

**ICANN**

**Moderator: Gisella Gruber-White  
March 12, 2015  
7:00 pm CT**

Coordinator: Recording has now started. Please proceed.

Leon Sanchez: Thank you very much. So welcome everyone to the Legal Sub Group Debrief call on March the 13th at Zero UTC.

This call is being recorded. Please state your name before speaking for the record. And if there's anyone on the bridge that is not on the Adobe Connect please state the name at this moment so we can add it to the roll call.

I think that Grace already asked this question but I just want to make sure that we don't have anyone in the bridge that's not present in the Adobe Connect room is that right?

Okay so pretty much I'd like to listen to your thoughts and concerns about the last call we held with Sidley & Austin.

I mean my impression is that is highly qualified law firm. Of course I might be not biased but lacking some views. Since I am not an American attorney I'm not licensed to practice in the US although I am an attorney in Mexico

I'm pretty sure there are very significant differences between our two legal systems.

So I mean from my point of view of I think they are highly qualified to perform and to provide the advice we're looking for. And of course I'd like to open the floor for other comments and other views.

I know that [name] has raised a couple of concerns and suggestions. I - in some way agree with the concerns he has raised since we are very constrained with regards to our timeline.

I think the best for us should be to make any decision as fast as we can but also keeping in mind that business decision needs to be the best decision for the good of the group.

So I see David McAuley's hand is raised so please David take the floor.

David McAuley: Thanks Leon. I just want to respond to your call for feedback on the call. I tend to agree with you I came away from the call with Sidley Austin, Holly Gregory's team with very positive feelings.

[Sensitive information regarding deliberations]

And I was quite happy to hear about the directive letter between ICANN and the law firm indicating the nominal client but that is an exclusivity as I heard it of advice and duty of giving advice solely to the CCWG in the interest of the CCWG and so I appreciate that.

So the long and the short of it is I came away highly favorable to Sidley Austin. I'd be very happy with them but I do think it would be a good idea to talk to the other firm that [name] mentioned and that's it.

Leon Sanchez: Thank you very much David for your feedback. Robin could you please take the floor? I see your hand is raised.

Robin Gross: Can you hear me okay?

Leon Sanchez: We hear you okay now.

Robin Gross: Great, thanks. So this is Robin. And yes I guess I pretty much want to echo a lot of what David just said where I was really impressed with the call the other day with the folks at Sidley.

And I felt like they've got some real core strengths on some really important overarching governance issues that I was impressed with.

I was impressed the attorneys themselves that we spoke with and I - on the issues of concern to me about duties of loyalty and that sort of thing I felt like they gave really good answers. And it relieved a lot of my concerns.

However having said that I don't think we want to be so - quite so presumptuous, you know, just to, you know, go with the first firm that we speak with.

So I do think it might be worthwhile just at least just to speak with this other firm and for no other reason just to get a sense of the differing strengths and weaknesses and how that could play out in our analysis. So that's pretty much where I stand on it.

Leon Sanchez: Thank you very much Robin. And I do share both David's and your views also. I was pretty impressed as I said with the answers they gave us to each question.

And one thing that was very pleasant from my point of view was that I didn't feel that they had the need to oversell the firm.

You know, this gut feeling you have when you are trying to engage with a law firm sometimes they tend to oversell the product. I don't feel that this was the case with Sidley Austin.

And I felt like their answers were very candid and very straightforward. So that's one other thing that in some way made me feel comfortable with them.

And yes I also think that it might be a good idea to have this call with this other firm which I don't have. I don't remember the name. [Firm]

And I mean it's just something I think we need to do, have this conversation with his other firm so we can just make sure that all the right things we saw in Sidley are exactly what we're looking for.

So I see Greg's hand is now up and I don't - I just want to double check with Robin is that an old hand or is that a new hand?

Robin Gross: No I'm sorry. I need to put that down.

Leon Sanchez: Oh, thanks. So Greg now it's your turn. Please take the floor.

