ICANN

Moderator: Gisella Gruber-White
March 11, 2015
8:00 am CT

Coordinator: Recordings have started.

Holly Gregory: Good morning.

Greg Shatan: Good morning. Hello. This is Greg Shatan.

Holly Gregory: Good morning Greg.

Sharon Flanagan: Hey Greg, you've - it sounds like you've got Holly. You've also got Sharon
                  Flanagan.

Greg Shatan: Hi.

Holly Gregory: Hi Sharon.

Josh Hofheimer: Josh Hofheimer's on too.

Greg Shatan: Is there something wrong with the Adobe Connect audio? I see Jonathan and
                  Maarten both agree on that. Oh it's now turned on. Okay. I tend to dial in
                  personally because I like to be able to stand up and walk away from the
                  computer microphone.

Jonathan Robinson: Hi it's Jonathan. I'm on the audio now.

Greg Shatan: Great.

Holly Gregory: And apologies but I'm not on Adobe and have called in instead. I'm in a car. I have physical therapy for a shoulder surgery every Wednesday morning early so I'm in transit.

Greg Shatan: Well I appreciate you letting us share your morning commute from - to or from physical therapy.

Holly Gregory: Are we expecting other people or are we ready?

Greg Shatan: I think we're ready. I believe they're still traveling.

Jonathan Robinson: Yes. We've just got to let Maarten come in because he wasn't able to get in previously on the - oh he's in now so Maarten's joined us. Greg, Holly, I'm conscious we haven't set out an agenda.

We've sort of - I know that this was described as an initial diligence call so I'm a little - and we wanted to get something going sooner rather than later. I'm a little in the dark as to the structure or how we organize this.

But maybe it's - so it's a question of really how we're going to organize the call. I'm not sure if either of you have had any thoughts on that but let's...

Greg Shatan: I'll expect one to conduct the diligence task so...

Holly Gregory: If I could make a proposal your scooping document lays out your thinking on some proposals, and we thought that maybe that would provide a guide for us to ask some questions about how you change these proposals.

I'm going to ask that either (Ed) or Josh or Sharon could take the lead because you may get a lot of background noise and I'd like to pretty much put this on mute and listen in.

But that was our thought that we ask the questions on the document and it's maybe driven by that document, and if that's the okay agenda I suggest we move forward.

Jonathan Robinson: Yes that works. That - so we really need to probably give you the genesis of that document and that thinking and then take a Q&A from you on the back of that I suppose.

Holly Gregory: I think we - certainly it would be helpful to understand the genesis of the - not so much of the document itself but the proposals within the document and the questions in the document.

And you can lead off or we can jump right in with questions but why don't you take the lead Jonathan?

Jonathan Robinson: Greg would you like to give a stab at that or would you like me to? I mean, it's really - I think if we go back to just pre-Frankfurt, the proposal on the Contract Co., the response from the group to that and then ultimately moving forward to an attempt to provide some form of integrated solution. You may be more...

Greg Shatan: I think that's right.

Jonathan Robinson: ...familiar with the detail. Would you like to sketch that out quickly?

Greg Shatan: Sure. Absolutely. I think the place to start really is as we looked at what our overall assignment was - in essence was to analyze and to replace except where we thought otherwise the current oversight and stewardship of the NTIA, and to generally ensure that the IANA functions were going to be, you know, going forward would be operated within icore dot operational excellence.

                      And I think that we circled the question a number of different ways, but ultimately we looked at what we'd call kind of a functional analysis of the overall role of the NTIA and what were each of the kind of tasks or roles that it played with regard to its relationship to the IANA functions operations within ICANN and the workflow and overall as I said the role.

                      So we then tried to think about how to replace those roles, and really what developed in Frankfurt in our face-to-face meeting there was the first proposal, the one that we call contract - the Contract Co. or external - first external proposal.

                      And I think the idea there was that, you know, each of the aspects or each of the groups that - or entities that were created in that process matched up to or performed one or more of the NTIA functions.

Sharon Flanagan: So Greg can you talk about - this is Sharon. So you - it looks like on the - from the - on the external solution there's two alternatives to that. There's a - the Contract Co. or I might - something to call it - New Co. and then there's a trust model.

Greg Shatan: Yes.

Sharon Flanagan: So how did you arrive at those as the - as your approaches?

Greg Shatan: First, it should be stated that those were arrived at very different times in the process. When we came out of Frankfurt we had only the New Co. solution on the external side and really a - only conceptual internal solution.

Neither of the proposals that are there as the internal solution were per se sketched out in Frankfurt. We actually left Frankfurt really with a - what felt like a fairly strong affinity for the New Co. solution but with a reasonably substantial group of participants who disfavored the external solution and who were independently seeking to develop an internal solution.

So that's kind of where we were and if you were to go and look at the - I guess we should put this on our list - the draft report that was circulated to the entire community with all the stakeholder groups and anybody else who wanted to comment on the draft report.

The draft report really set out only the New Co. solution. It - and it kind of - it stated that there was a - an internal solution was also being discussed and looked for some general comments on how an internal solution might work and what would be better about that than an external solution. The external...

Josh Hofheimer: Can you - I'm sorry. Yes Greg on that can you explain sort of what that constituency was that - who that was comprised of that was objecting to the external New Co. solution and was positing an internal or a trust solution?

Greg Shatan: Sure. I would say that the internalists at the time of Frankfurt largely consisted of a group out of the ALAC, the At-Large Advisory Committee, which is set

up to represent the interests of the end user in ICANN, and there were others who also were uncomfortable with an external solution.

Notably it became clear that ICANN, at least, you know, some members of the ICANN Board and others were also opposed to an external solution.

Josh Hofheimer: And what was their - what was the reasons they gave you?

Greg Shatan: Well it has to go back to all the public comments. We have copious documentation. I think main reasons were that the external solution was too complex.

It created too many structures that themselves were ill defined that could be prone to capture, that they didn't trust the division of powers among these different entities, that this wouldn't be acceptable to the U.S. government, that it wouldn't be acceptable to ICANN and that I think those were - that's kind of a very - some of the top line ones. And obviously, you know, Jonathan and Maarten can jump in on their view.

Jonathan Robinson: Greg let me come in there for a moment. Let me come in there for a moment. I think one of the overarching parameters is stability both now and in the future, so a stable transition and a stable ongoing function that isn't prone to disruption, whether that's by capture or some other mechanism.

So I think some argued that an external solution may be in some way less stable. I'm sure I'll get brick baste for suggesting that because others would say any form of separability is unstable.

There was a sense that ICANN - there was one argument put forward that ICANN was the natural in quotes home for the IANA function, and therefore

our job was not so much to find alternative homes for or potential homes in the eventual scenario for the IANA function, but rather to find remedies via the accountability group should ICANN and/or IANA not perform in an - in a satisfactorily accountable fashion.

And so the - when the point argument is made about complexity, one of the elements of that argument was that by building in separability and in particular probably with an external approach, we were potentially building in quotes another ICANN, you know, creating another whole structure whereas - and so those kind of - those sort of arguments led back to saying, "Well why don't you consider working within the ICANN structures and then having separability as an ultimate endpoint if absolutely necessary, but why set that up from the outset?"

Greg can you remind me what the term is? There's a second term. I mean, we currently have functional separation. In other words IANA is functionally separate within the ICANN operation. What's - a structural separation.

((Crosstalk))

Greg Shatan: Structural separation is...

Jonathan Robinson: So concept is of structural - exactly. And I think those were the sort of main additions or supplements I wanted to make.

Greg Shatan: Yes I think a variation on the theme of what Jonathan said was that people - some people said that the external solution and the New Co. solution was set up primarily to ensure separability and that that was inappropriate that - to set that up as the primary reason for the structure, that the structure into any solution should be set up primarily to deal with day-to-day operation and

oversight of the IANA functions and IANA functions through - and not to kind of elevate separability as the prime directive.

Holly Gregory: So - and this is Holly. May I ask a question? I just want to make sure I understand the concept of capture, the worry about capture. Is it that you're worried that an entity could be overtaken by one particular group of stakeholders?

Greg Shatan: The word capture is used a lot and yet not particularly well defined or I should say that there are a variety of definitions. That is certainly one of the definitions.

Another definition is that a group could be taken over by a number of stakeholder groups outsize to their actual kind of proportion or that a group could be held hostage by one group keeping it from moving forward, or that capture could be one country or a group of countries taking over and that this, you know, could include capture by way of influencing or secretly putting people on boards or in positions of influence or people having conflicts of influence/interests, especially unrevealed conflicts of interest.

