

**ICANN**

**Moderator: Brenda Brewer**

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**8:00 am CT**

Jonathan Robinson: All right. So welcome back after lunch everyone. Let's get ready to keep things moving.

And thanks so much. You were more prompt than me I think coming back from lunch. You obviously got the spirit of things.

So we went through those two models if you like, those two variants, and we've got a third to deal with now. We - I promised we would go through them a second time. And I think a quick cycle through will make sense.

And I'll probably ask in addition to anything that comes in during the course of things I'll probably ask Sidley to give some observations or any (unintelligible) they've got once we've been through that cycle. And then we can start to think about where we go next.

So the - we've made a pretty thorough pass over the sort of Contract Co. model, the so-called internal solution and it seems in a discussion pre-lunch to - I've talked with Grace and with Lise and we looked at this and it actually

seems like many of these issues might be quite similar between the two internal models.

So maybe one way of moving things faster is to copy and paste this across and then cut out anything or Avri you look like, you want to start from scratch.

Avri Doria: Instant (virtual) reaction to copying over and pasting was with doubt. But if you wish go ahead.

Jonathan Robinson: But we can start from scratch. I mean it's - I mean some of them may - you may make a reference to (unintelligible).

Chris Disspain: So we maybe just take each one and ask if it could be pasted across. In other words go through the list from the old one.

Jonathan Robinson: And who's going to judge that? That's the problem.

Chris Disspain: Avri.

Jonathan Robinson: Okay we can. She's not the maker of or she's not the maker of the pros or cons in each case. But, you know, I'll just - so all right, let's - but we'll work fast through then a set of pros and cons and see if they - and what we can do is when we cycle through we can cycle backwards to this one because they naturally sit quite closely alongside one another.

So let's do that. All right, so we got a clean slate with this. I mean it might be worth just capturing given the sort of comments and questions that were made previously. Avri can I ask you, would you like to say what distinguishes this from the one we were talking about previously in a couple of sentences?

Avri Doria: Yes, I suppose. I was actually thinking I was going to have to keep my mouth shut all the way through this one because you had said the proponents of things shouldn't be the ones giving the pros and cons.

But yes, I suppose I could start with it. Okay, well the first con was given to us by Sidley which is it takes a little bit more work to get started. So let me start by being fair and putting up a con.

It - one of its pros is that the (capability) is well defined and is ready to go if needed. It maintains - this is the same as the internal. It maintains the stability and of the model that we currently got. So it basically leads IANA on (omens) although it creates an oversight, internal oversight by virtue of having a contract which is - and that lessens the dependency on all of the accountability. The contract is at the end of the day a fixed point where one.

Oh okay.

Man: Okay.

Jonathan Robinson: I've got Chris next. There's nothing to stop you putting up your hand again. And actually I didn't say that the proponents.

Avri Doria: I have my hand up.

Jonathan Robinson: No.

Avri Doria: Oh okay.

Jonathan Robinson: That should you wish to add. I didn't say the proponents shouldn't put points up for the models that they have brought. But it was really more that

they shouldn't be stuck with only that defending the models if you like and try and because in the end of the day we've got to produce a model and a proposal for public comment that's got to fly in the big wide world. And pass through one of the tests that that ensures.

And that's what I meant by that. Try and look at it through the eyes of others as well as yourself.

Chris.

Chris Disspain: So I think a couple of things. Is that in the previous model - the difference between this model and the previous model is one, that there is an affiliate and Greg I think it was Greg put a pro or a con depending on which way you phrase the sentence and the last one saying that it doesn't have a virtue of a contract.

So I think there's that. I think that's important point for those who think that the contract matters. And acknowledge that it may well do.

Other than that I think all of the cons, the pros and cons from the previous model are pretty importable in the sense that on the con side yes, you would still have to - on the - I mean what's on there in detail but, you know, you would have to construct the accountability mechanisms that cover on how we left that at the end of the day.

There is one other pro that this has which is that it creates a clear pathway that the other two customers the IANA function would use if they chose to do so at any time - well certainly to agree (unintelligible) anybody else. To come together if you will on the - in other words perhaps a separate affiliate body

and having the possibility of whatever it was we called it future service agreements.

And so something you couldn't do it with the other model. It's just in the same way that (Holly) was saying, you know, you've made it now. You've made it now and there's a clear pathway.

So I see that as a very clear distinction between the two levels. But I do think that the vast majority of the cons on the other model are applicable to this one and we should. But I mean I'm happy - if you can put them up, I'm happy to say which ones I think. I just don't want to redraft for no good reason.

So the first con isn't appropriate. That's in fact the opposite of you've got a contract so that's really good. I think the second one is you need to nail down the mechanisms that give effect to the teeth. I think that's there as main thing for whichever model.

((Crosstalk))

Chris Disspain: No. That's the accountability mechanisms or I misread it. Is it - are you talking about the terms of the contract?

So it says the model, not the...

Avri Doria: I don't think that this one applies because the mechanisms are fairly well nailed down. There's a contract. As I said I think you need fewer of the accountability mechanisms. You don't need the - quite the extent that you need them, contracts to rely...

Chris Disspain: Right, okay. I'm fine with that. But the other - the next one definitely applies which is the dependent on the accountability mechanisms because it is...

Avri Doria: (And) that gets to be green because on the other side where it was saying that there's less dependency on the accountability - or dependent but less so perhaps. I don't know.