Greg Shatan: Thank you Leon. It's Greg Shatan. I have a lot to add to what's been said because I agree with what's been said. I do just want to add that having gone through the exercise once and having talked to three firms plus having interviewed several more that conflicted out for which I have, you know, good long general talks with the lawyers that it's a very - it's educational to talk to more than one firm and get a sense of different strengths and weaknesses and approaches and give you ideas about dealing with whatever firm you end up retaining.

[Sensitive information on deliberation]

And there have been times when I've been in the opposite chair pitching for business and after things were done I think to myself oh I had a better answer than that and now what am I going to do? I'm really not as happy as I would like to be about something I said.

So, you know, these things are by definition just little slices and sometimes they're not. You know, they're indicative but they're not as positive. Thanks.

Leon Sanchez: Thank you very much for that Greg. I see (Sam) is in the queue and David McAuley so (Sam) please could you take the floor.

Samantha Eisner: Can I defer till after David?

Leon Sanchez: I'm sorry. What was that?

Samantha Eisner: Can I - I'll just defer my comments till after David.

Leon Sanchez: Oh yes sure. Sure, yes so David could you please take the floor? You might be on mute David.

Samantha Eisner: He just wrote...

Leon Sanchez: He just got cut off.

Samantha Eisner: ...the room that he's cut off.

Leon Sanchez: Okay. So I would be interested in listening to (Ed) if you would like to react to what's been said (Ed). And maybe - okay so...

Edward Morris: Sure, surely.

((Crosstalk))

Edward Morris: I agree with everything that's being said.

[Sensitive information on deliberation]

Leon Sanchez: Definitely. Definitely I agree with you. This is a conversation we should have and I mean we have nothing to lose for having it.

So I see I think that David is back on the line. David are you with us again?

David McAuley: I believe so. Can you hear me Leon?

Leon Sanchez: Excellent yes, please take the floor.

David McAuley: Thank you. I just wanted to say I'm very glad that (Edward) got in there because I was going to defer to him if his hand went up.

[Sensitive information on deliberation]

[Sensitive information on deliberation]

I don't know if that's feasible, I don't know what ICANN would have to say about that but in any event I just thought I'd make those points. Thank you.

Leon Sanchez: Thank you David. (Sam) would you like to share some comments now?

Samantha Eisner: Yes. And I'm from the ICANN perspective I'm not going to weigh in unless you ask me to on the evaluation of the firms.

And I wanted to raise one housekeeping point which is we've realized that we're in the recorded call where we're evaluating potential candidates.

I don't know if we'd want this to be a public recording based on what we're discussing. There might be parts of the call that are appropriate for public recording and transcript things.

So I would recommend though open to the group's thoughts on having maybe a portion of the redacted transcript and possibly stopping the recording while we're still discussing firms.

And then this - the reason I raised my hand is I wanted to just emphasize that from the ICANN standpoint we are happy to support you talking to as many firms as you feel that you need to talk to in order to get to the right engagement.

We value the import of the work that you're doing. And so we will support you in helping to coordinate whatever calls and talking to whatever firms.

You know, if you ever do want to get our opinion on what we're hearing from the various firms ask. You know, we again I want this to be something that you can really hold out as your decision. So please let us know what we can do to help facilitate that.

Towards that and because time was such of the essence I wanted to make sure before the close of the day today that I could have a sense from [firm] whether or not they were still interested in the engagement which is a really important thing for us to know because why would we keep talking about that if they're not interested?

And I spoke with [name] shortly today and he confirmed that they are still interested in it. They [sensitive information on deliberation] are generally available on Monday.

And given the time pressure that we're under we could go ahead if this group is favorable and find a time.

[Sensitive information on deliberation]

I told them that if we went forward with the call we'd did him the scoping document not so that he'd be expected to provide legal advice on the call but so that he'd understand the scope of issues that are under consideration with the CCWG.

And that we'd be asking more general questions surrounding the firms capabilities and things that the CCWG might be interested in knowing to evaluate the firm's fit with the CCWG's needs.



He did just in as a matter of disclosure as we were talking he started going on about some ideas that he had as to where ICANN could go in terms of making changes to a not for profit structure or moving to a different type of structure that's accepted in the not for profit world.

And I explained to him that I was not in a position to engage in that conversation. That was not the purpose of my call.