It's one of the - I wouldn't say it's a bogeyman because there are legitimate concerns about capture. But it's - it gets thrown around a fair amount and it's definitely - while it can't be ignored it's also - it's important to try to dig down and do exactly what you do, which is to say, "What are you - what concerns are you actually expressing when you talk about capture?"

Jonathan Robinson: Suppose Greg and colleagues, one way of looking at this is to say there are a set of functions - technical operational functions that IANA performs on appropriate instruction.

In addition, there are a set of oversight functions that - overarching functions that NTIA performs, which are for all practical purposes lifted but ultimately potentially...

Jonathan Robinson: Okay just to recapture that - so that there are a set of technical functions that IANA performs and under appropriate instruction executes those and ideally to the appropriate performance levels.

Then over and above all of that is NTIA's role, which is to all intents and purposes on a daily basis very hands off but is nominally a very powerful role in the sense that it could nominally seek to offer the IANA function to another contracting entity.

The NTIA could in theory although it has never by all accounts come close to doing so not authorize the change to the root. And so there are these overarching functions that should they be replaced by then in this example a captured entity, it could exert significant power over - potentially over changes to the root.

So one looks at this - at those two levels. I suppose that might illustrate forms of capture but capture could in theory I guess occur at the oversight of the technical functions, let alone the overarching oversight.

Sharon Flanagan: Can we talk a little bit about - before we get into the two examples of external and then the two examples of internal, could we talk about two of the committees or groups that seem to be common points between the models, the first being the MRT and the second being the CSC?

It sounds like the CSC would have more day-to-day responsibility and the MRT is where CSC escalates the two, and then the MRT - one of its chief functions would be to cause the separation or at least cause the review.

But could you talk a little bit more about who the stakeholders would be in each of those and how you envision responsibilities being divided up?

Greg Shatan: Sure. I can take the first crack at that and then Jonathan and Maarten can jump in. I think let's start with the CSC. And I think your characterizations of the two groups really are correct, although the overall structure, you know, is still something that's, you know, under discussion and not every potential solution may have those.

But to the extent they are common to the solution, you know, that is the idea. Furthermore the idea is that the CSC would be primarily composed of representatives of the - what we've been calling the direct customers of the IANA functions operations, which are the Registries, the gTLD and ccTLD Registries.

There's been a lot of - composition overall has been one of the hot button areas of discussion on any of these groups as groups jockey for position, and worry about others jockeying for position and worry about capture and some worry about antitrust issues as well.

The - some among the Registries would like the CSC to be a Registries-only committee, or to be Registries plus in essence kind of operational and technical experts who are familiar with and can contribute to refined expert judgments on the operations of the CSC.

Others would like the group to be - to have some or more multistakeholder representation including stakeholders from the - I'll call them the non-operational side of the community, those that don't interact directly with the IANA function.

The CSC would take the place of day-to-day oversight. They would be the group that would receive whatever reports the NTIA or rather the IANA function operations put out.

The current IANA contract specifies a number of periodic, you know, both monthly and annual types of operations reports and especially service level type reports.

Those would all go to the CSC and as you say the MRT would be kind of the second level. If the CSC weren't able to resolve issues that it identified through their oversight then they would escalate that to the MRT, which would continue to try to resolve those issues and possibly ultimately move up to various solutions ending in - at least potentially in separability or in separation I should say, not separability.

The MRT - so let me stop there before we go to the MRT and see what Jonathan and Maarten might want to say about the CSC.

((Crosstalk))

Jonathan Robinson: It's Jonathan. I'll just make the comment then I'll pause and make sure we give you guys a chance to answer - ask further questions. But in very simplistic terms if IANA is a supplier and the Registries or users of that service are the customers, the CSC is - has a role akin to a manager within that customer.

It's a senior role that makes sure that the customer's getting what the customer wants. Now as Greg says you - we can debate whether or not the customer should have representatives from other areas, but in essence the CSC is responsible for oversight of the performance and making sure that happens.

So I think of that as a manager or executive at the customer. Then there is in addition to that a requirement for periodic oversight of the whole thing, and should the customer not get what the customer's - wants to get a form of escalation and that - that's where we get the MRT.

I think of the MRT in my own analogy just to help me understand it as something like a board, a form of oversight of that and it's possible that in some thinking members of the CSC would also have a position on the MRT analogous to executives and nonexecutives on a board.

So that's my simplistic analogy of the services performed and who gets to receive them, and how that hangs together and to some extent why that is independent of the models because those functions, if you like a form of direct customer representation and oversight and escalation are required independent of the model. Thanks.

Maarten Simon: Hey Jon, can I add something? It's Maarten.

Jonathan Robinson: Please.

Maarten Simon: I do agree with your simple model but one thing I don't think that has been decided yet is who will set - from the side of the CSC and MRT who will set the SLA?

We have - I've heard many discussions on it and I'm not sure. I would say it will be the CSC but I'm a Registry so it's - I think there are a number of people who still think that it should be part of the MRT so it's still vague in things.

Greg Shatan: All right. And I think Maarten's comment -- this is Greg again -- you know, highlights the importance of the service level that, you know, are at the heart of this.

So, you know, what is the performance? What defines operational excellence or at least operational acceptability for the performance of the IANA functions?

And you'll find that people throw, you know, I wouldn't say - that people use terms a little that sometimes don't exactly mean the same thing so - and, you know, aligned to your SLA I think service level agreement, which is more than just setting service levels but is a larger agreement that contains other aspects of a contract about service levels.

But in any case I think there's probably a middle view too, which is that the CSC would set service levels but with the oversight of the MRT in part due to the concerns about capture if you will or the - having the customers alone setting the service levels could potentially result in some sort of mismatch or, you know, control without proper oversight.

I think it should also be said that our general mandate that's set out in the request for proposals that came from the coordinating group for all the IANA proposals, the ICG, essentially says that we should not change anything without justifying why we are changing it.

So there are existing service levels as you would expect under which the IANA functions operations perform, so those would likely start out or should in my opinion start out as the baseline for any future discussion of service level.

And not to just get massively out of order but the - under the current work plan of the CWG we've started spawning small groups, which we're calling design teams which is a design to take specific aspects of a proposal or - and to come up with a kind of working design or a draft of those to bring back to the CWG as a whole for a review and debate, and ultimately to be dropped into the next version of the proposal or response to the request for proposals and there - the - there is a design team set up for service levels.

Sharon Flanagan: And Greg another question about the CSC and it'll - actually part of the MRT too. But how - has there been any discussion yet on how membership would be determined, how you would decide who would serve on those two committees?

Greg Shatan: Yes there's been plenty of discussion - obviously no resolution. And I think that typically in both cases the - there's kind of two levels. First there's determining what the seats are so to speak and what the composition is itself.

And that's to be decided under almost any version of this by the CWG itself setting up the initial organization, and then who would fill those seats on behalf of a particular entity would be done within the entity.

So for instance, you know, if there are - if there is a seat that is for gTLD Registries, that the gTLD Registries who are largely but not completely members of the Registry Stakeholder Group would decide who fills those seats.

And there would also be certain parameters in terms of defining, you know, what the role and nature of filling that seat is in terms of representation versus kind of a - more of a public good type of definition.

But generally speaking, you know, it was a - I think a belief that they're there as representatives of the larger community or stakeholder group that they're there to represent.

Holly Gregory: Greg this is Holly. May I ask a question? Going back to your discussion of the CWG's efforts with respect to service levels is - as I read - and I don't have a full copy of the CWG charter in front of me and we should certainly take a look at it, but is that considered a core component of the transition proposal or is it sort of secondary or even tertiary to the structure of the proposal?

Greg Shatan: I would say and I'll again, you know, let everyone else jump in but it's a primary, that again, you know, we have kind of a number of aspects of this. And one aspect of our group is to set up a structure that ensures ongoing operational excellence and that service levels are at the heart of operational excellence or at least the ability to oversee an operation to determine if - definitions of excellence, what those definitions are and how they're being met.

So I think any proposal we have has to both at the, you know, kind of taking it from the highest level down has to demonstrate how service level would be reported on, monitored, what those service levels would be and who is overseeing those service levels.

Maarten Simon: I think I - it's Maarten. I think I have a different opinion on that. I think that the service levels themselves are secondary. There are service levels and in general everyone was happy with the way IANA performs currently.

