ICANN

Gisella Gruber-White
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5:00pm CT

Coordinator: Recordings have begun.

Leon Sanchez: Thank you very much. So this is the sublegal team call for the CCWG and enhancing ICANN accountability. We have Edward McNicholas -- from Sidley, (Edward Morris) -- from the legal sub-team, Greg Shatan -- as well from the legal sub-team, (Howley) (unintelligible) -- from Sidley, myself -- Leon Sanchez from (unintelligible), legal sub-team -- Robin Gross, and Samantha Eisner from ICANN staff.

So as the costs in our previous email (unintelligible). The aim of this call would be to see if Sidley Austin has the expertise and the skills that the legal sub-team for the CCWG is looking for in order for you -- for Sidley Austin -- to provide the independent legal advice we're needing in order to build a proper proposal for ICANN's transition with the NTIA (unintelligible) transition.

Well, of course, the proposed agenda -- you have it on screen. It's the introductions, myself is Leon Sanchez. I don't know if the other members of the team would like to introduce themselves so we can all get an idea of who
is present. So please feel free to introduce yourselves as we are in the order of Adobe Connect room seems like the most convenient way. So please, Edward McNicholas, could you please introduce yourself?

Edward McNicholas: Sure. This is Ed McNicholas. I'm at Sidley's office in Washington D.C. I am one of the co-leaders of Sidley’s Privacy, Data Security, and Information law practice. And so I've been working on a variety of Internet law, cyber security and privacy issues since -- I guess -- for more than a decade now and very much have a background both in the governance of the Internet and understanding that process from doing domain name disputes and such towards also litigating cases that involved Internet jurisdictional issues. So I've been working on these issues for a while and look forward to speaking with you today.

Leon Sanchez: Thank you very much, Ed. I see David McAuley has joined the call as well. (David), could you please introduce yourself to the group?

Man: I think he doesn't have a mic.

Leon Sanchez: Okay. Well, no problem. We'll continue with Ed Morris. Ed, could you please introduce yourself?

Ed Morris: Sure, Leon. My name is Ed Morris. I'm coming into this group from the GNSO Council and as a representative of the non-commercial interests.

Leon Sanchez: Thank you very much, Ed. Greg, I think they're already familiar with you. I mean we're all really familiar with you. But still, could you please introduce yourself?
Greg Shatan: Sure, it's Greg Shatan. I'm a member of the Intellectual Property Constituency -- actually President of the Intellectual Property Constituency. I'm in the Accountability group as a participant from the Commercial Stakeholder group, and I'm an attorney in private practice in New York, specializing in intellectual property and technology transactional and counseling issues -- Internet issues and the like.

Leon Sanchez: Thank you very much, Greg. Holly, could you please introduce yourself?

Holly Gregory: Yes. I'm Holly Gregory. I am the co-head of Sidley Austin's Global Corporate Governance. And in that capacity, I counsel clients on a range of governance and accountability issues. My clients include a broad range -- public companies, private companies, not-for-profits, foundations, and some kinds of entities that are, you know, multi-stakeholder in their nature.

I'm also serving a three-year term that I just started as the chair of the American Bar Association's Corporate Governance Committee. I've worked on some governance policy issues for the European Commission and for the OECD and the World Bank over the years.

Man: Just...

Holly Gregory: And these are issues that I'm passionate about and interested in. And I have to tell you that this is a very intriguing project. I'm joined today in my office by Janet Zagorin. She's the client development officer at Sidley and has been helping us as we prepared to speak with you. And she will help, you know, shepherd us through the process should we move forward.

Leon Sanchez: Excellent, Holly. Thank you very much. Well, my name is Leon Sanchez as I've already said so. I'm the co-chair for the CCWG on Enhancing ICANN
Accountability for this transition. I'm an intellectual property attorney as well based in Mexico City. And I am part of the at large advisory committee -- which is the voice of the users within ICANN.

And I'd like to hand it now to Robin Gross so she can introduce herself.

Robin Gross: Thank you. Hi, my name is Robin Gross, and I'm with the Non-Commercial Stakeholders group. I'm the representative in the CWG, and I'm also a private attorney in San Francisco for 15 years intellectual property rights, Internet law issues, mainly transactions.

And about 15 years ago, I founded IP Justice -- a nonprofit organization working on intellectual property rights and free expression issues.

Leon Sanchez: Thank you very much, Robin. Sam, could you please introduce yourself?

Samantha Eisner: Sure. My name is Samantha Eisner. I am Associate General Counsel with ICANN. I've been in the ICANN legal department for six years. Before that, I was -- excuse me -- with the law firm of Jones Day. I worked - I support the CCWG work and also was active on the CWG client committee work, and so I've spoken with Holly and her team before with the CWG team.

Leon Sanchez: Thank you very much, Sam. I see Theresa has joined us. Theresa, could you please introduce yourself? I don't know if Theresa is on mute.

Samantha Eisner: I know Teresa's joining from - she's traveling right now, and she was able to get on the call. But she had indicated to me...

Leon Sanchez: Oh, okay.
Samantha Eisner: ...that she may have to be on mute during the call. But for the lead team...

Man: (Unintelligible).

Samantha Eisner: ...Theresa Swinehart is...

Leon Sanchez: I'm sorry. I'm sorry. Just go ahead.

Samantha Eisner: She's a senior advisor to the CEO on strategy, and she is the person within ICANN who is responsible for spearheading the transition work. So all the staff support for these efforts come out of -- or at least the non-technical work -- comes out of her department, and she's active across the board in helping to facilitate these processes.

Leon Sanchez: Thank you, Sam. We can go back to David McAuley -- which I believe is already in the phone. So David, can you please introduce yourself?

David McAuley: Thank you, Leon. My name is David McAuley. I am with VeriSign as an international policy Manager. It's a second career. My prior career was as a corporate lawyer in the software industry. Thank you, Leon.