Chris Disspain: Well it's dependent in the sense that if you going to have the same mechanisms in place to spill the Board and all of that sort of stuff it would seem to me.

Jonathan Robinson: Don't worry about the color. The color has no significant - no consequence at this point guys.

Chris Disspain: Am I making sense Avri?

Avri Doria: And why would you need to spill the Board?

Jonathan Robinson: Okay.

Avri Doria: In the same sense.

Chris Disspain: Well so...

Jonathan Robinson: Guys just on the point of process, I think we'll indulge you for a couple of minutes to try and get these, if there are things that are copied across but there is a queue so just...

Chris Disspain: Well what - so what's becoming clear to me and I think - so thank you Jonathan. So what's becoming clear to me is and again this is all about having

this conversation so we can get clear what sort of model we are actually talking about is that Avri's proposed model. I know it's not just you Avri. Avri's proposed model involves - it's not just a case of setting up a subsidiary or an affiliate. But involves having a contract put in place and it's that contract that you think he would use Avri to deal with a whole heap other things that in the other model would be dealt with by way of accountability mechanisms.

And my point would be yes, but in order to actually deal with them in the contract you need the accountability mechanisms to ensure that the Board does deal with them.

So I don't think it matters. I'm happy if you put them in the contract and say he will do the following. But the reality is if the Board refuses to adhere them to the contract then you've got exactly the same problem as you have with the other model.

So I think it's - I'm very comfortable having a contract because I think it's important to actually state what they are. But fundamentally the accountability issues are the same because you've still got to force the Board to take the steps it seems to me.

So for that reason I think it is important to say that the accountability mechanisms will still need to be in place.

Jonathan Robinson: Chris I'm going to hold you. Going to cut you short at that point because I think that was - that is an important clarification point. You know does it depend on the same set of accountability mechanisms.

But we do have a queue. So let's go to the queue and...

Man: Excuse me. Can I - point of order. When people are talking about the Board in this model please tell us which Board you're talking about.

Jonathan Robinson: ICANN Board. There is - that's a good...

Man: No.

Man: There is going to be a Board of this other group.

Jonathan Robinson: Okay.

Man: And that's the one that we have to make accountable I think.

Man: Chris was saying.

Chris Disspain: Well I was going one step up. I assumed that ICANN would be the member and that therefore ICANN itself as the member makes that Board accountable. And then it's how do you make a member accountable?

Jonathan Robinson: Well the truth is we haven't got that detailed structure sorted out as to whether - we don't know whether the affiliate is - has members. I don't think. But I don't think we know what the composition of the - a Board or the affiliate might or might not be.

So I mean those are details that would need to be discussed. Sharon.

Sharon Flanagan: And that's something that potentially is a con which is you have to create that - another level. We already have to deal with the ICANN level but you now have to deal with subsidiary level Board. Is it a full Board or is it really more



of kind of a skeleton Board. And so I think that is, you know, replicating governance is a con potentially of that structure.

Jonathan Robinson: Thanks. Jordan.

Jordan Carter: Thanks. A couple of pros, one is that this model would increase the transparency of the IANA operation because it would imply a greater degree of separation between the IANA operations and the rest of ICANN than is currently the case. And the primary benefit there I think is transparency.

And given that presumably it would include some kind of governance body in the - whatever the entity was. It does solve one of the dilemmas for ICANN at the moment which is that the ICANN Board is both the Board of the policymaker and the Board of the operator.

So it's - it would separate. That's what happens today in ICANN. Greg is looking very confused. The ICANN Board governs both the operations of IANA and the ICANN policymaking (for us) within the Bylaws.

So by separating those into two different governing bodies you remove that thing which some might call a conflict of interest for the ICANN Board. It can focus its attention on running the policy stuff as best it can. And the IANA Board or whatever it is can focus best on excellent IANA operation.

Two cons to mention, first of all, because this affects, at least I think it would affect the three customer IANA functions; it needs discussion with the other communities before it could be done.

And so maybe it needs to be specified more tightly that this would only apply to names otherwise it might be out of scope for this CWG. And the other con I

think is that it doesn't actually provide an answer to the thing that the other two models answer which is how you make the decision whether to assign these functions to another thing.

So if you chose this model as something to have you would still need to do one of the other two models as well.

Jonathan Robinson: So I don't think I need to tell anyone to be shy in coming forward. But it's interesting. I mean I'm not sure I fully understand or agree with Jordan's points.

And I think that's one of the things that one should do is just be sure that in just simply adding to the list is also feel free to come back and seek clarification or further detail on points that have been made.

And maybe I'll ask a question. I'm not sure I understand why it's - on that final bullet point, the final con, doesn't answer how to make the decision of reassignment of the ISO. Does - do the other models?

Jordan Carter: Yes. Yes. I think they do Jonathan because they are entirely focused on the - well not entirely but they are substantially focused on making that decision.

So in the external model their Contract Co. body that has the decision rights. In the internal model it's ICANN, do whatever process is set out in the Bylaws has the decision rights.

And in this one it isn't clear who has the decision rights. I don't think anyone is saying that the Board of this operational unit should be deciding whether it keeps doing it or whether someone else does.

Man: No. It's the same as the other model. It's ICANN.

((Crosstalk))

Jordan Carter: No. So it's the same as the internal model.

Man: To keep that...