They could say, "To simplify things let's keep the service levels we have and use them again." But then one thing is quite - what is important and it's - that's not secondary - that's primary is that we need to have a mechanism afterwards to change the SLAs where necessary.

And so it will be a mechanism towards IANA to tell them we would like to change the SLA this way, but also a mechanism to decide what we want to change and how do we come to a decision on this. So that's primary I think.

Woman: Mm-hm.

((Crosstalk))

Jonathan Robinson: This is Jonathan. I wouldn't mind adding something here as well. But let me wait and see if there's a follow-up question and I'll come in.

Josh Hofheimer: Yes, go ahead Jonathan. I'd like to ask a few questions asking you about ICANN itself.

Jonathan Robinson: Okay, let me try and come in with a slight different view of it. I don't think it contradicts what's been said, but the question was that we kicked off here is what is the function of the charter.

And in clear terms, and you may have all of this clear, but the ICG asks the three different communities for proposals. We're producing our proposal.

In producing our proposal the way in which we work, the very first thing we do is when setting out on this kind of work stream, it's to say, "Well what's the scope of work?" And the charter defined the scope of work. So the charter is our bedrock for setting out what we'll do in response to the ICG.

Prior to Frankfurt, the (modis operand) was to say right, "If this existing contract, let's dissect this and pull this apart and look at what it contains." We did a comprehensive job of pulling it apart and undertaking to analyze that whole contract. And at the same time, we became strongly focused on what the method of achieving functional - sorry - structural separation might be.

That left us with a very detailed analysis of the contract and some various models of which you've now seen; they're evolution as to how to achieve the functional separation. But it didn't leave us, in a sense, any closer to a proposal.

So in one way what we were doing was a kind of bottom-up approach. And the group became more and more and more focused on the model for functional - for structural separation.

And we became clearer and clearer that what we really needed was some help in understanding what models were possible to achieve structural separation and what the risks and issues associated were with those.

Now some of those are clearly political risks most simplistically. Would the NTIA accept a proposal that had structural separation with a Contract Co. in it?

But some of them are clearly what's possible and what are the risks associated with it legally. And in many ways that seems to me to be the question we're asking you.

The criticism we faced as we went into the Singapore meeting was, "You guys are obsessed with structural separation or all mechanics of separation, and you're not doing the real job which is really building out a proposal that responds directly to the RFP from the ICG and deals with all of the technical issues that are associated with it."

And so in response to that, I think what we did was made a slightly different approach which is what Greg has referred to and others, and we said, "Right, we'll build out a series of design teams that deal with the detailed responses to that RFP," and that's what the design teams are attempting to do. Those all lock into an overarching draft proposal that we're working on.

But none of that deals satisfactorily with the critical question of in the event that we finally require a formal structural separation, how would we achieve that? And knowing how we would achieve that how would that back into the proposal?

So for me, that's how I see a critical question being asked. And Maarten is right to highlight that throughout all of this, no one is saying, in very broad terms, the IANA Function is performing unsatisfactory at the moment or the SLAs are not being broadly and satisfactorily met.

But what the challenge is is to make sure they continue to be and in the event of their repeated failure to be met and/or fail to evolve satisfactorily as appropriate over time, that we have the appropriate recourse.

So I hope that kind of captures it and puts the charter in the right place to try to answer Holly's question, and I'll get off now.

Woman: Jonathan, that's very helpful; very helpful. Thank you.

Jonathan Robinson: Good. Feel free to ask follow-up questions of us now on the back of that
                    or Greg or Maarten's prior input.

Josh Hofheimer: Thank you. This is Josh Hofheimer again.

                   I mean building on what you just said, it's clear that through operationally,
                   ICANN, you know, seems to have support. But there - and it's performing
                   well.

                   But there were, you know, several comments in the scoping document about
                   some discomfort at the policy level with how things are being, you know -
                   there's a comment to disagreement with ICANN, the Board's interpretation
                   and implementation of policy developed through the multi-stakeholder policy
                   development process.

                   So can you maybe give us a little bit of color on, you know, how well the
                   current sort of Board structure for controlling ICANN with the multi-
                   stakeholders, how well that function appears to be functioning, and also if you
                   could explain whether there is this sort of outside policy development aspect
                   that takes place outside of the ICANN entity or the administration that has
                   created some friction with ICANN itself, and that we have to try to solve for
                   us through this process.

Greg Shatan: Well this is Greg.

((Crosstalk))

Greg Shatan: Jonathan, did you want to go ahead?

Jonathan Robinson: Greg, I wouldn't mind, and then see where you continue. It will be interesting to see how we interpret this.

But from my point of view and at a very simplistic level, what we've come to recognize is that arguably this isn't within the remit of the group. There are some concerns with the way in which the Board oversees the policy function within ICANN.

And an example of such a concern might be that there is no recourse to appeal a decision of the Board on the basis of its merits, only on the basis of whether such policy, such procedures, were followed.

But what's interesting about all of that is that's arguably outside of the remit of this group in that this group is supposed to deal with the stewardship of the IANA Function.

However having said that, because of the overarching role of the NTIA and the fact that the NTIA has this oversight of the whole of, and could in theory for example contract the IANA function to another entity, there is a direct link between this work and the work of the Accountability group where is arguably where this sort of discussion should take place.

So the critical thing to do is to make sure that this group does its work on the transition and dealing with the transition and make sure it has the appropriate links into the work of the Accountability group.

And so I'm afraid even with this group's issues, one has to have some grasp of what goes on in the Accountability area.

I'm not sure I've answered that as quite as crisply as I'd like, but rather than dig deeper into trying to explain it, let's see if Greg has a similar or slightly different take.

Greg Shatan: Thank you Jonathan. I agree with everything you said. I was actually going to answer the question from a different angle which was first to say that ICANN, the term ICANN, can mean at least three different things depending upon how you look at it. Often it has to be qualified and more people are kind of fluent in talking about ICANN the less that they explicitly qualify what they're talking about.

In this context at least, ICANN can mean ICANN as the IANA Function's operator, which really refers to just the activities that take place within the IANA Function's group which is about 12 people or so who are in charge of taking in various instructions about setting up the root zone and other related technical functions of the Internet and working with those instructions and ultimately passing them on to further changes to be placed in the root by the root zone maintainers. So that's one ICANN when you hear some people.

And when people say they're not unhappy with ICANN's performance as the IANA Function's operator is satisfactory and that nobody wants to change it right now -- virtually nobody -- that's the ICANN they're referring too. It's really those 12 people give or take.

And then there's ICANN the corporation which is, you know, 300 odd people who are employed by ICANN and also including its Board. And I generally refer to that, if I need to, as ICANN the Corporation.

And then third there is ICANN the community which is, other than Sam who is on the line and Staff support, all of us are part of ICANN the Community

but not ICANN the Corporation. And so it's kind of - when you say that ICANN is performing, well (unintelligible) policy, that really goes to kind of the tension between ICANN the functions operator, the IANA Functions operator, and ICANN the Corporation. And those tensions are kind of being identified by ICANN the Community.

So we have ICANN talking about the differences between ICANN and ICANN just to make it sound as difficult to understand as possible.

You know, that said - and going back to the whole concept of separation, when Jonathan talks about or highlights the issue of functional versus structural separation, that's really separating the IANA Function's operations within ICANN which are operational from the policymaking/policy oversight/policy implementation functions of the rest of ICANN, which is what takes place kind of outside the IANA Function's operations and which by the IANA contract are required to be separate so that the IANA doesn't become kind of a policy football so to speak.

Josh Hofheimer: Yes, that's helpful, thanks. Can we get a little bit granular for a moment, although it won't be too granular, but focus in on the key elements that CWG identified? And so that we can - because you just highlighted a very good point when you were talking about separation and separation at policy level versus the functional level.

And I've heard the term you've used to several times in this conversation and it feels to me like there's different intent behind it.

So I think it would be helpful to us to understand in a little more detail the meaning and the sort of intent behind the five key elements that you all identified that need to be addressed in the proposals for transition.

So I don't know if people have a copy of that document that has that in it, but if we could go through that I think that would be helpful and then we could - team people could ask some questions.

But just to - the first one says maintaining separability; the ability to replace ICANN as the IANA Function's operator, and you're going to have significant performance failures to (unintelligible).

So give a little more clarity on that because that does sound like a different type of separability than you were just describing between - regarding (unintelligible) responsibilities.

