

**ICANN**

**Moderator: Gisella Gruber-White  
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Leon Sanchez: Okay how many people confirmed (Brenda) for this call?

Grace Abuhamad: Leon this is Grace. I don't think - we generally don't have the - we only keep track of the regrets.

Leon Sanchez: Okay. I thought that we had the Doodle poll handy. But well that's no problem. We have six of us on the call already so I think we can give it a go.

So the aim of this call is of course to update you with regards to the selection process of the external law firm. We have Greg Shatan with us.

I hope he can brief us as with regards to the process that we follow as you know which you might not know because part of this is part update that happened a couple of - well several calls sustained with the candidate law firms with the short listed.

I would of course ask Greg to correct me at any time if I am saying something that's out of line or that doesn't - that's not correct. And there were I think

some eight law firms as candidate law firms in the beginning. These law firms were shortlisted. Yes I see Robin's hand up. Please Robin.

Robin Gross: Hi. Can you hear me?

Leon Sanchez: We can.

Robin Gross: Okay yes, no I was wondering about these calls that have been going on with candidate law firms. Because, you know, we're the legal team and we haven't seen that the names of the law firms that have been suggested or had an opportunity to decide which ones we want to interview them or how we want to do that so I'm just kind of wondering what's happened here.

It seems like maybe some folks got a little bit ahead of the group and went ahead and got started with some of the work so I'm just...

Leon Sanchez: Okay.

Robin Gross: ...I'm a little bit concerned about that. I think these are decisions that need to be made by the legal team. So I'm wondering who decided to send certain members of the group and what was who decided which law firms were going to be shortlisted?

And I mean, you know, as you can see I'm a bit concerned about this. And I think we may need to frankly do a lot of that work over again from that in a way that includes the members of the legal team.

Leon Sanchez: Thank you Robin. Well I'll like Greg Shatan expand on the answer to that. But from my view remember we are following the work that's been done by the CWG.

And actually we jumped into what they were doing to catch up with them so I think Greg can expand of course the answer to your questions and concerns and he can explain the whole process how it took place. So Greg I see your hand is up so could you please take the floor?

Greg Shatan: Sure. And I think, you know, the point you just made is an important point which is that really what you're describing is the CWG process. And, you know, we asked Leon to essentially to liaise for the CCWG legal committee.

The - our process has been ongoing for a few weeks now so it really is - the idea is that ideally if you like the firm we hired or are about to hire you would use them as well.

If there are reasons why you think they're not a good firm for the accountability program that, you know, you could hire a different firm, that you know, obviously has its own impact on cost effectiveness and the like.

So I think this has become more coordinated over time but it's still not coordinated. So, you know, in an ideal world that same ideal world where both committees started at the same time and that time was last June we would have done this kind of together from the beginning perhaps but it didn't happen that way.

In terms of the firms I guess we have to have a long list of about eight different firms. And since, you know, this is a legal committee the other - and the other legal committee knew the names of the firms I feel that I can share them, you know, within this group but do ask that it not get broadly shared. This is, you know, some of these things can be a little delicate.

We will be able to share the names of the three shortlisted firms publicly. I have or least publicly on these lists I have permission from all three now to share - for their names to be, you know, given broader dissemination.

Firms that we looked at in that ended up not staying in the process included [firm] which withdrew based on workload considerations, [firm] which withdrew based on a conflict that they identified and which they were keeping confidential from us and from ICANN. They only were willing to say that they had a in adversity that made the - unable to take this representation.

[Firm] is conflicted out because they are representing an IRP plaintiff whatever the exact term is, complainant and therefore are adverse to ICANN. See I don't have the whole list in front of me so I'm trying to think of who else I'm leaving out.

[Firm] who is also, you know, interested and then after doing their conflict check sounded like they were also representing a party who is in active preceding which apparently is going to get more active. That - I don't know anything more about it than that but that also made it unsuitable for them to continue. I see Sam noting yes please keep the names confidential just kind of its typical of this kind of process.

And, you know, we've asked three terms in the short list if we can be atypical with them and they permitted us to do so but, you know, broadcasting these names all around just creates, you know, bad air in the legal community and prefer not to have that.

The - I think those are all of the firms that fell out of the process in - before they could really be substantively considered. I had lengthy discussions with

many of them and they were enthusiastic and well-qualified, really just the conflict that knocked them out.

The three firms that are on the short list are [firm], [firm] and Sidley Austin. All three like all of the firms that we talked to are what I call somewhat tongue-in-cheek global mega firms.

While US-based they have offices throughout the United States, Europe, Asia many cases and practice in a lot cross-border manners and do a lot of things relating to - that are international in nature.