((Crosstalk))

Jordan Carter: So you would have to do the internal model as well as this is my point.

Man: And...

((Crosstalk))

Jordan Carter: Or the external model as well as that.

Jonathan Robinson: Sharon can respond as well.

Sharon Flanagan: I was just going to say. I think that for the Contract Co. it's clear because that is the focus and purpose of that entity. I think for both of the internal models that's - I think that's still work to be done which is the how. What are the triggers? How is it triggered? Who triggers it? That's a whole process of its own which we would need to address.

But I think that's in both of the internal.

Jonathan Robinson: Okay. So that's a really interesting point because when and if we manage to either exit this process with three, two or even one option, this whole process (beginning) now, I mean clearly we in the CWG and Sidley as the legal advisors we've retained to help us with this will have some detailed work to be done.

So the sooner we can get to that detailed work it'll - and that's the challenge with some of this. And it's kind of goes probably to the point that Thomas was even making before lunch that there are some challenges. And we thought this all the way through with - when one talked to the high level.

But it's the nature of the beast. We have to accept a little bit of uncertainty as we work through it. But we will have to get there in the end.

Right, there's a decent queue built up so Alan you're next.

Alan Greenberg: Thank you. A con in this one at least, again a con in my mind and the same as with the Contract Co. one is what we are separating should we separate is the stewardship, not the function.

CWG principles say we have to be able to separate the function. This also would separate the stewardship because should we no longer be dealing with this wholly owned subsidiary or affiliate we would be dealing with another one somewhere else, you know, General Motors takes over. And they become the steward of the whole process.

Jonathan Robinson: I see a number of heads shaking. So would anyone like to just offer a response? Please put up your hand in the room if you - sorry, in the physical room if you'd like to respond or I see a very sensitive hand from Avri.

Avri Doria: Do it so naturally. I think we're still separating the operational function because it's the IANA operational function it is and not the stewardship is still policy and the stewardship is there. It's still ICANN that's making a contract with this function and it's ICANN that would be changing who it made a contact - contract.

Jonathan Robinson: Sharon.

Sharon Flanagan: I think that's true initially. But I think that if ultimately - if the purpose of creating the subsidiary is to at some point theoretically spin it out, divest it, then there's someone else controlling that function, right.

So I think that's only true at Phase 1 but not necessarily if there ever is a Phase 2.

((Crosstalk))

Sharon Flanagan: Right.

Jonathan Robinson: And actually that's not Avri's intent. That's not the intention of this proposal. I don't speak for Avri but she's too slow to get to the microphone. The intention of this proposal is simply to be exactly the same as the previous proposal. I'm being a little bit unfair here but simplistically with the exception that you actually put the function into an affiliate.

It is not intended that it would be possible to spin the affiliate off into entirely separate ownership. It's intended that you could either re-let the contract by a subcontractor and lose the affiliate completely or you could take the affiliate out of ICANN as a separate entity but still have it contracted to ICANN with a subcontract. At least that's my understanding.

Avri Doria: Now the (unintelligible) only other option was to turn it into a membership...

((Crosstalk))

Jonathan Robinson: Okay. So I - let's just - that just catches here because there's a kind of question of the spirit and the detail of the initial intent. But of course that might move in time as we consider the different options.

So for example once you've created a subsidiary, a subsidiary as the - it could prospectively be moved out. I mean it's...

((Crosstalk))

Jonathan Robinson: Of course. Yes, of course. Of course, right. So I have a queue and the next in the queue is Alan.

Alan Greenberg: My understanding of this is and let's go to the case where there are three, the three controlling entities, if they choose to sever their Memorandum of Agreement with this group and move it to somewhere else ICANN is out of the picture. That's separating the stewardship at that point.

The whole issue was ICANN like the other two organizations can sever their Memorandum of Agreement. This entity still exists but it has no work to do because no one's contracting with it anymore. They're contracting with some other party we haven't talked about yet. That moves the stewardship as I understand it.

Now there's another option. This entity could subcontract the work but the three Memorandum of Understandings would still (unintelligible).

I thought it was being set up so that they can separate the Memorandum of Understand - they can cancel the Memorandum of Understanding with the three contracting bodies, the (IRRs), the ICANN, each of those can sever their relationship with this group and...

Sharon Flanagan: So a question, a clarification then. Is it the case that - I thought part of the purpose of creating this subsidiary, I thought it was twofold. One is to create better separation because there's a sense of functional separation wasn't enough and that there wasn't - but there were budgets and things like that. So you've got to create legal separation now, point of transition.

I thought that a secondary benefit was that by creating that ring and understanding what was inbound then to the extent you ever wanted to divest, move it out, you could.

But am I hearing three is no scenario where you would ever move it out?

I think that's - okay.

Jonathan Robinson: So that's why I think we've got to be careful here because there's a question of intent and a question of what's possible. We are - Sidley was possible and when Sidley came to us there were a number of things that are possible. So we're not - we can't by definition we almost can't be on exactly the same page here.

This advantage is a subsidiary. Quite what the detail corporate structure around what one could or couldn't do with that subsidiary simply isn't articulated at this point. I mean it is articulated in original form in the hybrid model. But, you know, there's more work to be done as we - so in a sense

one's talking about - I think we maybe need to abstract ourselves a little.

Okay.