Greg Shatan: Right and I think when we talk about separability, it is the ability to separate the IANA Function - either the IANA Function's operator from the rest of IANA and literally to put it in a different home, or the ability to take away the ability to perform the IANA Function from ICANN and to give that contract so-to-speak to another group that would assemble a team of people and the necessary technical requirements to perform the IANA Function's operations instead of the current IANA group within ICANN.

So it means both of those things, but I think primarily when we've used it, I think we tend to mean essentially giving the contract to another entity that would perform the IANA's operations and staff up and equip itself however it sees fit.

Jonathan Robinson: Greg, I'd like to come in here and just highlight one more point.

Correct; functional separation exists today. The IANA Function's operator is housed in a discreet part of the building with discreet staff and is to that extent

functionally separate from the rest of the ICANN Corporation. In general, no one is challenging or seeking to alter that both currently and/or in the near future.

The structural separation whereby that function could be, if necessary, removed by virtue of physically and/or contractually is clearly what the discussion is.

And if so, how so? What are the legal and corporate mechanics that might be available to us to be able to achieve that either to be in a state of readiness to achieve that should it be required, or to execute that at some future date and have done the appropriate preparatory work to do so?

I think there is one other thing to highlight and that is on the back of having written the charter for this group, one of the first working documents that the group prepared was the principles on which it would work. And as things stand, the principles have not yet been formally signed off although they are very close to being so.

And enshrined in those principles is the concept of separability which in my understanding refers to structural separability. In other words, at the minimum, that structural separability should be achievable if necessary after a series of ultimate steps has taken place. So that's my take on separability as it stands at the moment.

Josh Hofheimer: So one follow-up question to that and it helps me to understand.

So I appreciate - I hear what you're saying. It sounds like, you know, if I can repeat back, at the functional level, things today are working pretty well. There's a separate group within ICANN that is maintaining or performing the

functions around the IANA Function's operator and the contract similar to ICANN.

And on a go-forward basis, there's a desire to establish or maintain some mechanisms that would enable separateness between the structure of the kind of non-functionally focused parts of ICANN and the IANA Function's operator parts of ICANN and keep that separate. Or even, you know, in a more good regions (sic) scenario, split it off and let the function's operator roll the responsibility over to a third party.

But let me ask you. Just under today, you know, just today, if we continued with the current relationship and NTIA, you know, was granting the IANA Function's operator contract awarding that to ICANN on an annual basis, what would happen if say in 2016 NTIA awarded the functions contract to a different entity, to an entirely separate third party?

What happens to ICANN at that point? What role does it have and does it cease to exist or does it continue and does it have some responsibility that would continue if it is no longer the IANA Function's operator?

Jonathan Robinson: Okay I will make a quick stab at answering that and see if anyone else has.

ICANN's other functions are various, but in the context of this I guess it is primarily in and around the oversight and development of policy in and around domain names. So ICANN at minimum would continue to have that function.

Now you might argue and some do argue that the legitimacy that ICANN has to undertake that policymaking function is inextricably linked to an operation

of the IANA function. In other words, it's ICANN's management of these two functions is one of the same thing.

Clearly the proponents of structural separation, at least consider that these two could be operated separately, but there is a school of thought that says they cannot and in fact should not. That ICANN was fundamentally set up to do both in the first place.

So there is some discussion around that and there isn't a single answer. But I hope that in attempt to give you a brief answer that gives a picture of what's going on.

Greg Shatan: This is Greg, if I could jump in. First I agree 100% with what Jonathan said. And also that, you know, certainly there are those that would argue on a policy level or a theoretical level, and also use the argument that ICANN exists only because it performs IANA Function and by the fact that, you know, a large majority or what it does does not operate the IANA Function, and they'll use that to support arguments that there should not be separability in essence. And that ICANN's purpose built for the function of taking on the IANA functions.

I know there are others who would say, "Well that maybe true, you know, 15 years, 17 years ago, but look at it now. You've got 300, you know, plus employees and 12 of them are doing IANA. Clearly that's not what it is."

I think on a practical level that would obviously have to be solve for in any move of the IANA Function's contract away from ICANN to a third party. That the idea of reconstructing ICANN from scratch and letting all of the current operations go would be science fiction. And that, you know, any new

structure would have to potentially keep the rest of ICANN in business doing all the other things that ICANN does.

So you know, in spite of whatever the theories are about why it exists or what the basis is, that in a practical world, that would have to be resolved.

I want to go back to the playback of separability and with two points. First, when people talk about separability, they're not really talking about the intermediate step of all the things are going really bad so now we're going to put the IANA Functions into its own subsidiary or further structurally separated from ICANN but leave ICANN kind of charge, that that itself would satisfy separation as a result of performance failures.

I think when people are talking about the need for separation, it's to take the IANA Function away from ICANN completely.

So again, while we haven't worked out all the escalations and kind of the penalties if you will, and conceivably in working those out a penalty of moving some functional/structural separation, you know, could be worked into this, that doesn't seem to be, you know, top in line (sic).

Secondly, I would say that or I should mentioned that there have been discussion throughout and recently or fairly recently revived of structurally separating the IANA Functions from the rest of ICANN as a part of the transition.

In other words, have an IANA sub as a wholly-owned or partially-owned entity of ICANN, but for it to be structurally separated as in being in its own subsidiary corporation with its own discreet budget, with its own board, with either its own kind of service providers or services agreement with ICANN for

things such as a jar (sic) and the like, and that that would be kind of a post-transition result would be a structural separation, which in turn would make separability and a total separation achieved more readily achievable at a later date.

Josh Hofheimer: Great. Okay, thank you that's helpful too.

I was going to move on to the second point - and Greg thank you for sharing the five things. But I wanted to pause for a moment to see if anybody on (unintelligible) had a follow-up question on number one.

Okay, so then you talk about, you know, continuing to have binding documentation of ICANN which is an obligation (sic). As, you know, that's currently set forth in the IANA Function's contract with NTIA.

So I guess one question I had, if you absorbed and you made, you know, and you had contacts for the internal solution, you made IANA - I mean you made ICANN (unintelligible) permanent repository who are the IANA Functions operations, how is it that - what are people envisioning that they would do to maintain that binding document or that standard?

Because it seems to me that Number 2, if you take that to its logical conclusion, it does require two separate entities; one to hold the rights and be able to enforce it against the other.

Greg Shatan: Well this is Greg. I'll take a first crack at that and then I think others can and will jump in.

First I would say that ICANN is already the (unintelligible) permanent if not permanent home of the IANA functions at the operational basis. It's that

oversight side that is currently not really the home of although obviously it is the home of it at an intermediate level since the IANA Functions group, you know, doesn't operate within impunity or, you know, other complete, you know, independence within ICANN.

I would ask others to talk to kind of how much - what kind of oversight ICANN currently performs over the IANA Functions operations. But I don't believe that they operate as kind of a commando force utterly beholden to no one other than the NTIA.

So it's really - the question is once you remove the NTIA as an outside oversight function and kind of the holder of the end of the IANA Functions contract, how do you replace it in an internal world so-to-speak?

And I suppose the ideas that have been floated their side that there would be kind of internal documentation within the organization that was ratified - maybe that's the wrong word - but kind of approved by the overseers of the IANA Function that it wouldn't be a contract per se because there wouldn't be another party holding it. That it would be kind of the same as in any other organization that departments have performance expectations that they owe to their managers and the managers owe to their managers up to the top. And that those are or should be clearly set out and reviewed on a periodic basis and approved.

And if there is failure in the typical organization, you know, those would be set out and the managers and the managers' mangers would be, in terms of failure, try to resolve those issues; fire people, heads will roll and all sort of things like that.

And so the idea is that documentation here could be some sort of similar internal documentation that would be approved perhaps even up to the Board of ICANN. But that critically it would also need to be approved by the CSC and MRT or whatever combination of those two, and that the oversight of those groups, however they would be structured in an internal solution, will also be a key part of monitoring and enforcing satisfaction of those service expectations.

And part of that of course is...

((Crosstalk))

Greg Shatan: I'll just finish up.

Jonathan Robinson: Sorry.

Greg Shatan: One of the things they're looking to...

Jonathan Robinson: (Unintelligible).

Greg Shatan: Oh go ahead Jonathan.

Josh Hofheimer: Go ahead Jonathan.

Jonathan Robinson: Unfortunately there's a bit of a lag, so sorry; one responds and then you hear.

I guess that I was just going to point, and Greg I'll pause for you to finish if you needed to afterwards, but the issue is clearly of repeated escalation, failure to perform, and then ultimate recourse.