This is to the extent that it happens it's going to be a transparent engagement and I was not in a place to respond to or react to any of the ideas that he was putting forward and that those were better suited for conversation with the CCWG.

So if there is a point where we're going to scheduling that we need to get on the phone with him I would reach out to this group to see if there was a member who might be able to get on the phone with me just so we might - just so it's clear what's going on in the conversations.

So I just wanted to put all that out there and I'm happy to help coordinate particularly through email call for next Monday.

Leon Sanchez: Thank you very much for that (Sam). We appreciate the ICANN is willing to support us in speaking to the different law firms and choose the best that we think that can deliver the advice we're looking for.

And with regards to keeping this session which is being recorded in the transcript but of course confidential at least in part and where the law firm names are being mentioned I would like to call for the participants at this moment to agree or disagree of course on whether we should keep these

portions at least or the more general conversation confidential until the time is appropriate to of course make it public paragraph that.

So could you please indicate with a green tick if you agree on keeping this conversation confidential? Okay F Robin.

I don't see green ticks. How about portion?

Samantha Eisner: Yes. It would be in portions Robin, not in whole. We would likely produce a redacted portion of the transcript and then we could, if we determined it was appropriate to release a full transcript we would have that to produce at a later time. It wouldn't be a full black out.

Leon Sanchez: Excellent. So the agreement would be on preserving portions of the call as confidential. Does everyone agree on that?

Okay Robin, okay (Evan) okay, I think we have an agreement here.

So portions...

Grace Abuhamad: Leon?

Leon Sanchez: ...of this - yes?

Grace Abuhamad: Sorry. This is Grace. I just want to note that we can also do that for the recording. We can match what's, you know, we can match silences into the recording where there are silences in the transcript based on what's being rejected.

So I'll just note that it'll be a joint - it will be both the recording and the transcript but they will have original versions preserved in case we want to release those later.

Leon Sanchez: Excellent, that's good to know. Thank you very much Grace. So we'll keep that this way.

And I remember we had a queue formed. And I have if I - if I'm not mistaken I have David McAuley then Phil Corwin and then Greg Shatan. So David could you please take the floor?

David McAuley: Thank you Leon. I actually took my hand down and (Sam) covered the thing I was just going to note.

Leon Sanchez: Excellent. So now would be Phil Corwin's turn. Phil, could you please take the floor?

((Crosstalk))

Phil Corwin: I'm sorry, can you hear me now?

Leon Sanchez: Yes. We can hear you. Thanks.

Phil Corwin: Okay. Sorry I was on mute. Philip Corwin for the record. I am extremely impressed by Sidley & Austin as a firm and by the team they presented us to us and the breadth of their expertise.

Having said that I don't see any harm in having one more phone call, we're on so many these days anyway and to make a better informed decision.

[Sensitive information on deliberation]

Thank you very much for that Phil. Greg do you have your hand raised?  
Please take the floor.

Greg Shatan: Okay it's Greg Shatan. I think we should make sure when we talked to [firm] to talk to them about the note. You know, there's a topic in the note that I circulated and...

((Crosstalk))

Greg Shatan: David remarked on which is their ability as a team with other firms which compare their breadth of expertise with [firm] depth of expertise.

And, you know, get a sense of how they do that, you know, how that has tended to work in the past just so we have a feeling for that as a possibility.

[Sensitive information on deliberation]

I think it would be a very regardless of the outcome I think it will be (unintelligible). So thanks.

Leon Sanchez: Thank you very much Greg. And in fact this would be something I would be asking of course for us to review with regards to the agenda of - or the scoping document that we use for a call with Sidley. I would like to have it reviewed by all of us and of course come to a version that we could use with [firm].

So of course these kinds of questions should be added to the roster. And we should definitely ask the question to [firm].

And well so just making a recap of what we've discussed so far. We're pretty much in the same line as with regards to what we think of Sidley Austin.

And we're also willing to have this call with [firm]. And I think that for time constraints maybe Monday would be the perfect time to have this call as (Samantha) just explained.

And with this I would like an action item here for maybe (Brenda) on setting up a Doodle poll for us to answer as soon as possible maybe today with the span of ours suggested by (Sam).