Avri Doria: You're right. And as we did say that if ICANN went (rogue) but it's still - ICANN would still have the contract making. It would still have stewardship and the policy. The function would be spun out separately so that if for example in the subsidiary you found out that ICANN was still messing with it too much, ICANN was going (unintelligible), ICANN was putting too many pressures, ICANN wasn't agreeing to the right budget (rogue) and so on and so forth then it could certainly become more independent.

But it doesn't have - the stewardship is still based on the contract that ICANN has with this entity, not this entity that doesn't have ownership of the stewardship function.

So that's I guess where I'm disputing. Certainly it can be spun out. But it's still ICANN that owns making the contract.

Sharon Flanagan: Then spun out to what end? Why would you spin it out? That's the part I don't understand. If ICANN remains a steward what is the purpose of spinning it out?

Chris Disspain: Because it's not working. You spun it out if it isn't working.

Avri Doria: So as a subsidiary you weren't getting sufficient independence from ICANN saying how the function is done, how the function is paid for, the costs, the materials, the - you know that that part was being - you know if you've got three separate functions, policy, stewardship and operations but you find that the steward as opposed to contracting for the operation is controlling the operation then you have the reason for spinning.



Sharon Flanagan: Okay. So it is - the purpose is to essentially take what was variant three to standalone and have the ability to turn in - to turn this other variant into that.

Chris Disspain: No, that's - no.

Sharon Flanagan: Well.

Chris Disspain: That's still not right. If you go - if you - the purpose of spinning it out is the equivalent of letting a subcontract in the other model, intention of spinning it out so let's - it's all about intention here. If - in the previous model it is possible that you could have a circumstance where the IANA function was divested. Unless there is a Bylaw that says the IANA function will never be divested, it's always possible that you would have - you could divest the function, right.

But the way you build the second model is you say, you don't - is you say under certain circumstances we will subcontract the model but we'll retain the policy, etcetera, etcetera.

Where the confusion is arising is that we're not understanding why Avri and her friends want it in a separate entity.

And my understanding of the reason they want one, because having a contract is a really good thing to have; two, because it opens a pathway for the (IRRs) and the ITF to come and join in that game. It is not a reason to put it into an affiliate so that you can divest it to someone else entirely. That is not the purpose.

Could you? Yes. But that is not the purpose.

Jonathan Robinson: Okay, well thanks for clarifying that. That's helpful that we have that motivation notwithstanding all the other things that you might or might not be able to do in a subsidiary. That was the purpose. It's now clearly articulated at least it seems to be.

Let's make sure we stick to the queue. Now Sharon you were in the queue.

Sharon Flanagan: Oh.

Jonathan Robinson: But I suspect that that's...

Sharon Flanagan: Well, no I was in the queue to answer a question in the chat board about the first con which is it takes more work to get started. Someone had asked does it - I think it was (Martin Mueller). Does it in fact take more work to get started? Don't you still have to deal with accountability no matter what?

I think that - the accountability part, yes, that you have to deal with no matter what. The part that's the additional work is just the actual drawing the line around the IANA function and maybe that's easy. But sometimes when you try to separate what is a division into a legal entity the lines are fuzzy.

Is this person - where does this person sit? Are they wholly in or wholly out?  
Where does this IT sit? Is it wholly, is it wholly out?

And that's what I was referring to.

Jonathan Robinson: Thanks. That's clear. Olivier.

Olivier Crepin-LeBlond: Thanks Jonathan (unintelligible) speaking. And there's a contribution with a question mark here. Would this model possible for - shall wait and accountability as opposed to the previous, you know, having an external Contract Co. that would not benefit from ICANN's financial weight or accountability processes or (unintelligible)?

Sharon Flanagan: Yes.

Olivier Crepin-LeBlond: Etcetera.

Sharon Flanagan: I think - well it certainly addresses in a simpler way the funding issue that we had a Contract Co. A Contract Co. is just a question where is the funding coming from here? I think it would be clear. It would be coming from the parent ICANN.

And as to whether you've got, you know, better bargaining power I can't really speak to that on a commercial level. I would think you would but, you know, I don't know.

Jonathan Robinson: So that would be going in the pros column I guess.

Well there's a queues. And Greg who comes after Chris before we make another pass through. So Chris you're next.

Chris Disspain: Well two things, one given the discussion we've just had to the current last bullet point in cons is not correct (unintelligible) we're not talking (unintelligible) stewardship. We are talking about (unintelligible).

Secondly, and this is a con I think that any circumstance where you put the function into a set approach (unintelligible) whether that's a result of

subcontracting out to an independent party or as a result of putting in an affiliate, etcetera, so there are pros to it as well.

But one of the cons is that structured in such a way that you've got separation. You lose what I call in my company, management by walking around. In other words you've got an - you've got a body. You've got an affiliate or you've got a separate organization who is likely to be concerned about the face that they show you as the - as ICANN, the face that they show you. And it's more difficult to simply get a grasp of what's going on by standing at the water cooler and listening to the faucet.

I know that's very difficult to put into words. But what I'm trying to say is that there is a con to separation. There are some pros as well. And one of those is the loss of the feel. The loss of the general day-to-day feeling of is it all going okay?

Jonathan Robinson: Chris can we capture that as just greater distance from management or a - you know that's...?

Chris Disspain: Yes. So I suppose so.

Sharon Flanagan: Although I don't - I don't know that the legal separation contemplates physical separation. I think they could - and could imagine a scenario where they - all the same teams sits in the same place and.