All of the firms, [firm] and [firm] are California-based. Sidley has three offices in California, maybe even four, has a strong California presence. All are well-versed.

The central initially when I - and I was kind of, you know, was more than anybody else kind of looking at the firms initially or kind of the initial fishing expedition is initially looked at not for - firms that specialized in not for profit or in at large firms that had strong not-for-profit practices.

It sounded a lot of times when you scratch that below the surface it's a tax base practice and not really focused highly on governance. It wasn't until we decided that corporate governance was the central skill set that we needed to look for that things began to fall into place.

[Specific firm discussion redacted]

He [name] is retired from active practice now but, you know, founded that group. His key protégé actually left [firm] a couple years ago, went to [firm] and that's why I spoke to [firm].

[Firm] was highly recommended to us but without any particular name after a bunch of casting about where I didn't really find a corporate governance guru on the [firm] roster I just called up the vice chair of the firm [name] who sits in the Silicon Valley so I figured she'd at least know how to spell ICANN.

So we, you know, see they were also interested, put together a team. [Firm] I think was originally identified by Jones Day but I also had a long talk with [name].

[Name] is also kind of a dean of the corporate governance bar. He and [name] know each other well. They've probably seen each other in committee for the last 25 years. [Name] is the corporate governance guru at [firm].

So we assembled a - after some discussion we assembled a kind of set of interview questions. I think Sam Eisner did the first draft. I took a look at it. You know, it wasn't so much an interview but just kind of a skeleton of things we wanted to manage to hit in the call.

Some call - the calls were 60 to 90 minutes long. We had debriefs. After all - after the three were done also had some discussions in-between and discussions on the list about the firms.

Each of the firms prepared materials which I can, you know, clearly can share with you. And I have - I've also gotten clearance to share them with the groups as well that discuss their strengths and not just in corporate governance but in other, you know, related areas obviously not for profit and, you know, trusts. Some cases they chose to identify antitrust as an area of data privacy kind of technology law just kind of understanding the world that we live in as well.

And in speaking with the firms which took place last Thursday and Friday and this Monday, you know, took a with the scheduling process probably started the previous Friday but scheduling to get, you know, what ultimately is about eight or nine people on the phone, you know, is not an instantaneous process.

And, you know, I think each of the calls, you know, we there were, you know, took notes and then we had a final debrief after we had all three in hand and still fresh in our mind on Monday.

And I think for all of us who were on the call I think a strong front runner emerged out of the three. And I should say that while ICANN legal was on that call they very expressly deferred to the client committee in terms of the deliberation on the decision.

So this was really a client committee decision. It was not a situation where there was any kind of steering taking place. I really do want to say that explicitly. So just a note undisclosed, conflict was [firm] also another LA-based firm. So of the three firms I think all of us felt that [firm] had the most - gave us the best feeling.

I need to say that a lot of these things go on gut but there was a certain amount of gut in there. There was also some rational logical aspect. Of the three governance experts I think both [firm] and [firm] outstripped [firm]. [Firm] governance experts spends the majority or the person put forward spends as much or more of his time doing M&A work and seemed to think of this somewhat more of a transaction than as a governance project.

And overall the team that was put together and their preparation and their enthusiasm and their understanding and not just of what we want to do but

kind of how we want to do it and the way in which we want to work and their level of ability to answer intelligently and to kind of move the ball along even in these discussions just impressed us the most about [firm].

On top of that we discovered minor ICANN connections that don't raise rise to level of disqualifying conflicts but nonetheless should be mentioned and that [firm] while [firm] does not as far as I know do any work for ICANN [Specific firm reference redacted]

And frankly if that had - if [firm] had otherwise been the front runner we would have tried to work our way around that. But actually that same person was kind of the weak link in the presentation. I should say that all three teams were really spectacular and if any one of them, you know, could have been the front runner.

So what I'm talking about here are very thin distinctions not, you know, there were no disappointments. It was not an easy choice to make and none of the firms really felt wrong.

So really we were looking at minor, you know, really, you know, trying to think our way through how it would be to work with them in the long run and trying to be - make a sophisticated decision about this all.

[Firm] does some work for ICANN but it's completely unrelated to this in there but in areas like OFAC, you know, working with hostile states and things like that.

Not that those were disqualifying factors but it doesn't hurt that [firm] is as far as we can tell, you know, has no tangential - even tangential relationship to ICANN.



The Sidley people are very enthusiastic, very responsive, they've been - they've done everything we've asked them to do about twice as fast as one would think they would do which is a good start. I had agreed to debrief Leon because, you know, just schedules being such as they are Leon wasn't unable to be on all the calls.

In the course of debriefing and describing I realize that we had obviously spent, you know, because it was more our process than a combined process we had spent most of the time talking about the CWGs work and not that much about the CCWG.