Leon Sanchez: Thank you, David. Theresa, would you like to - I know that you're on the phone line now. Would you like to say something to the group, or should we begin?

Theresa Swinehart: I'd be happy to. Apologies for being late. Theresa Swinehart with ICANN overseeing the transition-related processes, along with being responsible for strategy and (unintelligible).
Leon Sanchez: Thank you very much, Theresa. And while we have support by Alice Jansen and Brenda Brewer, of course. And well, now the group have already introduced their self, I'd like to give a brief description of what the CCWG process is at the moment.

Part of the NTI Stewardship Concern element encompassed the fact that the need to enhance ICANN's accountability mechanisms to the community and of course to have them speak to the remission and several other factors that need to be taken into account with regards to accountability.

And what we're doing in the CCWG is exactly trying to take a look at the existing accountability mechanisms -- take a look at them, make an inventory, and of course, try to figure out which mechanisms need to be (unintelligible) to have a smooth transition and -- of course -- accomplish the fact that the NTIA has stated that we need to enhance these accountability mechanisms before the transition even takes place.

So we've divided the work into work streams. Work stream One which is - or which are those mechanisms that need to be fairly committed or already put in place before the transition. And also Work stream Two which are those mechanisms that don't need to be in place before the transition takes place. But they sure need to be addressed at some later point after the transition.

And while -- of course -- we are no focusing on the work that needs to be done before the transition -- which would be Work stream One. And our main focus -- as you can see here, the Letter C in Point 2 our agenda -- is how to appropriately enhance ICANN's accountability to each community in the absence of the historical backs up of the U.S. government after the conclusion of the historical relationship with ICANN when the (unintelligible) function contract ends.
So this is a very important task we have here, and of course, there is a lot of legal advice that needs to be consulted and needs to be get from external advice. We have so far reached out to ICANN legal in a first effort to try to have an idea of how many - I mean how things could be done from certain scope.

But we're also looking -- of course -- for some independent and external legal advice. Of course, I'm using the microphone right now, but if there's anyone that wants to jump in at any moment, please feel free to -- of course -- raise your hand, and I will hand the microphone to you at any time.

So in order to achieve these goals and in order to have a better understanding of how we can achieve the different goals that have been set by the community in the scoping document -- which you have a link to at the chat right now. This would be three main goals -- which are recalling members of the ICANN Board of Directors, the community empowerment over ICANN's management, and limiting the scope of ICANN's activity.

These three goals are -- so far -- the goals that we need -- or that the group feels -- need to be put in place within Work stream One. And of course, this takes us to the very creative try to accommodate the timeline -- the very tight timeline -- that we have in front of us. And this is also another challenge to the law firm that we engage, too, because the time needed in an (sic) response needs to be very, very fast.

We're looking at very tight timelines, and we would expect that the law firm that engages with the CCWG is -- of course -- able to provide this legal advice in a very fast, timely fashion.
From the structure of the engagement point of view, this engagement is about providing advice that will be used within a public process. I think you are already familiar with the process that's been taken out by ICANN. I hope that Greg provided this brief to you with the CWG activity. And we'll essentially public engagement with the ICANN community with focus on making ICANN the best organization it can be for the purpose it is serving.

Transparency around the provision of advice is essential, and we would like to ask you if you have any issues or concerns with your written advice memos being made publicly available?

Holly Gregory: Well, thank you, Leon. And I just want to note that two of our additional colleagues are on the phone, Joshua Hofheimer and Rick Boucher. Joshua Hofheimer is a California in our L.A. office -- one of our partners. He heads up IP Transactional practice and also has significant not-for-profit experience. And you may want to hear from him when we talk about those issues on this call.

Also on the call, we have Rick Boucher. Rick is the head of our Government Strategies Practice, has served in Congress for 28 years -- including was very involved and headed up the subcommittees that was involved in some of the very first discussion and legislation around the Internet and was there as the ICANN was created.

So with that being said, let me return to your question. We're very comfortable -- we've had this discussion with the CWG. We've checked with our own internal general council in the process of the retention of us by the CWG. And we're very comfortable with having our advice public -- with making our advice in public.
And we have -- there are written sort of working procedures that we've discussed with that group that are designed to assure that the process is very transparent. And we're comfortable with those processes and happy to discuss that at some point in more detail with you.

I also want to say at the outset that we spent a lot of time in working through the issues with the CWG and the client committee -- thinking about the structure of the relationship. We understand fully that the intent here is to provide -- in that case, the CWG -- and here, the CCWG with independent legal advice. We talked about how best to structure it from...

One of the difficulties is that neither CWG nor CCWG are an incorporated entity or a legal entity in any way, and ICANN is going to pay the bill.

The choices were between having every member of the CCWG or the CWG become our client -- and we would have to go through really onerous conflicts check about each individual and get them to sign a contract -- or a simplified system that we worked out -- which is to have ICANN as the nominal client if you will -- the technical client -- and have ICANN sign a direction to us that we're to take all direction from the CWG -- and we would do the same with you, that we are to provide advice only to the working groups directly, and not to have any conversations with ICANN personnel from the legal office in which members of our CWG don't participate.

We think it's very clear that the intent is that we are to be thinking about the concerns that are brought to us by currently CWG as we provide advice, and not think about sort of the project from an ICANN perspective. We're comfortable that that's the direction that we're given and that the retention letter is clear on that.
I'm happy to talk about that if you'd like. Again, we worked this through. It took a little time with our own internal general council to make sure that he felt that we comported with our ethical obligations. And we're very comfortable with this approach.

Leon Sanchez: Thank you very much, Holly, for your answer. I want to point out some remarks that Robin Gross has stated in the chat. She says, "It's important to know our task is not only because the NTIA contract has a window of opportunity for opening. It is also because ICANN's accountability mechanisms are generally regarded as inadequate, irrespective of NTIA contract."

Yes, this is the perception from many members of the community. We have to keep in mind that this was true by the NTIA transition. But Robin's statement, it's fair. So that's why I want to point it out. She's also saying that the currently timeline will most likely need to be adjusted since the committee won't have reached sufficient consensus or (unintelligible) of issues on the timeline suggested now.