Chris Disspain: Oh I completely agree.

Sharon Flanagan: Okay.

Chris Disspain: I'm not suggesting that. But however it does contemplate the possibility of a decision being made to do that by the Board of that affiliate. Yes. You know you need the mechanisms in place that say that the member of ICANN's. The member is going to stop that from happening and all of that stuff.

So I'm not - you know I agree. It doesn't contemplate it. But it makes it easier to do if you - point of view.

Risks it, yes, thank you.

Jonathan Robinson: Okay, let's get the pros and cons on the table on the first part of this model. And we got a strict stop at (Donna) then.

So we got Greg, Erick, (Donna), three more points on pros and cons on this and then.

Greg Shatan: Thanks. It's Greg Shatan. I guess I'm not - maybe I'm the only one in the room who's thinking this. But I was disagreeing with Chris when he was saying that it's not contemplated that the IANA function could be completely spun out from ICANN and become a separate - not just a separate entity but a separate entity that's not under the stewardship of ICANN. It may be under the stewardship of stakeholders of ICANN but without the intermediary of ICANN being involved in any way.

So I'd like to know if that's missed. That's maybe neither a pro or a con but it's kind of an overarching issue here. And that if I'm the only one who thinks that, that's great.

But I see Alan Greenberg agreeing with me that I'm not the only one who's thinking that. There may be others who were thinking what Chris thinks and but I think that's an open question, not a closed one.

So and I think just - I think Sharon said most of what I would have wanted to say about functional versus structural separation. I've been in clients where you have ten people sitting in a - you know offices next to each other who all work together and they're getting paychecks from six different subsidiaries. Some of them succumbed and some of them are in separate subsidiaries, you know, for legal reasons.

So there really doesn't need to be anything done there. So I think the risk is modest on that. Thanks.

Jonathan Robinson: The risk is modest on that one in the bottom of the column, the isolation from management point of view. Okay I would just say I think we dealt with that spinning out and subsidiary (unintelligible) issue properly.

Let me tell you why I think we dealt with it properly. I think it's - it could be contemplated within a structure such as this. What we established was that it wasn't contemplated by the model proponent.

So I think that's the difference. And so the model as we're discussing it didn't contemplate that. While if it is technically possible it's not - it wasn't what was being advocated or contemplated by - so I'm not sure how we then deal with that. But that's - we had that discussion.

Greg Shatan: I just think in an exercise like this model seems to be owned by their proponents.

Jonathan Robinson: I guess that's - I have some sympathy there for you that they still have to become a product of the group or...

Greg Shatan: Community property.

Jonathan Robinson: Yes. I've got a couple more people in the queue who haven't had the chance to speak yet so I'm going to defer to them. That's both Erick and (Donna) so first Erick.

Erick Iriarte: Thank you. If I am correct, this is the final of the first round of comments. Oh, so I, these are the comments especially if you catered for these. It will be It will be at (COMS) for the other two (models) too. .

It's not clear how will be the diversity of service between the (G\LD's) and (CCTLB's). (They said they're not sure) of the legal relations. They're not sure with the legal relations. With (GTLD's), its contract but they're not sure of the legal relation with (CCTLD's) is more a legacy, n historical relations before that. (Unintelligible).

So for the three (months) it's not clear how will be this diversity of the situations will affect any of the (mothers. The same comments for (unintelligible) is not clear any of the (models) with the legacy and especially in the case (CLD's) and also (unintelligible) to the United States (unintelligible)

Jonathan Robinson: That's an overarching concern regardless of how it pertains to any relationship.

I mean it's almost lie if there's something in test to make sure that (unintelligible) rather than a concern with this specific model.

Erick Iriarte: Yes, maybe in the stress test but I will not know if any of the legal (models). Understand that the legacy of the situation have relation with more political than legal structure are more related to (unintelligible) (1591) to a new contract (unintelligible) a new system with new (unintelligible)0.

Jonathan Robinson: Got it. Thank you. Donna.

Donna Austin: Thanks Jonathan. So I guess this is, I'm not sure whether this is the right place to raise this but when Chris raised the issue of isolation from management it occurred to me that, you know, one of the things that the registries want is the reliable service.

And part of that goes to having the right people in the right job. So one of the concerns I guess for me with any of these models is continuity of the service that is provided now.

And if there's uncertainty of employment by the people currently doing the IMF function, does that create a situation where you actually lose the expertise because they're uncertain about their future employment possibilities.

So I think a lot of, potentially all of the models create an element of uncertainty (though) it's doing the job now. And that has a (unintelligible) security (unintelligible) across the board.

Jonathan Robinson: In a sense this is, I mean in one sense, (Eric's) point as I understood is a continuity of service issue as well. He's concerned that there is an existing level of service provided to some (unintelligible) function and he's concerned



that, and in a way that's the same point, that it's a test that any model needs to be put through.

And it doesn't seem to me that it's necessarily an (icon) of any particular model but it's an overarching test that all models need to be subject to to deliver spontaneity of service (at minimum).

Okay so that was a useful pass over the models. I think what we said we would do now is flip back over them and check for and read through the points, make sure we're satisfied or if there are clarifying questions.

Since this is freshest in our minds, we'll come back to it last. I wonder, perhaps we just go back to the beginning and just check that now. In the light of the comments we've had I feel it may give us a fresh pair of eyes. So we have an opportunity to now spend 20 minutes or so passing over these different models.

