Grace, can I ask you just where we are on meeting slots next week?

Grace Abuhamad: Sure Allan. This is Grace Abuhamad for the record. So right now we have on the schedule of Wednesday 2100 UTC Time for RFP3B. Cheryl has canceled the RFP5 times and has offered that we can use those as well. So potentially we could have a Wednesday, 20th of January at 2100 UTC and then a Thursday at 2100 UTC as well.

That following week we had a call scheduled for Wednesday the 4th but since you'll be traveling, we'll likely have to cancel that call. One option and that depends on coordinating with RFP4 but they usually have a Tuesday slot that we have on the schedule.

We can either schedule a new time on Tuesday or we could use the RFP4 slot if that group are not having a call. So it just depends there. But we would get a minimum of two calls in next week, one on Wednesday and one on Thursday if we use the RFP5 slots.

Allan MacGillivray: Certainly I think it would be better to have some time between the slots. So ideally Tuesday and Thursday would certainly suit me better. I know this isn't just about me. (Robert), do you know if you're going to be having an RFP4 meeting on Tuesday this week?

Robert Guerra: Just one second here. I guess we've tentatively scheduled one. I can evaluate on Monday if that's the case. If not, I'm happy to cede the time to yours.

Allan MacGillivray: Well one thing we could do is maybe flip it with the Wednesday slot so we might - so that RFP3B could have the Tuesday, Thursday and you can take

the slot that we currently have for Wednesday. It's - how about that? Can -
would you see a problem?

Robert Guerra: Let me just look at the schedule. If it would be this time - what would be the
UTC Time for Wednesday?

Grace Abuhamad: It would be 2100 UTC.

Robert Guerra: Great.

Grace Abuhamad: But we could also if you wanted to - we could do a 1400. It's up to you
(Robert).

Robert Guerra: That would work. So let's...

Grace Abuhamad: Which one?

Robert Guerra: ...pencil it in tentatively for Wednesday 1400.

Grace Abuhamad: Wednesday 1400.

Robert Guerra: Oh, let me just check. Hold on. I have the wrong time zone in my calendar.
Hold on. Sure.

Grace Abuhamad: Okay. So in conclusion right now...

Robert Guerra: (Unintelligible).

Grace Abuhamad: ...I have - so potentially RFP3 on Monday, RFP3B on Tuesday, RFP4 on Wednesday, RFP3B on Thursday and RFP3 on Friday. And then our full CWG call on Thursday as usual.

Allan MacGillivray: And Grace...

Grace Abuhamad: And I'll make sure to send an updated schedule to the whole group.

Allan MacGillivray: Thank you Grace. Just while we have you. So what time on Tuesday and Thursday would (the meeting be please)?

Grace Abuhamad: I suggested we alternate. So we could do Tuesday 1400 and Thursday 2100. That way we get a broad reach of our community.

Allan MacGillivray: Okay. Okay. Thank you Grace.

Grace Abuhamad: That work?

Allan MacGillivray: So I think we're on the point of wrapping up. Are there any other comments, questions, issues that (people) want to raise? All right. Well, we have our work cut out for us. So we'll see you virtually next Tuesday. Thank you very much.

Woman: Thanks. Bye.

Man: Bye bye.

Man: Thanks everyone. Bye.

END