That's something that we definitely should need to address at the moment that it happens. But so far, we should be aiming to stick to our timeline.

And the question from Robin is, "What is the firm's understanding of its duty of loyalty to ICANN the corporation as opposed to the CWG?" Could you please answer that question, Holly?

Holly Gregory: I'm happy to answer that question. We understand that our duty of loyalty to ICANN is to fulfill the direction that it gave us -- which is to provide advice independently to CWG and to only take direction from CWG. ICANN has waived all privilege and has made its advice to us very direct.
So that's how we fulfill our obligation to ICANN -- by carrying out the directive that's in the retention letter.

Leon Sanchez: Excellent. Thank you very much, Holly. I don't know if that satisfies your question, Robin. Does that answer your question? Would you like to take the floor in order to raise any other concerns with regard to this point?

Robin Gross: No, thank you. That was a very good answer. Thank you.

Leon Sanchez: Thanks, Robin. So well, there are -- of course -- some other questions with regards to the structure of the engagement. Another question is - well, you've already answered that. You don't have any issues with making your memos and your advice publicly available.

And well, we would also like to know how else do you see us bringing or being able to build in transparency around this effort because there are many concerns around the community of whether we can have all the information regarding the legal sub-team and -- of course -- its relationship with the firm to be engaged with as transparent as can be. So do you see any other mechanisms that could aid us to achieve this goal of transparency towards our community?

Holly Gregory: Leon, I think it is important that the retention letter be made public. Certainly, I know that you have a scoping document that you're drafting, and that you will want us to write some sort of response that is a written discussion of how we view our expertise in relationship to the issues that you're laying out.

We would -- of course -- be in favor of having that be public, as well subject to, you know, any concerns. You know, if we are providing you information
about other clients at times, we ask that that be kept confidential. The clients will sometimes let us disclose their names on a confidential basis. So that would be the only concern there.

In addition, you know, I think you -- from what I understand, and you have to forgive me because I've been at this for just about a couple of days -- from what I've seen so far, there are a lot of mechanisms for transparency, both through the transparency around the discussions that we're having here, through posting the emails. We're open to, you know, your suggestions about that.

I don't know that I can think at this time of something in addition to what you've already thought of. But I ask my colleagues, Ed McNicholas and Joshua and Rick, if they have other ideas about things that could help to make this more transparent.

Edward McNicholas: This is Ed McNicholas speaking. One of the things we're doing with the CWG -- and I assume we would do here -- is that we would have an archived public email list. And although we would not hopefully need to use that for ministerial things such as scheduling, but that if we were to have any sort of (unintelligible) engagement on email outside of memos and calls, that we would have that on a public archive list as well just so that there is...

Again, we share the goal of making sure that this is a transparent process to ICANN and to the broader community of stakeholders.

Leon Sanchez: That's very helpful, Ed. Thank you very much. Thank you, Holly. Well, of course, interaction between the CWG sub-team and the law firm is not the concern, how would you see us interacting with you? And we would like to know if you have any concerns with login requirements to track interactions
with the different stakeholders. That's clear that you've already said that you have no problem with archiving -- with having an archive mailing list. But that's not the only logging mechanism, so I would like to hear your thoughts on this.

Holly Gregory: I think you need to give me a little bit more information about what you mean by logging requirements to track interactions with stakeholders. I mean we are certainly open to hear and consider anything you request. But I'm not sure I understand what that fully means.

Leon Sanchez: Thanks, Holly. Well, it comes to my mind maybe as different kind of interactions between not only the CCWG, but maybe some interactions from members of the group that might approach you, and of course, the interaction that you would have between them.

It's -- of course -- ideally, a relationship that's going to happen only between the legal sub-team and the firm. But we need to keep in mind that that might be some members of the group that might want to approach you directly. And well, that's of course, something that would be desirable to at least have a record on that.

Holly Gregory: Oh, now I understand, Leon. And I'm really glad you raised that. Yes, I mean I think it's really important for clarity and transparency and efficiency that it be clear who in your group -- in the CCWG -- is providing us with direction and who we are to take direction from. We're very comfortable in working out a protocol that says we don't interact individually, one on one, with stakeholders without those if it's an email being made public, if it's a call or a meeting, it being logged in some respect.
That's important, I think, for transparency. It's also important because we can move fastest and be most effective and efficient if we understand clearly who's authorized to ask to pose the questions to us and give us direction and ask us to get something done.

We cannot do this effectively and efficiently if we have a large number of people who think that they're directing and guiding us.

Edward McNicholas: Holly, if I could just add to that, for instance, if someone called a member of the team -- one of the members from the stakeholder community -- called a member of the team, and they were a non-ministerial discussions. It was a question about whether you could make a meeting at 10:00. That's one thing.

But if it was any substantive discussion, we could simply log that to the email list, so that we would then say there was a discussion of this topic and describe it so that we had a public list, real time, so that people could see the interaction.

We do have to - we would have to limit any such requirement to the subject matter of the CCWG because -- of course -- the idea of a stakeholder potentially for ICANN is a - there are obviously hundreds -- if not thousands - - of entities that might consider themselves stakeholders to various degrees in this process. And no doubt, some of them are clients, some of those folks with the corporate ones are no doubt clients of Sidley on other matters.

And so we could limit to the subject of the CCWG that would be fine but obviously we can’t if we are advising, if it was a software company or something, you know, a cloud provider who might consider themselves a stakeholder and they won’t be acknowledged as a stakeholder but we’re doing corporate transaction for them.
We’re not going to be able to provide visibility into that interaction. But I think for the subject matter of the CCWG’s competence we’d be happy to provide that sort of logging.

Leon Sanchez: Thank you very much that’s very useful and yes (unintelligible) out in the chat, this kind of clarity is of course in the interest of the CCWG’s legal (unintelligible) as well as the largest CCWG.