And one of the things that's been represented to us indirectly or at least discussed is that in a corporation such that ICANN is, that it's not possible to have a mechanism or potentially not possible to have a mechanism of recourse - in other words, under-repeated failure and escalation and so on - in the ultimate scenario that is not subservient to the Board.

So the concern, I think I could accurately represent, would be the IANA Function repeatedly fails to perform. We go through a series of documented escalation mechanisms, no remedies are satisfactory, repeated failure to perform occurs, and the ultimate recourse is exercised. However that ultimate recourse doesn't exist because the Board either could overrule it or it would be constitutionally impossible to have such a solution because the Board is the ultimate authority.

So that's one of the apparent concerns with respect to a so-called internal solution. And as I understand, I've explained it very much in layman's terms, but one of the legal challenges if you like.

Thanks. Sorry to have cut across you earlier Greg.

Josh Hofheimer: That's a very good response Jonathan and clarified one thing for me which kind of ties into the third point. And so let me ask the question to you.

You just described the failure being focused on a failure at the IANA Function level that might necessitate a need to change the IANA Function's operator.

But you're not talking about - correct me if I'm wrong - but you're not talking about if there were, for example, a disagreement at the policymaking level at ICANN, or there were, you know, the rogue sort of grouped at one to make a

significant change in policy or had significant disagreements with the policies that were being promulgated by ICANN.

That that could somehow - but the IANA Functions operator implementing whatever policies ultimately were approved by the ICANN Board to administer to implement functions, if the IANA Function's operators continuing to do its job effectively, we're not talking about a means to remove or people aren't looking for a re-means to remove ICANN as the function's operator because of a disagreement at the policy level of ICANN.

Jonathan Robinson: That's a very astute question and it hits at the heart of the point.

My understanding is within the remit of this group, what you've just said is absolutely correct. However, the subtlety is that with the withdrawal of the ultimate oversight of the NTIA, the community at large would like to be assured that if there is some form of failure to perform at the policy level, there is the appropriate recourse to do so.

However that problem, that issue, is being dealt with in the Accountability tract. So it is being dealt with separately but it is connected to the withdrawal of the NTIA which is why these pods of work are often described as parallel, interdependent, linked and so on.

So strictly, it's not within our remit, but there is a connection. And I think you've hit it fairly closely on the head it feels to me, and I've got a grasp of it in the way you described it there.

Josh Hofheimer: That's a difficult issue then.

Greg Shatan: This is Greg, if I could just add. I think that, you know, one of the things that has been discussed is, you know, along those lines is how unlikely it would be one of the scenarios versus the other.

And you know, which ICANN, if you will, is the one that's failure would require separation; a failure at the IANA level or a failure at the enterprise level?

So I think in essence both are on the table. You know, some believe that, you know, one or the other scenario is kind of beyond - there's one more or less likely than the other.

Maarten Simon: Maybe to add something to the confusion, although I think the number of things have mainly become quite clear, is that there are some that say if the Accountability works to and is successful and comes up with a solution where the (Zecom) community, whatever that means, will get the last say in ICANN which many feel that they don't have now, separability is not necessary.

Jonathan Robinson: Maarten, if I may, I think that's a really good point. And it links to A, I won't try and repeat what you said; I think you expressed it well. but there's a related point I suppose and that's just to make sure that the (Sidley) Group that in terms of the inter-related nature of the work, one of the - there is a work stream within - there's two work streams within the Accountability Group. And the work stream must necessarily be complete or sufficiently strongly committed to being complete for our proposal to fly.

In other words envision our proposal being conditional on Work Stream 1 of the Accountability work being complete or sufficiently strongly committed too for our proposal to work. So we will make our proposal conditional on the

satisfactory completion or perception of the ability to complete Work Stream 1 to work.

And then you get to the point that Maarten made. Well, it may be that Work Stream 1 has got sufficient belts and braces in it that some may feel that separability is no longer an issue. So I think that's a really important point to have brought in.

Josh Hofheimer: So what you're saying when you say that it's conditioned, it's not just to be completed but that the Accountability Work Stream recommendations that come through will be, you know, consistent with and able to be realized by the recommended structure from this work stream. Correct?

So there may still be an adjustment or changes, if you will, in structure that would be designed to accommodate and sort of achieve the recommendations of the Accountability work streams. Is that correct in my understanding?

Jonathan Robinson: Let me try and answer that indirectly, and if it's not a satisfactual or satisfactually clear answer, others can step in or the question can be asked again.

We'll make our proposal for the transition. And we will say, "Our proposal is conditional on satisfactory completion of Work Stream 1 in the Accountability work.

That doesn't assume that our proposal relies on separability or not. That's a distinct question as to whether it's the internal or external model or whatever the case is. But our proposal is very likely to be specified as being conditional on certain key Accountability measures being in place and committed to that have been developed in Work Stream 1.

So our objective would be to be satisfied that all the work that we require or much of what we require, all of what's necessary, is dealt with in Accountability Track 1.

Maarten Simon: And if I may, the questions that Work Stream 1 is trying to answer is the question what Accountability measures unnecessary within the current ICANN structure or the transition. So that's the difficult thing.

They look from it from a different perspective (unintelligible). And one of the things I'm personally bothered with is if they are going to solve things that we see as a problem. Okay, it's very inter-dependent.

Josh Hofheimer: Right. All right, you know, given where we are with time, at this point I think rather than continue through the remaining 4 and 5 of the five key elements, which I think we've touched on many of these points already, unless somebody has a specific question about some of the language in number 4 or 5, I would suggest that we want to move onto being able to ask some questions and answers and getting a little bit into the two external solutions, so the description of the two external solutions and the internal solution.

Edward McNicholas: Josh, this is (Ed). I did want to jump in for a second with a question.

In terms of - we talk about the potential for a failure of ICANN to perform one of the functions. Given VeriSign's role in terms of operating many of these functions, is there a particular example that people have in their mind of what sort of failure to perform where we're thinking about? Just to kind of make it a crisp example.

That would be very helpful to me from my thinking actually, to get a particular example of that if there's one that leaps to mind.

Jonathan Robinson: I think that's a really good question and it's been in my mind as we've talked, that the practical examples might bring things home along the way.

I think two examples I would spring to mind - and I think bringing VeriSign in as root zone maintainer probably confuses things at the moment. So I would leave VeriSign. VeriSign has a unique and distinct role and a specific contract to perform specific functions that are different from the functions that IANA performs, so I would just put that aside for a moment.

But in terms of two examples, I would say the IANA failing to perform might be either putting - requesting that a TLD and ensuring that a TLD goes into the root when that wasn't requested, or alternatively refusing to put one in when that was appropriately requested, those would be in my mind failure to perform.

Now there will be variations along the way such as doing that too slowly outside of the SLAs, but the ultimate failure to perform an example of which would be those two.

That's very different than the accountability to perform the IANA function as required. And that's quite different to ICANN itself; ICANN on a policymaking basis not being accountable or not being sufficiently accountable according to the communities' requirements. It's a specific example of a failure to perform the IANA function as required.

Greg Shatan: This is Greg, if I could just add one thing to Jonathan.

I think a single failure or small failure to perform quickly probably would not be, let's call it, a material breach for a legal term. But that a systemic and uncured failure to perform up to service levels, you know, probably would be a trigger for some sort of, you know, large changing in relationship or in the like.

And just to come back to - I know Jonathan laid aside VeriSign's role but just to pick it up for a moment. VeriSign's role should kind of be seen as - if you look at this day workflow, work orders if you will in a generic way start on a name side largely with the TLD operator, or initially with the Board approving a TLD being delegated into the root.

And then the work - there are other less, you know, exciting or substantial things and changes that are made that, you know, updating a record of an existing TLD for instance, looking at root, to mediate a kind of Whois record for first level domains (unintelligible) top-level domains instead of second-level. So those kinds of changes also come through the IANA Function.

So there's a work flow and then the work flows out through the authorization function or validation function as is currently done by the NTIA, and then onto the root zone maintainer for the change to actually be functionally made to the root itself.

So we're not looking at the VeriSign side of things here. You know, we're looking at the IANA portion of that workflow. So just to bring a fine point on kind of which box in the workflow we're focusing on. We're focusing on that and we're focusing on the NTIA box which is going away and being replaced in some fashion or decisions being made - not replaced, you know, (unintelligible) contract.