And since it - since Sidley was the front runner I thought that rather than me describing to Leon what Holly was saying and the other people at least at Sidley were saying and, you know, trying to somehow create some sort of outcome I just suggested that maybe Leon just set up a call with Holly and, you know, talk directly because that's - it just seemed like an easy thing to do. And then I think that call has become larger and more formal. And that's kind of how we got where we got. I don't think there was any intent to leave anybody behind or to get ahead of anybody.

I will say that the CWG is under incredibly intense time pressure. We're basically in overtime. Our paper is late and we have, you know, the other two groups submitted their proposals on January 15 and right now it's March 5.

So you know, we're basically hustling like mad to try to get something done. So I suppose we could have tried to slow down the process a bit to meet up. But that kind of was, you know, antithetical to all the other pressures that we were on.

So like many processes it's a bit messy, it's a bit imperfect. And if you, you know, you want to look at the weaknesses in the process that's, you know, always good learning for the next time.

But I think that the strength is in the result. And I think that Sidley, you know, is a first-rate firm, in particular the focus on governance and the people we have that they've identified and that were on the call to work with us really, you know, are just impressive and enthusiastic, very capable, very bright, very creative, very well informed, very deep expertise in their areas, very collaborative and very available. And that's - I'll stop talking and let the - those who are lined up to talk so thanks.

Leon Sanchez: Thank you very much Greg. Do you have anything to follow up on this Robin?

Robin Gross: Yes thanks Greg. I really appreciate that explanation. That's really helpful and I'm sure not just to me but also to the broader community. And it does sound like you've got some great candidates there and I look forward to interacting with them going forward.

So I just, you know, want to just make sure that it's expressed that I'd like to be a part of these discussions with the law firms going forward.

I mean since our working groups are considering using the same firm I think it would be worthwhile. And I also think it is important to recognize that the firm that the CWG hires is not necessarily going to be the one that the CCWG ultimately hires.

Leon Sanchez: Thanks Robin. You will definitely be on the loop as I told you on my email. And actually one of the things I want to set up and I'll go ahead - I'll go with Sam and David next.

I just want to be clear that this call that Greg mentioned that I was setting up is - has been requested to take place either a Monday or Tuesday. I requested Monday because I think it would be great for us to provide an update to a larger group honor Tuesday call.

So the next thing I'd like to ask the members of this group is to provide me with some timeslots on Monday in which you could be able to hold this call with the firm so we can of course have a good talk with them and see if that's the kind of law firm we're looking for. And well then I'll just pass the microphone to Sam whose hand is up. So please Samantha could you please take us through?

Samantha Eisner: Yes, this is Samantha Eisner. And I just wanted to weigh in on Greg Shatan's comments. I just want to make clear that while we have been discussing potential terms of engagement with that final candidate we have not yet engaged them.

So and also during those conversations and I know that we mentioned this briefly on CCWG call that happened earlier this week on Tuesday there's a question raised about whether or not it was even appropriate for the firm - for one firm to handle both the CWG and CCWG issues.

So one of the questions that we asked of all of the firms that we talked with was whether or not they saw a conflict between the representation of the CWG and CCWG in these efforts?

And we heard from none of the firms that there would be any sort of issue-based conflict. And we also received confirmation that they would also from each of the firms that they would have their resources to support both of the work.

So we tried to without forecasting what it is that the CCWG would be asking about we did not share documents relating to the CCWG work though they are publicly available.

We were trying not to presuppose the CCWG efforts in this. But we were trying to make sure that at least there would be resources and no concern as we move down the path with any single law firm.

Leon Sanchez: Thanks Samantha. Next in line is David McAuley. Please David could you please take the floor.

David McAuley: Thanks Leon. I just and thanks Sam for those comments. I was going to ask Greg if you could talk a little bit about you mentioned Holly. I take it that's Holly Gregory.

Where is she located? I forget. And did you talk with her about the fact that the next couple of - I'm guessing the next couple of months there may be questions that come up. It might be intense between now and June or something like that.

And I was just wondering if it is seen as a continuing referral of questions as they may arise with the view of keeping costs within reason. But I suspect that it won't be a one-time iteration. Did you all discuss that kind of thing?

Greg Shatan: Yes. Holly is located in New York. There also folks in at least in DC and in California who are - have been introduced to us as well.

And definitely understand, you know, we've given them of flavor, maybe not a complete picture but a very strong flavor of the time pressures and the intensity with which were working with which we would need them to work, you know, especially on our side where we've kind of hit a logjam probably a few weeks ago by now the, you know, really can't be broken without external legal advice.