So that’s very good to hear that you will be doing this kind of exercise with us.

Joshua Hofheimer: So this is Joshua Hofheimer speaking, Sidley Austin. My apologies that I’m not on the Adobe Connect and able to see or raise my hand properly but I’m outside of a meeting so I’m trying to keep it on mute as much as possible.

So I think the one thing that I would want to add or suggest is that there needs to be sort of equal importance is the effort by the CCWG to communicate back by the working committee, you know, those people on this call and other members of the working committee.

To communicate back progress and interim guidance as appropriate to the larger stakeholder communities so that, you know, there are no misunderstandings and people understand how decisions or strategies are arrived at and the vetting that goes into that.

Rather than it being appearing as if actions or decisions are being taken in a black box without there being some sort of iterative process. And I think that will also help to bolster the confidence of the larger stakeholder group in their
recommendations and advice that are worked out through the efforts of the working committee and (unintelligible) be engaged.

Leon Sanchez: Thank you very much and this is an excellent point too. And while continuing with the questions for Sidley Austin we have an upcoming face-to-face meeting on March 22, 23.

And we might as well have more face-to-face meetings from the point we engage with you if we decide. So the question is would you be willing to attend these working sessions, would you be able to attend these working sessions?

And how would you participate in this in the working sessions along with larger group?

Holly Gregory: So we of course are happy to participate. We would talk and make sure that we had the right people there. It so happens that I need to be in London for a prior engagement for a speech that I’m giving on the 23d.

But we have a broad and deep bench and if I couldn’t be there in person and I’m not quite sure where your meeting is, I would certainly be available to participate by phone.

Always at the start of an engagement we have a little scheduling conflict but we’ll try everything we can of course to work those out as quickly as possible. Could I ask where that meeting is? Is this going to be in (Istanbul)? I know there’s a meeting in (Istanbul) later in the week.

Leon Sanchez: Exactly it’s (Istanbul) Holly, it’s - thank you David for pointing out the exact dates, it’s March 23 and 24 and it’s a back-to-back meeting with the CWG.
We’re going to have a two-day meeting of the CCWG and then the CWG is going to have another two-day working session in (Istanbul).

They of course will be joining on the 26th and the 27th but we’re going to have our working session on the 23d.

Holly Gregory: So certainly some, one or two of us could be there. I was planning on getting to the CWG meeting. I can probably get to (Istanbul) on the 24th. I probably would have to be traveling on the 23d after my speech. So it’s all a long way of saying that of course we’re committed to working with you in however you think will be most efficient and effective. And I think in person meetings often are really important as much as these kinds of meeting and the Internet, you know, facilitates these wonderful other kinds of meetings.

There is nothing that quite replaces that in person opportunity to get to know one another, to get to, you know, have those face-to-face conversations. So all a long way of saying that we would discuss with you what your needs are.

We’ll make sure that if you call a face-to-face meeting if we can possibly be there we will be.

Leon Sanchez: Thank you very much (unintelligible).

Holly Gregory: I do have a question. We talked at the start of this around the very tight timeframe. I would love to get an idea of what you think the timeframe is.

Leon Sanchez: Well the timeframe I don’t know if you had the chance to have a look at the CWG timeline and I don’t know if it would be possible for (Alice) or (Brenda)
to put the timeline in the screen so we can have a look at it. Thank you very much, how effective.

You can see the timeline. Both timelines of the CWG and the CCWG. Of course we have where pretty much where the line, where the drawn line is at this time and you can see the signals here are the green dots are face-to-face meetings. The blue dots are high intensity meetings, which are not face-to-face but rather remote sessions and the red dots are ICANN meetings.

So we are heading high intensity meetings in the middle of March and we’ll be having our face-to-face meeting in (Istanbul) at late March and we will open the aim of this meeting would be to have at least a first draft proposal for public comment.

I know this is optimistic and hold your horses before telling me that we need to build a timeline but this is, these are the things as we see them as they stand at the moment.

The goal for this meeting would be to have a first proposal for public comment and then we would of course gather those comments and begin a series of iterations between the law firm and the legal sub team and the wider group involved in shaping the proposal in order to make it legally viable and of course feasible to be implemented when the time comes.

And then our ultimate goal for work stream one would be to submit our proposal to the board before the Buenos Aires meeting, which is going to happen at mid-June, the third week of June and so the ICANN board can take a look at it and hopefully approve it by Buenos Aires.
So this is the timeline as it stands and yes (Robin) is right our priority is to get things right rather than fast but we would also like to have a good proposal, the best proposal possible in the shortest time possible.

Holly Gregory: So Leon I just want to be frank. This is an aggressive timeframe from where you are to where you want to get in terms of sort of the legal advice. We would be committed to doing our absolutely best.

I think (Robin’s) point is very well taken that there is a, the priority is to get it right while getting it done not just to get it done. Although I do understand that the extent that it could be close to this timeframe it would be very good.

One of the things that makes it difficult for me to commit to you that we could meet this timeframe is I don’t have a window yet into how much work you’ve done.

I need to understand, we have some work to do, which we would do very quickly with you to make sure we understand how you’ve identified the three issues that you’ve identified in the scoping document.

What else you’ve considered that you’ve taken off the table because you didn’t think it was viable and why because we view this not only as simply reacting to what you are thinking of at this time but also to give your insights about potential other pathways that you may not have considered.

Now I’m not suggesting that that would take you off track and it may be that you thought of some of those other pathways but we’d want to make sure that we were giving you a full view of the potential things that you could be considering.
So we would need to do that diligence soon, spend a couple hours on the phone with the smaller legal group of the CCWG and make sure we understood how these came to be the issues that you’ve decided are the most important.

So again, you know, we love to say yes to requests from clients for timelines but I just want to tell you that my reaction is it’s squeezed, it’s possible but a lot of it is contingent on things that aren’t in the lawyer’s control.