So you have the opportunity now to put your hand up in the queue and say I have, I'd like to add another one, perhaps make a clarifying question on or if you have a strong view, just so it's on the record or any particular points or if you'd like to add anything.

Your hand has gone up. I mean would it, I mean I'm not sure it's helpful to read these. I suspect everyone can read them themselves. I'm not going to read them out loud. We have a queue forming. Let's go. Chris.

Chris Disspain: I have a question. This model needs stewardship in advance of moving. I understand what it says. (I'm not sure) what it means.

Jonathan Robinson: Lise.

Lise Fuhr: I think there are people who felt it was a plus and some who felt it was a minus. It's on both sides of the column.

Greg Shatan: I apologize. So that's, so there is some case of the green stuff on the earlier charts because we were using green charts. That was the intention.

Lise Fuhr: The green just means that it's on both sides of the column.

Greg Shatan: Then I apologize. Can I just ask, Jonathan, you're asking, if nothing is said then there's an implication that I agree that all of these...

Jonathan Robinson: I think it's just hard and fast at that. This is a bit of a white boarding exercise...

Man: No problem.

Jonathan Robinson: ...to try and put them through this, through the test of it and make sure that we, you know, and it's almost like a show of hands and a little bit more detailed than that. But it's actually starting to get a sense of how these stack up relative to one another.

Because we haven't really done that level of cross-compare. Chuck.

Chuck Gomes: Thank you Jonathan. (Chuck Gomes). I'm wondering Jonathan and Lise, items on either column that are really just work to be done. I mean there are pros and cons that are innate to the model and we included a lot of things that are really, it's just some work to be done.

And as long as it's a reasonable amount of work, now we can maybe flag it if it's an excessive amount of work to do it but if it's just something for us that still has to be done, I'm not sure if that's a con and I'm not sure if all of these fit into the con category or not.

But it seems like that would narrow down our pros and cons and it's not really a con because there's work to be done. That's going to be true of a lot of things. We know we have work to do. So I don't know. We through that our as an idea.

Jonathan Robinson: That's a very constructive suggestion and actually one of the things that I'd like us all to bear in mind is that that's right. There's going to be work to be done on potentially all of these.

I would throw it back to you. Could we do the work on less than three of them, you know, because in a way if we think where we're going with this, we've got a public comment period coming up pretty shortly where we need to have a document out.

We know we put a document out previously with contract curve in it. The question is if we put a document out again with contract (code) is it going to be the same or is it going to be different?

Are we going to put more than one model in there or do we think we can get to something by doing that work that you described that would serve. One way of thinking about this is are we prepared to do that work on all three or should we be trying to think about doing that work through the client committee instructing (unintelligible) to do some really detailed work on less than three. Chuck go ahead.

Chuck Gomes: I'll share, this is Chuck again. I'll share my personal opinion. I'd still like to see if we can narrow it down further to one ideally and if we had to, two before we give up on that.

And so what I was suggesting would be a way maybe that we can narrow it down a little bit further, get the, fluff's a terrible word for what I want to say, out of there that really is a negative in itself the model. It's just something we have to do.

That's okay to have stuff to do. And then I guess personally, I'd still like to narrow it down further and my suggestion was one means of maybe making the picture a little bit more concise.

Jonathan Robinson: So got it. So what we will do is if anyone has a suggestion as you respond in turn to one or more points that represent, the terms that (Chuck's) talked about, we can use some color highlights into that, if that rather could be characterized as additional work rather than necessarily a pro or a con.

The one other question I had was just to think in the back of your mind if it is only the third model or if any of these others might have an impact on the users of the (IMS) Services because that's a concern in my mind that if at the ready least, if the other users of the (INS) services see the work we're doing and is it going to create concerns or issues for them?

So Eduardo.

Eduardo Díaz: Thank you. I just wanted to talk about this in general terms, not in the process (unintelligible) but if I look at the process and the (unintelligible) on this specific model you know, we look and we compare that to the principles, I

mean in this model we're talking about moving a (stewardship) which is out of the scope of our principles.

So it's not compatible in that way and second, if you look at the (coms) and one of the things that Chuck mentioned before is that the (NTI) doesn't expect us to create any (entity).

So my point is, you know, sure we'll keep looking at this or which is concentrated on the other (unintelligible). Sorry Eduardo. Multi-tasking. Trying to deal with (comments) in the chat and various things.

So I want to make sure we...

Woman: Yes. He's essentially saying should we start to consider taking this off the table for now.

Eduardo Díaz: Yes.

Woman: Okay.

Jonathan Robinson: So if we intend that we come to that fine. That's a consideration. But the intention is that we come to that next after having made another quick pass through each of the models just to check. So you're one step ahead of us. Well we'll mark that card.

Martin you're next. And Eduardo and Chuck we need your hands there.

Martin Boyle: Thanks Jonathan. (Martin Boyle). I've got two comments on the detail. Firstly, and perhaps I wasn't paying enough attention. Perhaps just my

memory's beginning to fail me. I don't actually understand the pro points about this model avoiding a single point of failure.

It looks to me like having put new bodies, entities into the structure. We have increased the number of points of failure. It might be a lower risk for of those. But, you know, they are things in the direct chain and therefore should be considered as points of failure.

The other point I'd like to get out was the bottom of the pros where it says long chain of decision making which I think actually came from me originally but in fact my point was that you have a risk of slower decision making.