And they are very much prepared to hit the ground running and to keep running with us. I think I called it a marathon at sprint speed in one of the calls. In terms of iterations and the like one of the things I think that needs to be discussed is kind of the method and intention of getting legal advice.

You know, typically legal advice isn't done by submitting written questions and getting a list of written answers back. And that could be part of it. But it's more typically a little more interactive and iterative and kind of more of a process of getting from one into the other in terms of figuring out what the ultimate questions are and what the ultimate resolutions need to be.

You know, that said I did speak to Holly specifically about the idea of answering questions. And our Q&A document has a lot more Qs than yours does.

I know I'm one of us and one of us but I'll just say yours for the purposes because I'm tattooed with the mark of the CWG and only lightly branded by the CCWG.

So the - and she did feel that even though, you know, that's not kind of in the end real legal advice. It can be part of it and felt that they could look at our - they know what our document looks like and it's about 40 questions organized in sub questions that they could produce a document before Istanbul that would be answers to those questions and on top of that give the more collaborative iterative type of legal advice.

And I think one thing that is an interesting thing and one of the things we liked about Sidley as they looked at this if they felt that it was almost more like a consulting representation as it was a legal representation.

Many times we're actually doing a lot of legal work ourselves kind of. We're exploring a lot of things that would might people might just throw of this off to the lawyers at a much higher level then come back with both essentially what our questions are and our answer. So in that sense they view in part their role as helping us to do the work we're doing and not to take over the work we're doing.

So but I think in that they're going to be collaborating. So there's - it's the furthest thing from a kind of one-shot. I mean in the end though I think there obviously needs to be deliverables.

And for the kind of purposes of transparency and for the record, you know, maybe deliverables that's, you know, somewhat more often than there might be in the - in other circumstances.

So, you know, there can be stuff that is part of our record and what's disseminated to the larger group so that people don't think that the legal committee or the client committee are some sort of, you know, group of that knows everything and that nobody else knows anything.

David McAuley: Right, thanks Greg. Can I - Leon can I just ask one more question?

Leon Sanchez: Of course you may.

David McAuley: Thanks. And...

Leon Sanchez: That's what this call is for.

David McAuley: When do get on the phone or part of the team get on the phone with council? Do they - are they okay with recording it much like we do this in the Adobe room?

Greg Shatan: I would say that in the pre-in the potential client phase of things that would probably be an awkward request. In terms of the client phase we've mentioned that to Sidley.

And they have no problem with that. Their view is that this is being in a essentially public manner. You know, they mention some representations, they've done with say boards of large public universities which are under Sunshine Law requirements and, you know, so they're prepared there.

But kind of in terms of the dating phase of things I think it would be a bit off putting, you know, to record that sort of thing. Plus frankly they may - I mean at this point with Sidley things are pretty far down the line but if you don't want to treat them as, you know, the firm, you know, until they're actually engaged I think that would be - my expectation would be that it would not be likely to happen.

David McAuley: Thanks Greg.

Leon Sanchez: Thank you Greg. Thank you David. Well now I think that we have covered the issue about the identified law firms and the possible engagement with them and of course the call we would be holding on Monday.

So I think now it is safe to restart the recording which I see they Greg has already resumed recording. So now I'd like to focus on the draft legal scoping document that Robin has kindly set up for us. And while there have been some comments made to, some comments or suggestions made to the Google Doc as it is.

And one of the concerns that was discussed or raised in the calls with (unintelligible) group was that this document may seem a little bit too long. And the suggestion was that we shorten this documents (sic). So now the challenge is how to achieve this? I've made a couple of comments in the Google Doc if you have it handy.

Maybe the structure could be partly as it is with the - okay so I see Robin has put a link on the chat for a more updated version. Okay so perfect. I'm sorry I'm sorry, I'm just scrolling through the Google Doc.

So maybe the structure if you agree could change a bit we can provide a little bit of background which is already there then mention the goals and concerns obviously lined up with what we've been discussing with the larger group with the for example the empowerment that we should be looking for to invest in the community.

And then my suggestion would be to after we mention a goal maybe just drop in a couple questions with regards to that objective or the goal without expanding a lot on the issue.



My concern is that while we all might have already some proposals in mind I wouldn't want to bias the lawyers or drive them or steer them through a possible solution. I would like to rather just pose the question to them like in a manner that how can we achieve boards billing for example?

And then they would give us these mechanisms and then we can assess which of those mechanisms which of course the most suitable regards to what we're looking for and is more lined up with ICANN's corporate governance structure. So I don't know if anyone else want to comment on this. I see Robin hand right away. Please Robin?

Robin Gross: Can you hear me?

Leon Sanchez: We can.

Robin Gross: Can you hear me? Okay great. Yes actually I would - I don't think we should take out what our concerns are or take out what some of the proposals are that we'd spent a few months now working through.