Leon Sanchez: Yes we’re mindful of that of course. We are conscious that this is not something that just - these are no, yes and no questions. So yes we need to work together on this and maybe time will be very (unintelligible) and maybe we will have to adjust the timeline for the sake of getting it right rather than getting it staffed.

And well that’s something we will need to take a look at when time comes. And I’d like to ask (Alice) or (Brenda) if you could go back through the document at work stream as we show it on the screen. Thank you very much.

So going to the general experience of the firm I’d like some, I’d request some help from my American fellows. I see Ed McNicholas’ hand is raised so Ed could you please take the floor?

Ed McNicholas: Yes I just wanted to further to (Holly’s) point it would be helpful for us to understand what sort of presentation the CCWG is contemplating during the face-to-face meetings.

If it’s a, if the need is for discussion of the pros and cons of various proposals, specific proposals that have already been floated such as those that have been identified in the legal scoping document.
That might be something that would be much more doable versus something if it would be a full out legal and a written legal analysis that would be submitted for public comment particularly if you’d want us to suggest that one proposal was more effective or less effective than another or legal in New York and not legal in Delaware or such.

That would be a more, you know, that’s obviously a more robust undertaking. Probably a more helpful one but that’s the kind of thing that could not be accomplished before (Istanbul) particularly given that it’s at the beginning of the week and so there’s even less I mean we’re almost like almost 10 days or not 10 days but 13 days out from then.

And so I guess the question is what sort of thing would you be looking for for (Istanbul)?

Leon Sanchez: Okay thanks Ed. Well I guess first up we would be to decide whether we would (unintelligible) with the law firm or not. And once we decide if go along for the engagement with the law firm then we would be able to of course give further steps forward.

But in my mind supposing that we do engage with your law firm I think that we should begin by answering the questions that are in the legal scoping document that you have in hands now.

And we would also need to make a combined effort as to see how the different answers to the questions may fit into the work that’s being done by working party one and working party two, which relate to community empowerment and review and redress mechanisms.
So in my mind we would need to have a proper look not only to the legal scoping document but also to for example the different mechanisms that have been so far designed by these working parties and see if they are legally feasible and of course how they play along with the answers to the questions of the legal scoping document.

So this would be a first approach I think and as I said before it I think that this would be a very iterative work between the legal sub team and the firm. And I think that would be the expectation for (Istanbul) so far.

Holly Gregory: So this is Holly speaking. I know that time is getting short we had scheduled this call for about an hour. One of my colleagues who is on the phone I wanted to have an opportunity to address the questions that you had about our experience with California not for profits and not profit public benefit corporations and that’s Joshua Hofheimer.

Leon is this a good time to turn to that question?

Leon Sanchez: This is an excellent time Holly. Thank you for bringing it up I was just about to shoot that discussion up. So if you have (unintelligible) general experience please feel free to answer them at this moment. I won’t intervene or interrupt.

So if you have the questions there just feel free to answer them and of course if anyone has any concerns or further questions please feel free to raise your hand and raise those questions. So please go ahead Holly.

Holly Gregory: So, Joshua Hofheimer, I’m going to address then he will address the question about California not for profits in our experience. I do want you to know we have a large not for profit practice at Sidley.
We have the expertise of that whole group behind us to help us should we need it but (Josh) has specific experience in California non-profits and (Josh) it’s yours.

Joshua Hofheimer: Yes thank you Holly and that’s a good point. Hopefully there’s not too much of an echo here it sounds like there was one. Holly raised a good point about the backing of the firm.

I would be the point person because I have specifically (drove) clients that are California not for profits and we work for them on general matters but also have been advising them on governance issues and bylaws issues and actually directors issues recently some issues have arisen with regard to replacing directors of changing the bylaws, change the voting structure of a non-profit.

So these are issues that we’ve had to do very recent research on that we would hopefully be able to bring to bear for your benefit as well. And we do as Holly said we have the larger (true) firm practice behind us but I - it enables me to draw upon that expertise so that, you know, people are not reinventing the wheel but are actually leveraging the experience of people who have thought about, you know, complex issues in connection with non-profits.

Whether they be, you know, California or Delaware or (unintelligible). And then we also have, which I know has been some discussion in some context the utility of using a trust for some measure of control and looking at trust structures and that’s also an area that we can draw upon, you know, a substantial bench within the firm to get guidance on and to explore the, you know, potential advantages of disadvantages of a trust structure.
Layering into the overall governance or structuring relationship here that would enable you to achieve some of the primary goals into all that’s expressed in the scoping document.

So that’s basically what I wanted to offer up as my (unintelligible) background statement and then I can take any questions.

((Crosstalk))

Leon Sanchez: Thank you very much.

Holly Gregory: Leon if I could add to that. If I could also add to that from my own experience. I’ve worked with some California non-profits on governance issues and I work with non-profits, you know incorporated in a whole variety of states over the years on lots of issues including, you know, large federated organizations and international organizations like Save the Children, like Planned Parenthood Federation.

Many of which have not multi-stakeholder to the degree certainly that we’re talking about in this project but certainly have complex interwoven relationships that need to be considered and where you need to build accountability systems that consider those interests and are transparent and assure that those interests have an opportunity to both be heard and to have some effect in the governance of the organization.

In, you know, and in a broad range in one of the very public projects that I just finished working on is with Penn State in the aftermath of a real crisis that they’ve had in trying to help a wide variety of external communities if you will come together and find consensus including on some corporate governance reforms for that board of directors.
And so it’s a way of saying I think the California not for profit expertise is important then the public benefit expertise is important. There are a lot of commonalities in these issues around how boards function. The law is really not all that different from state to state in the United States. So that experience I think is additive certainly.

Leon Sanchez: Excellent Holly thank you very much, thank you very much (Joshua) for your, for the background provided. I would be, I would like to open the floor for my fellow participants if they want to formulate any questions. I see (David McAuley) has his hand raised, please (David) go ahead.