But more importantly it starts becoming more unclear where the service is failing, who is responsible, who is accountable at the various levels and essentially it distances the customer from the supplier in a way that I find a little bit concerning, if we haven't very, very defined where the accountability for different things lies.

It's fixable but it needs to be (staged). Thanks.

Woman: I think we would update then that (comment) on decision making to, instead of long chain of decision making, risk of slower decision making.

Martin Boyle: Yes, two things, is the risk of slower decision making and the other one is the more, make it more difficult to identify who to pin the blame on.

Jonathan Robinson: Making sure that we've got things loaded in the room so that we can keep track of the conversation. We lost the presentation from (unintelligible) remotely and locally can see the same information and (unintelligible) real time update.

Okay. Chris next.

Chris Disspain: Okay. Thanks Jonathan. I've gone through this slide and the only thing I can find on it that I think (Chuck's) got his work to do. There's a (comment) that says implementation and accountability action.

I can't see it because the cursor's over it. Implementation and accountability, should the (unintelligible) function be moved? I'm guessing that one would be able to deal with that, in the sense that there's work to be done. Certainly accountability you need to do. That needs to be in place now.

But implementation is just simply work to be done, isn't it. Accountability (not). I'm not (fussed) about it. It's the only thing I could see so I thought I'd mention it. The only other point I wanted to raise was whether or not we should be considering the issue of at this stage moving, effectively splitting the functions in effect immediately, what we would be doing at this state.

I'm assuming we would be moving the naming stewardship into contract code. If we aren't, then we would need to have the consent to (unintelligible). So I don't know if anyone's considered it but I suspect it is a niche. If we did it, we'd have to be very seriously happy to say actually we believe these three functions should be separated as a principle because that's what we'd be doing.

We'd be saying the stewardship of the three, of the three functions, protocols, numbers and names should be separated because that what (we expect) to be doing.

Man: Okay. I saw a hand go up from Elise. Did you want to respond specifically to that?

Elise Lindeberg: Yes.

Man: Can you actually use the mic. Thanks.

Elise Lindeberg: Thank you. And I think it's problematic to say we can give them advice from our group but we can also say to the other groups that we think this should be separated for all functions of the (unintelligible). And they can then comment on that.

I know that this is something for the (naming) function that we are (unintelligible) that in the end (no one could say anything). No group could say anything because we all have to dive into all of the other processes.

This (unintelligible) also and I think we can give some sort of advice on the model that would have the capability (unintelligible). That would mean that we think that all three functions need to go into what (unintelligible) separate.

I think (that the other groups can then come and transact). Otherwise, what you're saying now is it's impossible for us to talk about the ability, yes, because it would only be for the naming function and then we would (unintelligible) that we need to split the (unintelligible) function into three pieces. Is that what you're saying?

Chris Disspain: No I'm not saying that at all, so. I said thank you for raising it because I have clearly, I haven't made myself clear. No. All I'm saying is (and we can discuss probability). What I'm saying is if we to do this model, the external contract model everybody knows that it's the first, that we would be



separating the stewardship. Not the function, not the IMF function. The stewardship.

By doing that we have said that separating the three, the stewardships of the three functions, it is okay because we are doing it by separating out the names function., Or we have to go, or we have to say to the numbers and the IATF, we would like to put this into contract (co). Would you put yours in?

So I'm simply saying I didn't think that was the proposal that we would go to the numbering, to the IATF and we would say to them will you please put yours in. What I thought was the proposal is that we would separate, using this model is that we would separate stewardship into contract (co) and that by definition separates the stewardship of the three functions and I'm not sure I'm comfortable with that.

((Crosstalk))

Chris Disspain: So that's it.

Jonathan Robinson: I want someone to be able to respond to you. Greg responded right away and I think, I don't want to get stuck on this point, please check (Olivier) and Alan if (Greg's) response is satisfactory or not and if so, we want him to come back to the queue.

Greg Shatan: This is Greg Shatan. I don't think that's the way this model works. I think that the stewardship that the NTIA currently holds is what's being moved over. The IETF and the RIR is currently exercising external stewardship of, over (IMF) functions as customers.

The IBA here as the contract (co) would exercise the parallel type of stewardship. So it's not that ICANN would give up operational responsibility and oversight over its (IANA) function group. That will still be internally in there and supervised as it is now. So nothing is being moved or split.

We are in essence creating a similar structure to what the other two communities already have which is a body outside of ICANN (IATF) for the (RIR) in their cases that will exercise customer based stewardship.

Jonathan Robinson: This is a potential rat hole but it's I'm concerned about going down the street and I'm concerned about, so I think we have to mark it as a concern with this structure. Have we got it? Have we captured it as a concern at least even if it's not, you could put under (cons), concern: impact on other communities.

For me this is the, this is an issue throughout. It's whether there's a particular impact. Otherwise we'll get stuck on this for absolute ages. (Paul), you're next in the queue.

Paul Kane Oh thank you Mr. Chairman. I would like to see if it's possible to speed up a little and get to the other models and then try to rationalize it. I don't think anything should be taken of the table just yet.

I started coming here thinking the contract (co) was possibly the path to go down. The more one starts looking into the more complicated it seems to become and I'm increasingly forming the view that possibly contract (co) as an external body is not the way to go down. (Unintelligible) to come to that conclusion.