Woman: Okay, great. So can we turn now to the structure that you're considering? It looks like there's four structures on the table. On the external side, there's the Contract Co.de (sic) or trust, and on the internal side there's a golden bylaw, let's call it, and then the trust.

So and it looks like a lot of thought has already been given to these structures. And so it would be helpful for us to understand a little bit about how you got to each of these and maybe walk through them.

It sounds like the goals are all the same, it's just these are different vehicles to achieve those goals. And part of our mandate is to help you understand what the pros and cons are of the different structures.

And maybe we can start with external and start with the Contract Co.de (sic), and you can just tell us what the thoughts are there. Is the idea that this is to look like ICANN in terms of California non-profit, has that structure generally worked historically? Just from a pure corporate law standpoint.

Jonathan Robinson: So I'm just going to defer to Greg but I just wouldn't mind making one quick comment before. I think that's an accurate assessment to the extent that it was the task and the questions asked as well.

There is subsequent to the preparation of this, there has been put on the table an attempt to create some form of hybrid solutions. So you should be aware that there is a variant that is being worked on that attempts to integrate or - and I think it's - and produce some form of integrated proposal.

But that doesn't make the question any less valid or your understanding of the scope, but just to make sure that you're aware that that's bubbling away in the background as well.

Woman: Okay, yes, that's helpful. So yes, you could combine, you could have a Contract Co. and maybe the Contract Co. has the bylaw. And you could think of different ways you might combine the benefits of each.

                Okay, yes. So could we start with the externals and the Contract Co. solution and help us understand kind of why you consider this, what you guys currently are thinking in terms of advantages/disadvantages?

Greg Shatan: Sure, well this is Greg. I'll jump in.

                I think that, first off, in terms of how the Contract Co. solution kind of came to be, as I said, we just really directly out of our two-day face-to-face in Frankfurt - I think it was in November.

                And when we broke down the major function that we saw NTIA as performing, and putting aside the authorization/validation function (unintelligible), we tried to fulfill those major functions through a structure where those functions were assigned to groups.

                And one of the feelings was that if a single group performed all of these functions, that would kind of be a cause (sic) to greater concentration of power and allotment (sic). It might not create a second ICANN but it would create an entity that would be, you know, essentially had, you know, kind of too much power/structure into it.

                So that was the idea of creating kind of virtually a shell as Contract Co. and having the MRT and in essence instruct Contract Co. And for there to be a contract, there needed to be an entity that could legally hold a contract or legally enter into a contract, so therefore Contract Co. needed to exist.

And the MRT, you know, couldn't be a contracting party but that it needed to functionally be the party that had the power of the contract delegated to it. And that, you know, further the idea was that the CSC would, you know, smaller, more nibble, more customer focused body to perform those kinds of day-to-day functions.

And that the MRT which at one point was called the periodic review team but then we realized it would only be conducting periodic reviews, would have the kind of more second level of powers plus the power of the contract including the power to make a determination of material breach and issue another breach and all that sort of thing.

So the idea was to kind of try to match the structures to the functions that we identified. And that was what came out of Frankfurt as really our only flushed-out proposal at that time. And all the rest of the proposals evolved.

((Crosstalk))

Josh Hofheimer: Absolutely, come in.

Maarten Simon: What I wanted to add because the whole idea I think behind Contract Co. was a good one. And that was keeping it simple.

There's a contractual entity now that oversees the IANA Function, it's the NTIA. So let's keep a contractual party there that had to then to be Contract Co. And so the main driver was to make the simple - it didn't work quite well - but the idea was it.

Woman: Okay. And have you talked about the MRT, because - Jonathan, you made
                    reference to this as an analogy and I kind of made a note to myself in reading
                    this. Would the MRT be the board of this if there were a Contract Co?
                    Literally be the Board.

Greg Shatan: I think there's been...

((Crosstalk))

Greg Shatan: ...a number of discussions I think about what the relationship of MRT would
                    be to Contract Co. And one of the auctions would be for it to be the actual
                    Board of Contract Co.

                    And I think, you know, one of the criticisms if you will of Contract Co., what
                    came out of Frankfurt, was that there wasn't, you know, kind of detail on
                    every level. That while it was both complex, it wasn't detailed enough, which
                    is an interesting thing to pull off; having both too much detail and too little all
                    at the same time.

                    But in any case, by and large, my feeling is that it wouldn't be best for it to be
                    the Board. But you know, this is where we kind of put ourselves in, to some
                    extent, in your hands.

                    You know, I would not do - if I were sitting in a law firm doing a transaction,
                    I wouldn't, you know, make massive structuring decisions. So you know, we
                    are looking for counsel on what that relationship could be and what the pros
                    and cons of different relationships would be.

                    But I think by-and-large the thought was that the Board of Contract Co. would
                    not be MRT but would be some sort of small constrained boring Board, and

that overall Contract Co. would be highly constrained and narrowed by its bylaws and articles. And it would be kind of a special purpose vehicle almost, that it would have structural - it would have significant limitations on what it could do.

But by now...

Holly Gregory: So Greg, this is Holly. Could you give us a little bit more insights into your thinking on that? Because, you know, frankly a board well constructed can be a significant accountability mechanism and, you know, could take on the MRT kind of functions. We're just interested in how much effort/thought was given to that, or is that just sort of an assumption that the Board doesn't provide a mechanism that would be appropriate here?

Jonathan Robinson: Greg and Holly, if I could just maybe come in at that point, I mean I think that's a really good point.

As we left Frankfurt, Greg is absolutely correct. It was envisioned that we would fulfill the board function with whatever was necessary, but the board would necessarily be light and the so-called periodic review team at the time or late to the Multi-stakeholder Review Team, MRT, would in principle be able to give directions to the board.

At a later point, I remember when it was. It's sort of struck me in the same way that it appears to strike you; that there was certainly analogies which is why I made the analogy. And I've got to be careful because it's very much my analogy rather than something that's come out of the group.

But it struck me having, you know, with my own personal experience of corporate governance is that in essence there were some analogies behind a

structure whereby, as you say, a well-constructed board might appropriately represent different components of what was required. And it may have been over compensated (sic) to have both a separate board for Contract Co. and a Multi-Stakeholder Review Team potentially directing that board.

So that's just my two cents worth. (Graden), I don't know if that covers it accurately but that's certainly my response to Holly's question.

((Crosstalk))

Woman: I would still - what we're looking for is some insights into why that path seems more interesting or more fruitful to the CWG to date rather than - I mean there are lots of different paths clearly. But you could conceive sort of a fairly straightforward situation in which the multi-stakeholders have a role in selecting the board of this Contract Company. The board could actually be representative of some of the stakeholders, although I'm unsure if some of the concern is capture.

And then you would give some of the functions that you might otherwise have to that reviewing body to that board.

Greg Shatan: This is Greg.

Jonathan Robinson: Greg, sorry. Just one other response to that and that touches on the concept of the concern over the mini-ICANN. Because as you start to go down that route, you see that structurally that has analogies with ICANN where policy stakeholder community are responsible for selecting board members on the current ICANN board.

So I just thought I'd give that reason why that perspective comes at that point. Over to you Greg.

Greg Shatan: I was just going to say that I think that some of the concerns that led to the separations that ended up were that if the MRT were the board of the Contract Co. - there are two levels of issues.

But practically speaking, there might not be enough oversight over the board at that point. And I think the idea was that while the MRT - why the Contract Co. Board would be lightweight, that it would have the power to tell the MRT that it was giving Contract Co. instruction that was outside of Contract Co's limited remit.

So that if the MRT were captured, so-to-speak, that the Contract Co. Board could say, "No, you can't take the root and move it to Russia or some other such hypothetical." And so that there would - while it be unlimited, it would have power and in essence would be a check-and-balance against the MRT. And that if you were to combine the MRT and Contract Co. that you kind of create an entity that needs, you know, further oversight, because obviously you can take oversight down the long hall of mirrors forever. (Unintelligible).

Woman: But I guess what I'm struggling with Greg is how do you then assure that you don't have the same issues with the MRT? I mean it's sort of where does the level of oversight stop? What's to - how do we ensure that the MRT's end doesn't have the possibly run afoul the same kind of things that the board could run afoul on?

Greg Shatan: Right, well I think the idea was that the board would act as a check-and-balance on the MRT if the MRT were not itself with the board.

There's a separate issue which is that the MRT would have, you know, representatives of various stakeholder groups and organizations. But remember that virtually all of these people are either volunteers or they're serving on behalf of their employers or on behalf of their government such as the GAC members.