David McAuley: Thank you Leon and thanks to Holly and your team. Here’s a question. Prior to engagement we will have to sort out for ourselves whether it’s advisable for the CCWG to get advice from the same firm that the CWG might be getting advice from.

So my question to you Holly is, do you know of anything or do you have, is there anything that you can think of that would sort of bar the firm from representing both groups?

Holly Gregory: So we’ve been thinking about that here and, you know, based on what we know I’m hard pressed to see that there’s any sort of conflicting interest as between the two groups.

As I understand it both groups are working sort of to a common purpose and a common end and have very similar interests in defining that common purpose, common end with success.
And I think that there is a fair degree of crossover on some of the issues. And so I think, you know, I understand why there is the thought that it would be efficient.

So I see no conflicts and those are the kinds of things that would pose barriers. In terms of our bench strength to take on the representation of both entities at the same time I believe we have it.

I believe we and we have it in this team, we can broaden out as needed. We have a deep bench certainly on the not for profit side, on the corporate side, on the governance side.

And, you know, we would be committed to putting whatever firm resources are necessary behind this.

David McAuley: Okay thanks I see that Greg has a question, his hand raised and (Ed Morris) has a question in the chat. So I will say thank you.

Leon Sanchez: Thank you very much (David). I see Greg’s hand is up but (Ed’s) question was posted first so I’d like to just read out (Ed’s) question and then go to Greg.

(Ed’s) question is for proposals concerned with structuring ICANN into a membership or delegate based organization. Do you have any experience in this type of restructuring?

Holly Gregory: Well I’m going to open it to my team and I can also come back. That’s a question that I’d love to be able to go back to by non-profit team with. I have worked with membership organizations and I have worked with helping to restructure governance in membership organizations.
The Planned Parenthood Federation is a membership organization where with a very complex structure that we helped to restructure. But I have not honestly taken a non-member organization and made it into a member organization.

I don’t think however that, you know, once that decision is made I think that the path becomes pretty clear. I don’t know if (Josh) is still on the phone and if he’s had (unintelligible).

But I would like to be able to go back to my non-profit folks and we can come up with examples where we’ve done this or something similar. I’m comfortable however with the advising around it and I don’t think that it would pose any difficulties for us as a firm to take that on.

In fact it’s one of the things that I was thinking about as we looked at from what little I know about ICANN.

Joshua Hoffheimer: This is Josh.

Holly Gregory: Because there’s some elegance in that mechanism.

Joshua Hoffheimer: This is Josh, right. I got pulled out I’m sorry I got pulled out by the Operator because I was trying to come off. My apologies and again I am not in the quietest place.

But yes we have had some experience, you know, with specifically with again as Holly said interestingly enough converting cooperative organizations into more traditional for profit entities.
I have to think about whether we’ve had experience with ongoing governance of membership organizations and I recognize that’s one of the possibilities that we could deploy here.

And I think I have been giving some thought to that as well off line and would certainly want to have further discussion on sort of the utility of such an organization where the individuals, you know, there may be some conflicting priorities that arise out of a member driven state organization.

We just have to think about the governance of that and whether it would be appropriate as opposed to having something that is dedicated to the public. But, you know, much more like a public benefit non-profit in California as opposed to a mutual benefit non-profit.

So, you know, I welcome the question but I think it’s something I think we would want to dig into a little bit more. I have been sitting on the board of a organization until recently that was a stakeholder driven board and I will say that it did create some interesting discussions at times around potentially conflicting priorities for the stakeholders.

Leon Sanchez: Thanks Josh. Now I’ll hand it to Greg Shatan, Greg please take the floor.

Greg Shatan: Thanks, it’s more in the nature of some observations than questions so hopefully you’ll indulge me. First, in terms of the question of working with both the CWG and the CCWG I see some very significant advantages and a couple of minor disadvantages.

And I think the disadvantages are ones that can be controlled for, and the advantages are ones that can't be duplicated with having two separate firms.
The advantage is, first off, the learning curve. We don't have to get two separate law firms to be, you know, completely understanding -- not just ICANN and Internet governance but the times in which we find ourselves in ICANN with the INTA transition - sorry, the NTIA IANA transition -- and the accountability examination, much less the kind of larger history of ICANN reviewing its - and the ICANN community reviewing its accountability mechanisms over time, which this is not the first time it actually has taken place in this general area, although it's the first time it has taken place in this particular kind of context.

So the more we can take one firm up the learning curve rather than two, the better off we are. I think the second advantage is kind of a natural coordination and convergence of the work going on between the two groups. Otherwise, we would need to coordinate law firms as well as coordinating our two working groups, so that would add a layer of complexity.

I would comment that while the groups are working in many ways towards some similar goals and toward at least a similar interim -- and the accountability group actually has a longer lifespan and bigger remit than the IANA transition group -- part of the IANA transition groups workload, or parents the accountability groups workload, will dovetail with the work of the IANA group. But other parts will go on further and deal with aspects of the accountability of ICANN that don't need to be kind of completed or set in place before the transition takes place, basically of a much longer, bigger field of play for the accountability group.

I think the disadvantages -- which I think Holly already addressed -- really are conflicting timelines and timeframes and kind of trying to meet two masters that are mostly have some overlapping people in groups but also have a lot of conflicting or overlapping responsibilities. I've tried to - I'm serving both
groups, though the CWG with a much greater capacity than the CCWG. I can say that keeping up with both is not an easy task.

Lastly, I would. Sorry?

Leon Sanchez: Nothing. I'm sorry for interrupting.

Greg Shatan: Yes. On a completely separate topic, I would say that I'm also on the board of a couple of nonprofits and while I would not hold myself as a nonprofit attorney, I have experience in working with nonprofits including in the area of nonprofit governance, but not something I hold myself out as doing other than for practical purposes.

The tendency, interestingly enough, is to take membership organizations and turn them into non-membership organizations. That is the trend that has been occurring certainly in New York State where the nonprofit law was radically overhauled in the last a couple of years and where many organizations were forced to be membership organizations now no longer are and have become - are becoming non-membership organizations including one of the organizations that I am on the board is very seriously looking into it because there are a lot of disadvantages to being a membership organization; not to say that there are not advantages.