I think, you know, we had an earlier draft that didn't include those things and the larger group said we need to have put context in here. We need to put - explain what our goals are and what our concerns are.

And so based upon the feedback from the larger group, I tried to draft something that includes the goals and the concerns and what the proposals are that are being discussed. So I certainly don't want to prejudice any - our attorney, and you can see it does say in there, "Please give us some additional solutions. These are the only ones that we've come up with and we want to explore more."

But I think we've got a lot of people in the community who want to know how their specific proposal would fare, and we would get a lot of pushback if we suddenly took their proposal out of the evaluation document.

Leon Sanchez: I don't mean to table the proposals. My aim would be to maybe have a shorter version of the document, which of course might include some of the proposals but with the aim of letting the lawyers expand on the initial proposals. I don't know if I'm being clear here.

Samantha Eisner: Well I think we all agree one of the goals is to pare the document down a little bit. So I mean - I don't think that's necessarily on the table. I'm just concerned about the suggestion that we take specific proposals out since that's what the group said put in. I mean I've gotten several emails in the last week saying make sure you include the proposal on the two tiers structure, make sure you include the proposal on the CCWG proposal.

So I don't think we can take people's proposals out that they want to see evaluated. We are very clear, and there's no reason - I mean, you know, the lawyer's not going to be close-minded in his thinking ,especially if we explain to him these are not the only things we want to consider but these are the things that we've come up with and we want to know how they would work out.

Leon Sanchez: Okay. Okay fair enough. I agree. We can put this in front of the lawyers and further discuss with them. I see Greg Shatan's hand is up. Please, Greg.

Greg Shatan: Thank you Leon. I'll admit that the first time I looked at this document was today before this call. I've seen it in my inbox a dozen times but the press of

events has been such that I didn't get a chance to look at it until today. So I don't know what it looked like before about 45 minutes ago.

I will say that I don't think it's too long. I don't think it needs - I mean it may need some tweaking here and there and I see some notes in the chat on the document about things that could be, you know, made clearer or maybe added, subtracted. But frankly, you know, it took me, what, half an hour to read and edit it. So what's it going to take one of the lawyers to read? Fifteen, twenty minutes maybe?

Obviously there's questions here to answer but I don't think that losing questions is going, you know, make it a better or shorter legal advice situation. I don't think that taking away potential ideas is going to free the lawyer or - and I don't think putting them in is going to prejudice them.

I've known (Holly) for 28 years. She's no shrinking violet. You may hire somebody else. Whoever you hire, they're not going to be a shrinking violet. They're going to have ideas. Lawyers love to tell you the question you should have asked them instead of the question you're actually asking them, and usually they're right and you realize why you need to, you know, change your questions around a bit.

So I wouldn't waste a lot of time on editing the document to meet some sort of perceived length issue or some perceived prejudice issue. I'd just try to make the document better. And actually I think the document's very good. I mean I don't know what it looked like before, but right now I think it's very good. It's a pretty easy read. It's pretty straightforward. It makes its points.

I think there's one paragraph on jurisdiction that includes a lot of fantasyland stuff in it. I agree with Becky Burr's comments on the chat. I don't - subject to

- other than, you know, very few intergovernmental organizations, there really isn't such a thing as international jurisdiction. It's usually a matter of waivers and limitations on prosecution and things like that that allow things like the UN to be in New York City and the like.

So frankly I'd put the whole jurisdiction question on hold until - because that's, A, it's a rat hole of the first degree, B, unless you don't want an IANA transition, discussions of a jurisdiction are really just going to end up, you know, not resulting in anything. If there are jurisdiction freaks on the call, I apologize and I apologize for calling you as freaks.

But, you know, we spent hours and hours and hours talking about jurisdiction in our meeting, and it went nowhere. So I think that that's the only part of the things that gave me pause. I mean it talked about international jurisdiction like it was this real and common thing. Plus the idea of, you know, trying to get immunity from prosecution and immunity from the usual strictures of being in a jurisdiction sounds to me like the opposite of accountability. It doesn't sound like accountability to me.

So I've said more than enough about the jurisdiction section. I want to make very encouraging words about the entire rest of the document, and I don't think it's at all off target. Thanks.

Leon Sanchez: Thanks, Greg. I see Pedro's hand is up. So, Pedro, please take the floor.

Pedro Ivo Silva: Okay thanks, Leon. Thanks to the previous speakers for their comments. Well I just wanted to well to state or restate my agreement with the fact that I think the document is good. It's not that long, and I think we should leave all those questions that have been proposed in the document, because I think they are - they reflect genuine concerns from the stakeholders and genuine, serious and

genuine concern is about jurisdiction, especially well some government and also representatives from other stakeholder groups have expressed their concern about this issue.