And so for instance if, you know, the representative of Norway were on the MRT, there was a question of how could the representative of Norway be a board member, or Norway itself be a board member of Contract Co? And that was a concern too. By and large, in the ICANN community, everyone feels comfortable serving on things like the CWG in whatever capacity they kind of come to ICANN. The idea of serving on a corporate board seems like a bridge too far.

Holly Gregory: For some of the members of the stakeholder community?

Man: Yes.

Holly Gregory: Okay. I understand.

Man: Indeed, that's why you don't...

Jonathan Robinson: Can I just add one other point?

Greg Shatan: Go ahead.

Jonathan Robinson: Thanks, Greg.

I would just add one other point. I think these questions are both useful and important. And they highlight your ability to interrogate our thinking, possibly

more importantly the motivation for our thinking. My understanding of what we were seeing to achieve with (unintelligible) interrogation and be potentially alternatives that said, "Well, now we understand your motivation which is kind of where you are very tentatively starting to go at this point.'

I think that is my expectation of what expert advice might give us is that it might challenge our thinking entirely and say, "Now we understand what you were trying to achieve. Why on earth didn't you think structuring it like this?" Now clearly it's premature to have that conversation now. But in essence I just wanted to capture that expectation ultimately that it's not necessary about achieving what we wanted it. It's about challenging what we were even trying - the structures we were as amateurs playing with.

Holly Gregory: I think we're on the same page around what the goal is here, which is in providing advice and helping you think it through the potentials and the issues he has put on the table to also, you know, help make sure that there are no other things should be in your toolkit to think about and help provide some advice that you can then use to shape either these proposals or potentially other proposals.

Greg Shatan: This is Greg. I'd just like to pick up on what Jonathan said which is while we don't necessarily have to return to that immediately afterwards, I think that is a critical point in terms to know those things. I was kind of struck as you were asking these questions - which are excellent and perfectly appropriate questions that Jonathan and I and others who have kind of been coordinating this group at various levels -- have been answering those questions or variations of them to various different bodies for months. And that I, as kind of, let's say, the U.S. lawyer in the room -- and virtually the only U.S. practicing lawyer in the entire CWG, although there are some who are kind of participants. None of them are really kind of embroiled as I am.

We have been answering these questions within the CWG and then on webinars and on panels, and then ultimately we've come to the point where I cannot satisfy anybody and everyone. You kind of - that gets to where the log jam of where we're at which is that there is only so far that we can go as, in essence, an amateur group. I'm not going to hold myself out. You know, this is not my core confidence. I've worked on hundreds of transactions but usually as the IT tech guy on the transaction. I'm not a first chair corporate M&A partner or a corporate governance partner.

There is only so far we could all go. Plus everyone - by being an interested party, I cannot provide disinterested advice. So we kind of came to the end of the road in answering these questions. The answer is: They may be suitable; they may be unsuitable. All the alternatives may be workable. There may be pros and cons in each of them. In the end, we came to a log jam or a Gordian knot or a series of Gordian Knots on these different proposals and what we're trying to accomplish.

Everyone basically said, "We just can't go further without independent legal advice." Those of us who don't know enough to really evaluate or need the independent legal advice and those who are trying to provide legal input cannot go further without either validation or correction or new ideas from independent legal advice. That's why we're here.

Holly Gregory: I wanted to ask the team if we have more questions at this point on the Contract Co proposal or whether we should talk a little bit more and turn to sort of the notion of some kind of external trust.

Sharon Flanagan: Yes, Holly, I'm ready to move onto the external trust.

Holly Gregory: So let's talk about the external trust. Sharon, do you have a specific question?

Sharon Flanagan: More of a general question about how that came about, what the people thought the advantages of that would be?

Man: First, I would say this is the entrance and literally made it into this document probably on the final draft before it went out to law firm. And is kind of came out of a need for an external alternative to the Contract Co. The two internal models developed kind of in the meantime and we had put together what we had called RFP3 group which was intended to explore and flesh out, to some extent to the extent you see it, internal models.

The groups like the ALAC that were trying to cook it up on their own could get only so far without working within the structure and the support of the CWG. So this came from essentially one participate in the group who proposed this model. And then it was debated a bit in the CWG and then placed here.

In part, I think it was a reaction to kind of the negative reactions of a substantial sector to the idea of Contract Co and the complexities that were seen in the so-called Contract Co solution.

Holly Gregory: Got it. Okay...

Man: At the same time the need for those perceived, it looks like some for an external solution.

Holly Gregory: Okay. That's very helpful because it wasn't - it's not an immediate obvious choice. So we were somewhat puzzled about it. But that's helpful to understand. It was a late entrance and really just trying to create some

alternative to the Contract Co. That's, I think, all we need to really understand on that.

Woman: May I ask a question about - the primary purpose and duty of the trust in this document is described as "selecting and contracting." So having the IANA function operators, having a very, very similar purpose really and function to Contract Co. Any thought given to it having a lesser role, which would be - simply could be the body that would determine whether ICANN was performing the IANA functions appropriately in what would otherwise be mostly an internal solution and have the right to, in that oversight role, to come in and seek change in the unusual circumstance that change was called for.

Holly Gregory: Sort of have the - I don't want to - I almost want to call it like the "golden share," right? The notion that the trust established simply for a point at which there is a determination that - or a sense by the multi-stakeholder bodies that this really isn't working and an ability for multi-stakeholders to go to the trust and say, "Okay, it's time for you to consider exercising power."

Maarten Simon: I think that's a perceptive question. I've heard something I think similar to that. I hope I'm reflecting this accurately; whereby either the trust or a multi-stakeholder review team could be convened to execute such as act. In that context one might have a form of dormant trust. The trust is the vehicle that is pre-prepared in the event of such a requirement being needed. So I hope that is an adequate response. But I think elements around that have been discussed along those lines.

Man: I would agree with that. I don't think that is even necessarily excluded by what is in the legal scoping documents. I think that - in looking at this, I think the idea of the MRT and CSC performing their functions was kind of assumed as

part of this proposal and not that the board of trustees would take on those kind of functions of kind of operational oversight under the contracts, even though it was the contracting party, so to speak; that it would not be the one exercising those day-to-day or month-to-month roles but only exercise roles at extreme times.

Holly Gregory: Yes. I was almost thinking you're taking out of the selecting and contracting aspect of this and only having sort of the ability to take it away and give it someplace else in the extreme situations.

I think we can probably -- if no one else has questions -- move on. And I take it that, that hasn't been taken off the table. It just wasn't put on the table. Correct?

Man: Correct.

Holly Gregory: Okay. Why don't we move to the internal solution unless other people have questions about the trust proposed?

Maarten Simon: Very briefly to that point, that's a really good point. I think in many ways, nothing is off the table and that's part of the advice we seek. Just to be clear about that. The extent that it isn't currently proposed, that may be because of the limit of our collective imagination or knowledge rather than the fact that it has been proposed and discounted.

Holly Gregory: Okay. Thank you.

Man: And I would also just add to that, that one of the things we're looking for you guys to do is to put things on the table, takes things off the table, say, "This is

not quite what should be on the table, but we would change these things. And now it's kind of fit for being on the table."

Holly Gregory: Okay. So any other questions or should we move onto the internal solutions?

There are two variations of this, as I understand. One is where simply the IANA functions contracting ability sort of goes away and you just give ICANN the right to - ICANN becomes the IANA functions operator. You have you are MRT and CSC structures as in the other function, but you want some method to make sure that you'd have separability if you had to. Is that the thought? So that's why I raised that other kind of trust -- external trust -- issue is perhaps relating to this kind of an internal solution where you have a hybrid.

Man: I think that's fair. Yes.

Holly Gregory: And whether you do that through a bylaw that can't be changed or something else. When we talk about bylaws that can't be changed, I think we're really talking about some kind of function that is either really not a bylaw but an articled provision. Then the question becomes under California law: Is that something that you have to go get approval from the State for? I don't know the answer right now. Or whether you need some kind of - this might contemplate the notion of a membership body. There are a whole lot of variations that I can think of.

Has there been any discussion of those kinds of considerations?

Man: I would say that there have been discussions, but, again, haven't taken them far enough down the road.

Holly Gregory: Okay.

Man: Jonathan, Maarten, do you have anything to add on that?

Maarten Simon: Maarten here. What I understand is that there have been discussions around this scene in the CCWG, an accountability to it. It's quite related (unintelligible). I've heard from (Dan) that they also think about membership structures or things like that.