We would, to some extent, be swimming upstream in making that change. Of course, we would be doing it for much different reasons. It is kind of worth noting that it's against the trend.

Thanks.

Leon Sanchez: Thank you very much, (Greg).
There is a question by (Robin) in the chat regarding the workload. How would that workload be balanced in the firm within partners and associates doing the work in this manner?

Holly Gregory:  This is Holly Gregory. Again, this is an unusual project. We think that it would take - it's going to take a little bit of startup time for us to really determine the right balance. We do have some great associates that we have on this team, and our commitment is to be as efficient and effective as possible; and to the extent we can drive work to the associates, we will.

As you know, many of the issue that you're dealing with here are not simple and straightforward; therefore, I do expect that this is a project that will require significant partner time.

Again, our commitment to efficiency: You will not have seven partners billing on every call. We have a process whereby the people that have to be on the call are on the call. Others are invited to be on the call if they'd like to but on a non-billing basis so that they can be informed if that's how they best choose to get informed rather than reading the notes and minutes.

I sense that what is driving the concern is the concern for efficiency in the expense side of this. We always try to drive the project to the least expensive but still competent level.

Leon Sanchez:  Thank you very much, Holly.

Well, now there is some space for a question of ICANN specific needs. We would like to have a better understanding on your knowledge about the ICANN. If you have a basic knowledge on ICANN, how would you gain this
knowledge? How would you get a better understanding of ICANN? We'd like to find out your overall knowledge on ICANN and how the ICANN ecosystem works -- the different stakeholders, the different groups, et cetera.

Holly Gregory: This is Holly. I'm going to turn this question to some of my colleagues. I'm going to say at the outset that I am not an expert on ICANN. I am a quick study and a quick learner, and as someone who works on governance matters all the time, I have to learn new systems. I am very pleased and proud to say that we have on this project team people with real expertise in this area.

I want to turn first to Ed McNicholas and then to Rick Boucher.

Ed McNicholas: Yes. This is Ed McNicholas. As I mentioned at the beginning of the call, I'm one of the co-leaders of the Sidley's Privacy Data Security Information Law group. We work on Internet law issues. We've been doing that for quite some time. Obviously, ICANN has featured prominently since the transition to its maintenance of the IANA function through Verisign.

We have dealt with numerous the main name disputes and their acting but also a country level dispute. We've had very complicated jurisdictional issues that have arisen in cases in which we've had to look at the authority of the Eastern District of Virginia U.S. Courts over the root zone servers on an earned (end). So we have really plumbed the depths there.

Our practice involves dealing with some of the world's largest technology companies. We got into this area because of our presentation of a major telecommunications carrier, longstanding reputation of a major telecom carrier that has a lot of Internet backbone assets; and that has led to work with various cloud providers, software companies that all wind up interacting in some significant way with ICANN. So those issues come up frequently in practice and we've dealt with them in a variety of context over man years.
Before turning it over to Rick Boucher, I'll speak for the other person who is
not on the call but who has tremendous experience in government on this as
well as Cam Kerry. Cam Kerry was the general counsel Department of
Commerce and then the Acting Secretary Department of Commerce during
the Obama administration. He has just joined us. He is a senior counsel with
us. He also has a posting at Brookings and postings up at MIT as well.

Obviously, as a general counsel commerce, he dealt and has very clear
knowledge of the NTIA's perspective on the contract with ICANN and the
importance of the IANA functions and the political state of play with respect
to that as well as the legal side of the operations there. So we have a very
strong, very realistic, well-founded knowledge of ICANN and the structure of
the Internet.

We have some fantastic associates, one of which -- (Vidic Milhan) just to one
give you one snippet one of our associates here -- was lecturing at Harvard on
cybersecurity issues and as part of our practice works for a major software
company in their DC policy shop and then joined us. So we have that kind of
depth and breadth in our practice.

I think the person with the longest tenure of experience and knowledge in
ICANN and our group has got to be Rick Boucher. So I will turn over to Rick.

Rick Boucher: Well, thanks very much, Ed. Let me ask if those on the call can hear me.

Group: Yes, we can, loud and clear.

Rick Boucher: Okay, because I was concerned that the operator might have placed me on
mute.
Well, it's a privilege to have the opportunity to speak with you this afternoon. I'll just talk a little bit about the knowledge that I have of ICANN and its functions and the multi-stakeholder process going back literally from the inception of ICANN and times prior to that when the functions were performed entirely within the U.S. Department of Commerce.

I chaired in the U.S. House of Representatives. The subcommittee that has oversight and jurisdiction for the NTIA, our National Telecommunications and Information Administration, with which I'm sure those on the call are very familiar.

In the 2009 aware of the IANA contract by NTIA to ICANN, my subcommittee organized and conducted a whole series of hearings that featured Larry Strickling, the administrator of NTIA. During the course of those hearings, he kept us apprised on an ongoing basis about the progress of discussions with ICANN and the terms and conditions that would be part of that IANA contract award.

At the time that many in the developing world were urging that the ITU undertake a much stronger role than Internet governance along with my republican colleague (Bob Goodlett) -- I'm a democrat; he's a republican -- the two of us have drafted and passed through the U.S. House of Representatives a resolution which received rare unanimous support because this has always been a very bipartisan matter for us. And that resolution urged that the Internet remain under the governance of the multi-stakeholder process and that the ITU not be significantly involved.

I'm very close to the former ambassador that we had to the ITU -- David Gross -- and worked with him extensively in the drafting and the passage of
the resolution to which I've just referred and stayed in touch with him as he made progress in the discussions at the ITU.

So I have a long acquaintance with ICANN. I understand its functions very well. I've had discussions periodically with Rod Beckstrom when he was the director of ICANN. More recently I served on a panel with Steve Crocker that was about a year-and-a-half ago where we had a discussion of ICANN's functions and addressed a range of specific issue. I'm quite acquainted with it.