I don't think that it is related to freakiness or fantasy or any kind of - I think this a real concern, something that has been let's say expressed as a concern for well at least two, three years at least. And there is a document that - about Internet (unintelligible) that was recently shared within the list, and this I think kind of indicates that this is a real concern.

And I think there is a link between there's a strict relation between accountability and jurisdiction. We are, well, discussing, debating about mechanisms that eventually will be implemented under a certain jurisdiction, and what happens if that jurisdiction does not allow for all our accountability requirements to be implemented. We need to think about possible alternatives.

Of course this is not something short term, but I think we need to have that idea of alternatives in the background, because I think it will further help our exercise. So I really - of course there seems to be some depreciation about this idea and this question, but I think this is a real, real concern from stakeholders and I really would like some at least some respect for that concern. Thank you.

Leon Sanchez: Thank you very much, Pedro. No one is I think saying that this is not a real concern. I believe that it is a true concern for many members in the community. It's been a long time concern of Fadi's that I circulated earlier and the list shows. And the question here and the question that's been raised in the CWG at large is to whether this a matter for workstream one or a matter for workstream two.

So far the feedback could be summarized as jurisdiction being a matter of workstream two, not only because it will take a lot of time to implement but also because if you were following the testimony that Fadi gave on the U.S. Senate as well (unintelligible), he, Fadi, I mean, was very clear that so far the intention was to keep ICANN within the U.S. as subject to U.S. jurisdiction.

And my fear -- that is a personal appreciation -- my fear would be that hinting U.S. Congress on any intent of changing ICANN's jurisdiction might derail the whole process. So I do agree that this is something we need to look at, we need to address at some point, but I think it would be better off left to workstream two.

And now I'd like to hand the floor to Edward Morris, whose hand is up.  
Please, Edward.

Edward Morris: Thanks, Leon. First of all I don't take my instruction from Fadi, he takes his instructions from us. That's the first thing I'd like to say for what you just said. Greg is right. Jurisdiction is a sinkhole, but I think it's one we need to have the independent counsel tell us is a sinkhole, because there's a lot of pressure in our group, for example, folks tell us hey you guys have already given the Americans what they want, jurisdiction in California. I think we need to at least ask the question, get the response and then move on.

Leon Sanchez: Thanks, Edward. I see Greg's hand is up. Greg, please.

Greg Shatan: Yes I just want to clarify that first no disrespect was intended of anybody else's opinion. These are all, you know, well held and well considered opinions. Secondly, that I don't think the jurisdiction section should be removed entirely. I think it is important to get some feedback from counsel on the jurisdictional questions.

I do think it has to be a workstream two situation. I think that it's important to ask questions because frankly I think some of the answers will show that for practical purposes, putting aside other purposes, that U.S. jurisdiction in California, jurisdiction are actually very strong jurisdictions for accountability and rule of law and offer a lot of actually increasing amounts of flexibility for different methods of accountability.

And on the other hand, if there is some silver bullet for achieving some great accountability leap forward and it's available in another jurisdiction and not in California's, it's something that should be known. I'm not saying anybody should hide their heads in the sand.

You know, part of the problem with the jurisdiction is it's often difficult to identify on these questions what the problem is with California jurisdiction practically as opposed to politically. And I'm not saying the political concerns are irrelevant, but in terms of enhancing accountability, the question is, you know, how does keeping it in California fail to enhance accountability.

So by all means the question should be there, I just think that the section as it stands is a little bit florid in its consideration, but it's definitely a question, you know, we spent hours discussing it, ultimately ended up putting it to one side because it was just never going to be resolved, and we actually had, again, practical considerations to move forward with in the CWG and felt that they, certainly for the purposes of the IANA transition, we were not moving jurisdiction of ICANN.

You know, looking at some other structures might, you know, if those structures exist, they don't have to be in California. But, you know, so we may return to jurisdiction questions for the CWG as well. But I don't want to turn

this into a long discussion about jurisdiction because it's - my view is that it's one of the things we need to talk about less rather than more, so don't let me contribute to the opposite of my own opinion.

Leon Sanchez: Thanks, Greg. I see Pedro's hand raised. Please, Pedro, take the floor.

Pedro Ivo Silva: Yes thank you. Well thanks everybody for their comments. I also don't want to extend to much that discussion. I think we have also other issues to talk to.

I agree that we perhaps this is an issue that today an action to be taken in a more let's say longer term period, but I see there are also things related to jurisdiction that may be let's say needs - well that touches upon jurisdiction that maybe need like a decision, short-term decision like a discussion about the paragraph eight of the AUC or a discussion about the jurisdictional concerns regarding the review panel. But I think this is an issue.