So we can all fill this poll in and of course schedule the call with [firm]. I don't know if anyone has anything else? I see Greg Shatan has raised his hand again. Greg please?

Greg Shatan: Thanks. One other point, I just wanted to thank Sam both for her efforts and also for the extremely judicious and perceptive way that she is handling ICANN's role.

There are those who would like to make all kinds of interesting statements about ICANN legal and inside and outside.

And, you know, of course there's always a grain of truth in every oyster but there's also a lot of other stuff going on. And I think that I just wanted to thanks (Sam) not only for her efforts but for the tenor of her efforts which I think is striking the right tone.

While I'm not one who worries over much of it, I'm sort of, you know, overarching it so I think there are clearly themes being taken to be non-influential which I think are, you know, important.

And indeed one reason I wouldn't want this recording to be buried forever is just that I think to demonstrate to people that, you know, whatever people might think could happen but actually is happening is, you know, I think, you know, a very appropriate exercise of (assistance). Thanks.

Leon Sanchez: Thank you very much Greg. Yes definitely our thanks go all of supporting staff. They've been very helpful in this and they will continue to be very helpful on our road to our goal.

And one other point that I would like to raise is as the last point is that it would be very useful if we could have an update to the larger group on our call on Tuesday.

So if you are okay maybe we could hold the call with [firm] and then maybe some a couple of hours later or immediately after the call with them have our debrief call so we can see where we're standing and if possible make the decision on whether we would be engaging with one law firm or another.

This might seem a little bit rushed. If that is the case please of course I'm always open and I'd like to listen to your thoughts.

Okay I see David agrees. The rest of the team does it sound reasonable what I'm proposing?

Excellent. So I think we have agreement from many members of the team.

So that would be another action item from for (Brenda) is set up a Doodle poll for a debrief call, may be a couple of hours or an hour after our call [firm] so we can have our debrief call and hopefully have a major update for our larger group on our Tuesday call.

Okay Greg is pointing out that the calls he participated were 90 minutes and that 60 felt a little rushed. I agree that 60 felt a little rushed so maybe having a slot for 90 minutes would be a good idea.

I see Grace's hand is up. Grace please?

Grace Abuhamad: Hi Leon. I'd like to suggest maybe that (Brenda) can send one Doodle poll out since it would be for the same time on Monday.

So I mean if she sends one doodle poll and then find blocks of availability for one and a half, you know, 90 minutes and then and other block for a debrief call that should be sufficient right? There is no need for two Doodle polls?

Leon Sanchez: Okay. However if...

Grace Abuhamad: Does that make sense?

Leon Sanchez: ...easier for you yes, that...

Grace Abuhamad: Okay.

Leon Sanchez: ...well, at least for me makes absolute sense. It's just that I'm very (administer dumb) so...

Grace Abuhamad: No, no, no, no I just was - I was just wondering if it made sense, okay it seems to make sense, yes.

Leon Sanchez: Yes, but, it does make sense yes.

Grace Abuhamad: Okay great.

Leon Sanchez: Okay. Well, so does anyone have any other business that they would like to raise at this point? I see (Sam) and David typing.

Okay so (Sam) suggests blocking two hours and have a 90 minutes for ANC and the rest for our debrief.

Okay David no other business and seeing no other hands raised I think we can adjourn this call.

So thank you very much everyone for your time. Thank you for attending the call.

Samantha Eisner: Leon?

Leon Sanchez: Yes?

Samantha Eisner: If I find that I need to get back on the phone with [firm] along with - towards just the statement I made earlier - and Robin forgive me but I'm going to volunteer you just out of time zone proximity.

I would maybe suggest I reach out to Robin to see if she could jump on the phone with me unless there was someone else from the group that you thought would be appropriate?



Leon Sanchez: Yes. I mean if Robin agrees with that I am happy with that.

Robin Gross: Sure. This is Robin. I'm happy to do that. Thank you very much.

Samantha Eisner: Great thank you so much.

Leon Sanchez: Excellent. So we have a plan. So thank you very much everyone for your time. Thank you for this very fruitful discussion and I'll talk to you soon. This call is now adjourned.

END