I certainly understand the processes within the congress, the personalities and the kinds of forces that are at play that will be brought to bear when the transition plan is performed from ICANN to NTIA and can certainly help in advising to make sure that the various mileposts that have been said by influential numbers of congress -- such as Senator John Thune who chairs the Senate Commerce Committee -- are met. And that will optimize our opportunity to have congress be accepting of this plan and not take any actions that would block funding to carry out the transition.

I'm pleased to be part of the team. If anyone has questions about that, I'm happy to answer.

Leon Sanchez: Thank you very much, Rick. I see Cameron Kerry has his hand raised for a while. So Cameron, could you please take the floor?

Cam Kerry: Hi. Can you hear me all right?

Group: Yes, we can hear you.

Cam Kerry: I had some microphone problems on an earlier call, so I'm glad that is working.
Just to add a little bit to what Ed McNicholas said: Before joining the Obama administration, my trajectory was like many of the lawyers at Sidley like Ed. I worked in communications law. I sort of migrated from broadcasting and cable to telecommunications and to representation of ISPs.

As general counsel at the Commerce Department, I established the Internet Policy Task Force which combined NTIA with other agencies that deal with aspects of a digital economy; and certainly multi-stakeholder governance, multi-stakeholder policymaking was very much at the heart of the work that we did there, both in terms of - it was the Internet governance of issues regarding the flow of information around the world as well as on privacy and security.

As general counsel, I led the legal team, provided services to NTIA, was involved in a number of issues from the renewal of the IANA functions, contracts to the issues surrounding the expansion of top-leveled main names and the power issues of Internet governance. Those are issues that continue to be engaged in. Much of the work that I'm doing at Sidley Austin involves international privacy and security issues and issues of trade flows. That has certainly been involved in my work at Brookings as well.

When the transition plan was announced, I wrote a paper for Brookings defending the importance of the transition. I'm acutely aware from a host of policy issues of the importance of a credible, effective transition here that will get buy-in from the internal stakeholders represented here, from the stakeholders around the world including the U.S. Government but stakeholders elsewhere around the world.
I'm very pleased to have the opportunity to work on these issues through Sidley Austin.

Leon Sanchez: Thank you very much for this.

I would like to open the floor to my colleagues in the legal section to see if anyone else has any other questions that could be raised to the firm at this point. Okay. I don't see anyone raising their hands or typing. Well, (Robin) is typing, chat. Okay. From the firm side, I don't know if you have any questions for us. Do you need any clarification or would you like to raise any questions to the group?

Holly Gregory: I have a question. This is Holly Gregory again. I just would love to understand more of your timeframe for making a decision around this. I want to emphasize we are ready to jump on it and get started and be in assemble and help in any way we can. But the ability to do that effectively, of course, depends on having some time between the decision and that assemble meeting.

Can you give us some insights into where this process stands and what your timeframe is?

Leon Sanchez: Thank you very much, Holly. Yes. We will definitely need to have a debrief call with the legal subteam. This should happen within the next, I'd say, two or three days at the most. When that happens, we would get back to you as to either confirm that we would be engaging with your law firm or that we would be looking at other options.
At this point, I don't have a definitive timeframe for us to tell you that the engagement is going on in X days or dates but I can tell you that we should definitely have more clarify on the timeline by the end of this week.

I see some Samantha is typing in the chat, also.

Samantha Eisner: Leon, this is Samantha. I was just typing that, you know, if there is a decision -- and I'll circulate it in any event -- but I think that maybe the members of the legal subcommittee will be interested to see that engagement letter that the CWG has already entered into. My sense is that if there was a decision to engage Sibley on the CCWG side -- and Holly, please correct me if I'm speaking out of turn -- but given that there is already an engagement that has been vetted through your general counsel office in that language, that we could complete an engagement fairly quickly using very similar language.

Holly Gregory: Yes. I mean we've worked out all those really difficult issues on our side. And so if there was interest in taking the same approach, it would be very simple.

Leon Sanchez: Excellent.

Ed McNicholas: If I could just - I just wanted to raise one thing. This is Ed McNicholas from Sidley. We would need to make sure that there was agreement on both the CCWG and CWG sides with the process. I know CCWG could have their process. And it would be important for us to make sure that there was agreement between both working groups, that they were both comfort with the representation.

Holly Gregory: Right. Well, CCWG would not be hiring us if they weren't. So the operative thing is we would need CWG's consent.
Greg Shatan: This is (Greg). I'll just speak briefly to that. I can't speak for the client committee as a whole or for the CWG, but I would certainly think - I would be highly optimistic given that this is happening with kind of the full consent and transparency to the CWG and a general understanding would go forward. So I would be shocked if somehow the CWG were to say to the CCWG, "Back off and find your own counsel. Sidley's all ours."

Leon Sanchez: Yes, that would be very weird.

Greg Shatan: I do agree that we have to assume nothing, verify everything. One of the things about the bottom up multi-stakeholder process is that it's slow and messy and sometimes a little slower and messier than we want it to be. One of the reasons it is, is because we do try to make sure we have real buy-in from people. When we don't, there are always people who more or less reasonably will tell us to make sure we've done that sort of thing.

Leon Sanchez: Okay. So now I'd like to close the call. Is there any other business or any other concerns or points that anyone would like to raise at this point? I see (Dave McCullough) is typing. Okay. Thank you very much.

I'd like to thank everyone on this call for your time, for listening to us, for attending the call. We will get back to you wholly as soon as we have our debrief call to update you with what we come up to.

Woman: Thank you. We enjoyed the chance to talk with you very much. We would greatly look forward to working on this project with you all.

Leon Sanchez: Thank you very much for your time. Holly, thank you very much to your team as well. Of course, thanks to all the legal subteam and our support staff which has been outstanding.
So this call is now adjourned. Thank you, all.

END