Holly Gregory: One of the reasons I asked the question is because in our conversation yesterday with the BCWG was they were talking about the potential of a joint representation. One of the issues they wanted to know was whether we had experience taking a not-for-profit but is a non-membership organization into a membership structure.

Woman: So I know the issue is buckling around another circle.

Holly Gregory: Sharon, do you have any questions about the internal solution, either variation?

Sharon Flanagan: No.

Holly Gregory: I find complexity in the second variation. I'm trying to understand what really is contemplated by it. Sharon, if you have questions, please jump in.

Sharon Flanagan: No questions on the golden bylaw approach. Maybe we can move on to the trust approach. Same question. Can you give us a little of background about how this structure came about? Why it was proposed? What people perceive to be the advantages?

Man: This structure came out of - or was primarily proposed by a group coming out
                of the Australian CCTLV manager (auDA). To some extent in examining it
                myself -- not being a trust lawyer -- it seems to some part be inspired by
                things that exist in Australian trust law that aren't necessarily existing in U.S.
                trust law such as the ability - whether a trust is an entity that can contract;
                what kind of entity a trust is or non-entity?

                So this was proposed well after Frankfurt as we were kind of realized that we
                had kind of gone as far as we could in discussing external solutions. This end,
                to some extent, slightly later the golden bylaw solution came out of initially
                kind of off - out of the CWG groups than coming and bringing things into the,
                as I mentioned, the RFP3B subgroup named because the third section of the
                RFP is the heart of the proposal; in other words, what will things look like
                afterwards?

                So we first started a group called RFP3 which was examining kind of the -
                and trying to (chart) the major proposal -- the Contract Co proposal. And then
                RFP3B was kind of the scut work or lab for different thinking that wasn't
                revolving around the existing proposal at all. This was really kind of brought
                in and proposed.

                One of (auDA)s senior execs -- who actually hadn't been participating all that
                much in the CWG -- came in and kind of explained it - I mean (Paul Shindler)
                and it was being championed by this -- I'm not sure if he's the head of (auDA)
                -- but the senior person (auDA) Chris Disspain who also is a member of the
                ICANN board. It took pains to say that this was not a board position that he
                was taking in any stretch of the imagination. This kind of came out of those
                discussions.

I think this may have been to some extent inspire by either their own structure or by structures that they were familiar with in Australian entities that they had familiarity with.

Maarten Simon: Maybe I can add something. It's Maarten. What I understand is that the golden bylaw proposal was also supported by (auDA) and that they had been looking into it and if such a thing need work under California law. Have they got signals that that would be difficult? Then they cannot - quite difficult to understand -- for me, at least -- proposal with trust.

I remember that (Bol Shinta) who brought this up even said that if the golden bylaw would be possible in any form that would be a better (ID). I'm not sure if you can do that but it should not be primarily our focus on this one, I think.

Man: Just to be clear for me because the MRT is something that does seem to have - there is a lot of important (unintelligible) through a multi-regional review or multi-regional body/board entity, whatever, they can have some oversight. But the oversight that it is directed to is to - again, correct me if I'm wrong.

But the way I read this -- and I want to be sure -- is the oversight of the MRT directed to whether or not the IANA functions operator -- in this case ICANN -- is satisfactorily performing the IANA functions as opposed to - it's not a policy making or policy review board that they feel that the policies that are being adopted by ICANN are being put out by ICANN as the policy end.

If those things - if the MRT disagrees with the policies, would the MRT have the ability to pull back the IANA functions contract from ICANN and award it to somebody else? Because I'm a little worried about checks and balances where we've got this MRT board that sort of hangs out there on the side or MRT entity that ends up on the side, and yet people are contemplating giving

it the power to dictate and authorize changes. To me, there is a capture problem there because I see limited oversight on the MRT if it's not kind of brought out into the sunlight.

Man: I think there are a couple of points on that. First, I think it's important that the MRTs power -- that any power -- to make drastic changes be clearly defined as it would be in kind of termination and escalation provisions in an agreement, or maybe more clearly and extensively defined than that. I think specifically one of the difficult issues is whether there is the right to kind of pull the IANA functions from ICANN based on problems not with IANA but with ICANN on an enterprise level and whether those powers should even exist; and if so, how they can be defined and managed.

I think that one of the issues in terms of MRT oversight -- and I agree that obviously there are capture issues -- the MRT by being in multi-stakeholder body would have representatives from every stakeholder group -- non-commercial, commercial, private sector, registries, registrars, at large government advisory, security instability advisory committee, et cetera -- you kind of would have to have almost some sort of Manchurian candidate kind of takeover to have groups that have such disparate interests all have their representatives move to take a drastic action.

I think, again, one of the thoughts was that these people would be very much representative and that if the groups that put them in place; for instance, if the commercial stakeholder groups representative was acting in a way that the commercial stakeholder group thought was inappropriate that they could be pulled unlike not to wade into other waters. But unlike a board member who may have been selected by a stakeholder group, but once on the board has responsibilities that aren't directly representative of the group that put them there.

Man: But you could have a representative board, not an expertise board, but that's a detail.

                I think we've got some time limitations. I know various Sibley people are absent on other calls. How do you want to handle the next steps?

Woman: I think Holly...

Holly Gregory: I'm still here.

Man: (Charlie), I was asking you how you wanted to handle the next steps since we are at the end of our two hours? I think we've lost (Charlie).

                Sharon, do you think - we didn't get into some of the 12 questions and sub-questions that were supplied by the participants.

Sharon Flanagan: Yes, I think that's okay. I think that's more on the level of detail. I mean Jonathan, you hit the nail on the head in terms of our goal which is to - we asked a lot of questions -- and thank you for your patience with us in giving us all this background -- but it will help us consider the structures you have; consider whether there are structures that aren't on the list that maybe should be considered and hopefully will lead to better set of recommendations coming from us. So thanks for your time on that.

Jonathan Robinson: Well, thank you, all. I hope this is going to be recorded and will be heard. I hope that the group thinks we've represented their ideas accurately. It does sound like it's been useful to you. Great.

Greg Shatan: I'd like to thank you as well. This is Greg. I guess I would just say that in terms of the 12 questions, that is what we have discussing, actually having answered in kind of an FAQ fashion, at least, in time for a symbol. Certainly, we would want you to ask us questions for clarification and to understand where those came from.

To some people, at least, a key portion of the legal advice, so to speak, is, in essence, getting answers to those questions because those questions kind of bubbled up from all the participants and came from their ability or inability to kind of judge where each of these four models -- or the components of the models -- came from and how applicable they can be and what their pros and cons were.

So that's kind of in terms of next steps something very much to discuss.

Man: Why don't I suggest that we...

Man: I think that some of the Sibley folks need to take some of this offline and practice through this. We've had some notes as well.

Man: We can circle back and see if we want to schedule a further call to go through some of these questions and ask some questions or ask a person clarification on these things.

Man: I know that we had talked about - or in the remit to us, it talks about not expecting responses to each specific question, but maybe we think about how to sort of organize some responses to the categories generally or to selling one. Some of them kind of redundant or appear in multiple places.

I think the next step would be for us to circle back on that point in specifics and come back to with a request for some follow up discussion or perhaps some written request for clarification as well.

Man: Absolutely. And I think one of the things we're trying to schedule is a regularly scheduled time for a call between the client committee and Sibley. We've been looking at Friday. The Friday times are rather late for Europe. I think Maarten is having some, at least one if not more of the members we know are going to have problems with that given the six-hour time difference between the east coast and Europe other than U.K.

Man: ...and nine hours for those of us on the west coast.

Man: Right. Essentially there is never a good time. It's just a question of what is the least bad time. Obviously, there is no eight-hour day in which a nine-hour difference can be made part of the traditional work day, none of which - which none of us actually work. I think that if you look toward Thursday or Friday or at least this Friday for a follow up call, that would be something, a time for our next discussion as well as taking things down to the client list for follow up.

Man: Okay. We'll circle off with Holly internally and we'll get back to you with some ideas. In the meanwhile if you'd let us know whether there is availability for Friday. Hopefully not quite so early for the west coast but something that is a little bit tolerable for both sides -- both ends of the extreme, I should say.

Man: All right. Thank you very much for your time.

Group: Thank you.

Group: Bye.

Coordinator: That concludes this conference. Thank you, all, for participating. You may

                now disconnect.

END