And, well, just one other comment. This is I think the questions - the question that has been raised about that, I would kindly ask to also to refer to the international law specialist that has been indicated to provide us some assistance there. I think he's a professor from Norway if I'm not mistaken.

And I would like also to raise the more general question about how to -- sorry if I missed something that was previously agreed -- but what about the use of those other experts, seven experts, that's been indicated to assist us with regards to those questions. Thank you.

Leon Sanchez: Thank you very much, Pedro, for your views again. So if I may do a very small recap and begin to agree on some outcomes for this call. May I ask if you agree to keep - that we keep the document structure as it is? Are you - do



you agree with keeping this document structure as it is? Please signal with your green text, that would be very helpful.

I see Pedro, Greg. I assume that those hands raised by (Par) and Edward are ticks as well. Is that correct, (David)? Robin, and okay. Okay so I think we're all in agreement that we would keep the structure as it is.

Then the second agreement I would like to call upon is that nothing in the document as it is will be taken out, all right? Because this is not just something that Robin has put up - I mean this reflects the work and the feedback from the broader community, not only our views, right? No nothing in the document is to be left out at this point.

Okay, Pedro, (Par), do you agree on this? Excellent.

So the next call for agreement would be, or not a call for agreement, but rather a call for reviewing the goals that we have here. I see Greg's hand is up. Would you like to say something, Greg?

Greg Shatan: Yes just briefly. I don't mean to pull the call off of your topic, but I just want to underline the point that Pedro made, which I think is incredibly important, about the panel experts. And with my CWG hat on, I'm incredibly envious of the access you have to this panel of experts. They look like they can be incredibly helpful on many of these questions.

I think not only Professor Bygrave in Norway who Pedro mentioned who is, you know, I was waiting anxiously to see who'd be appointed to that seat because it really is the most relevant, but also Ms. Minow is also very germane to the questions that are here. And so I would mention the panel of experts to the law firm when you talk to them and, you know, give them a link

to see who's there, because that's a resource that can be used in your case as well.

We don't really have them. I'd love to borrow them, but it doesn't seem like that's a thing. Plus we have - our problem is time more than resources, but I think definitely building them into the process here, thinking about how they can work in this process with the legal community, with the law firm, and even with these questions, is not something to be - to minimize. I think it's a great opportunity. Thanks.

Leon Sanchez: Thanks, Greg. And you're right. We are truly lucky that we have an expert group with us. And actually I had just a call with (Lee), which is our international law expert. Of course the first issue I raised was the jurisdiction issue. So he's taking a look into it and I am sure that his views will be very fruitful to the work of this group.

And I hope - I'm not sure if he's going to be with us in Istanbul, but if he is, I would definitely like to find a space for us to gather with him and have him of course taking a look to the document and different issues. So I (Grace) is telling us that (Lee) is tentative so far. Well, we'll wait and see if he can make it to Istanbul.

And the next point I'd like raise in this call is if we agree with our goals that set so far in the scoping document. I see three goals now. One of them is recalling members of the ICANN board of directors. The second goal I see here is community empowerment over ICANN's management. And the third one is limit the scope of ICANN's activities.

I mean there's no question that those three goals are in scope and have to be in the document, but I'd like to have at least two more goals, one being how can

we protect ICANN from being prompt capture, and the other being how can we protect ICANN from antitrust law in the U.S. of course. And in case we decided to take a deep dive into the jurisdiction issue, we should also be considering how can we protect or which implications would the change of jurisdiction on ICANN's exposure to antitrust laws.

And I know I would like to hear comments and thoughts from the other members of the group as to whether you find these two other goals in scope and of course feasible to be included in the document. I see Greg's hand up.

Greg Shatan: I'm making up for lost time in these meetings. In terms of antitrust, I think that is, you know, always a concern for an organization that brings together competitors and buyers and sellers of things. So, you know, it's not off topic. I know that at least one of the firms we talked to, if not more, you know, brought an antitrust expert onto the call in anticipation that was an issue.

In terms of the accountability points, you know, it clearly can't be discounted. I'm not sure it's the most important of things here, but it can't be discounted. So at some point in the process, you're going to want an antitrust review of the potential mechanisms and just to make sure that they're not going across.

You almost don't even to ask the question. All you have you do say to the lawyers, "I think we need an antitrust review." And they'll get an antitrust lawyer who'll do a review. So I actually practices antitrust law almost as much if not more than IP law for the first 12 years of my practice. So I've been on that job.

So I wouldn't take it off the table but I also wouldn't waste a lot of time thinking about what antitrust questions you might ask, because the antitrust

specialist will have the tools already to attack it in the workshop. You don't need to create any tools for him or her. Thanks.

Leon Sanchez: Thanks, Greg. I see Robin's hand up. Could you please take the floor, Robin?

Robin Gross: Hi. Yes I'm a bit concerned about the legal sub team coming up with new goals for the CCWG. We - the overall CCWG came up with our three goals. That wasn't something that we as a subgroup decided upon. So I don't think it's appropriate for us to start adding new goals. That's not what our mission is. Our mission is to figure out the legalities for the goals that the larger group has decided upon.

Now I agree that the antitrust issues are important and that's why we've got some questions in there on them, and they certainly can be improved. But that's in the questions section, that's not adding one of our overarching goals is being protecting ICANN. That's a brand new insertion that the CCWG has yet to debate.

Leon Sanchez: Thanks, Robin. My intention is of course not to add new goals to the CCWG work nor to say that we need to protect ICANN. I apologize if I misused any words. Remember that English is not my first language, so I would ask for a little bit of comprehension on this side.

My aim is or my concern is that we should address mechanisms to prevent the whole system to prevent capture, as it has been widely discussed not only the CCWG but also the CWG. And my concern would be that any change in jurisdiction might affect the whole organization and of course its stakeholders with regards to the effects of antitrust laws. I think this makes it a little bit more clear as to what my intention is.

I see your hand's still up, Robin.

Robin Gross: Well I just think we can certainly add them as questions and issues we want to expand upon, but I just don't think we can create new goals through the creation of this document.

Leon Sanchez: Any other thoughts on this? I see Greg's hand up.

Greg Shatan: I'm actually - in terms of the antitrust, I just - I don't think that should also - I also don't think that should be considered a goal. It's just going to be a byproduct. Clearly, you're not - we're not going to propose accountability measures that create antitrust problems, because those antitrust problems won't just be ICANN's, they'll be the problems of the actors involved.

In other words, if ICANN brings together a group that is violating the antitrust laws, that's a problem for everybody in that group, not just ICANN. So the - so that's - it is a problem but it's not a goal any more than it wasn't a goal if you don't put it down. It just - it's a byproduct of the process. You know, you're also going to want to make sure that you're not breaking any other laws.

ICANN doesn't need to be any more - itself doesn't need to be any more protected from antitrust laws or shielded in some fashion than it already is right now, and any of the mechanisms and structures we put together will need to pass antitrust muster along with any other kind of muster they need to pass. So I think it's a red herring to consider it a goal.

Capture is a more interesting one. We spent a lot of time discussing capture in the CWG, and I think that capture is a concern across the communities, although I don't think any community - each community thinks some other

community is more likely to capture ICANN and minimize their contributions.

And - but there's also - and not to say that we're beholden to the U.S. Congress, but clearly capture was very much on the minds of the senators questioning the panel. So, you know, that in a sense could be, you know, or should be a goal, because I think it goes to issues of accountability and is part of the thing. So I think that failing to keep an eye on issues of capture is probably a mistake. Whether you need to call it a goal, you know, I'd leave it to others, but certainly it's an important and (unintelligible) issue.

Leon Sanchez: Thanks, Greg. Okay so the agreement would be not to add any other goals to the document but rather phrase the questions that address - I mentioned, and of course any other issue that might come up with the one at a time. Is that right? Excellent. I see Edward Morris' hand is up. I don't know if that's - okay.

Now remember we are also waiting for those questions that might arise from the work of working part one and working party two, and even from the (unintelligible) working party. So I think this has been wonderful progress and I thank Robin for holding the pen on the document, and we should definitely be in touch with the representatives of working parties to ask them again to hand their questions to us so we can include them in the document.

I don't know if anyone has any other business that we could take care at this point. Okay. So no other business to take care of. So would you agree that we could find in the document maybe let's say before our call on Monday with the law firm so we can of course put this document as a draft in front of the law firm to discuss with them. Would you agree with that?

Robin Gross: Yes, Leon, this is Robin. I can have a new draft sent around in the next day that incorporates a lot of the tweaks and suggestions and edits that have come in the last couple of days that I think will significantly tighten it up, and also based upon our call today. So I would say just within the next day even.

Leon Sanchez: Excellent, excellent. Thank you very much for that, Robin. And well if no one else has anything to add, I would like to thank you all for attending the call, and I see that a couple of you have already replied to my e-mail with regards to the timeslots for our monthly call. Please reply to that e-mail as soon as you can so I can forward timeslots to the person at the law firm and I can arrange the call with staff.

So thank you very much everyone. It's been a very fruitful call, and I'll talk to you on Monday. Thanks everyone. Bye-bye.

Robin Gross: Thank you, Leon. Bye.

Samantha Eisner: Thanks. Bye-bye.

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