Now the stewardship role that we've been talking about is currently undertaken by NTIA and I think the assumption that the stewardship is a default by ICANN is an assumption. And I don't know if we've actually made that assumption yet.

I am comfortable with it going to ICANN but I would like possibly to see if there are other organs that would be better suited should separability or whatever occur.

Also, I'm very comfortable with the operational side going to ICANN. They have a proven track record. They are good. But I would also like should they fail to live up to service levels, operational levels, not policy. Should they fail to live up to operational expectations, that that can be moved.

So policy is with ICANN. That's for (GTLD's) it's with ICANN. For (CCT's) it isn't. But the point I'm trying to make is we're spending a lot of time delving in (unintelligible) and I think it would be useful just to try and speed up a bit and look if we can come back to the objectives, the constraints, and come back to a simple model that's not as complicated as these appear to be. Thank you.

Jonathan Robinson: I think we are potentially tying ourselves in knots and I'm going to try my best to answer you, Paul in the way in which we work. We're meant to be taken a quick pass over these, a final quick pass to make sure we get, we've captured the pros and cons.

Remember, at the point of transition of stewardship, the functions of (IANA) operation, as it is agreed remain within ICANN. By definition, therefore, I think ICANN is the steward at that point to the extent that they remain in. And

the job of us and the accountability group together is to make sure that that is appropriately and adequately an accountable stewardship.

However, there's another dimension which is in the final event should these functions move out of ICANN, we'll also need to take (unintelligible) and ensure there is adequate and appropriate accountability at that point.

So that's my kind of picture of it and for the moment the intention is to try and take a walk through these three different constructs and capture a mass of pros and cons and as Chuck suggested, perhaps say which they are implementation issues.

And so I'm mindful of the queue. Need to move it through and then we're going to see if there's any basis on which we have a feeling that these can be simplified down to less options really is where we're going to have to take it.

I've got Alan next.

Alan Greenberg: Thank you. As we've been talking I had somewhat of an epiphany I think the right word is, a revelation. We're using the term stewardship in two different ways. We spell it the same way both times.

Currently NTIA is the steward of the (IANA) function that is they right now give ICANN the ability to run (IANA). IN looking at (Avery's) model, we said that ICANN would still be the steward of it if we decided to sever that contract and move it somewhere else because we would decide where it is.

The (RIR's) also have that ability today to decide to go somewhere else which means it is really for the (RIR's), two levels of stewardship. There's the stewardship granted by NTIA and the stewardship granted by the (RIR's).

And we're using the terms interchangeably and I think that's one of the problems. Thank you.

Jonathan Robinson: Thanks Alan. I'm going to draw the queue to an end on this contract (co). So this is a, I'll put you to either cement or clarify or add to pros and cons on contact (co) and we'll flip through on the other two.

So I've got James, Jordan, Greg and Lise.

James Gannon: I just want to speak to (Donna's) point from earlier, both the continuity to service with specific right to staffing. I fully agree that we need to be very cognizant of the continuity of service push.

I feel that we may be overstaffing our (mark) saying that we need continuity of staff. ICANN as the current (functions) operator I would hope had a plan in place that the (IANA) functions regardless of what staff (unintelligible).

So while I understand the staff that are currently a big part of the ecosystem, we're talking about the function, not necessarily the staff and that function should continue no matter who's running it.

Jonathan Robinson: Thanks James. Jordan.

Jordan Carter: I just wanted to, I thought we had the conversation before that we were looking at these in the context of the models that they represent not just the entity's that listed.

So the second to last (con) bullet point can't be appropriate because it's a core design feature of this model that the contract (co) is only conduit. That the MRT is the steward body.

I just wanted to also briefly comment, if you'll indulge me, on the stewardship word that seems to be causing confusion. At the moment the NTIA is the steward (unintelligible) in it's contract with ICANN requires it to provide functions for the three communities.

The other two communities are both the policy makers and would become the stewards under the transition proposal. So there's no guarantee in the model as painted already by those two that the (IMF) functions would continue to be (operated) b ICANN in the future.

The question, all this comes down to between the external and the internal is the mechanism by which the ICANN community or the (unintelligible) community (unintelligible) and makes a decision about separating the (named) functions that ICANN is operating.

So it's really important to be really clear about exactly what is at stake here. This model, the external model (unintelligible) talked about, the power to make that decision, to assign the functions, the names function, to a different operator.

Stewardship is transferring whether we like it or not (unintelligible). Stewardship is being distributed. ICANN is not going to be the steward of the (IMF) function. ICANN is only going to be the steward of the names function.

Or, for the internal model, for ICANN (the internal model is ) (unintelligible).

Jonathan Robinson: Greg.

Greg Shatan: Thanks Jonathan. And Jordan said a good deal of what I wanted to say but I wanted to make a more general remark as well which is that in reviewing these pros and cons and we seem to be spending a lot more time reviewing cons, I think we need to think about which are things that can be solved or we can draft around them, we can set things up but it's just, it's work that in the end it gets solved.

And those things which are chronic, negative features of the set-up are undesirable to want solved. But I think a number of these are nitpicks or a number of these are things that will get over their humps. Others of these are just permanent features and I think we're treating a lot of them the same.

So a bunch of nitpicks and humps aren't really cons. They're just work. Thank you.

Jonathan Robinson: Which is not dissimilar perhaps to the point that Chuck made. It's just a question of highlighting those. (Greg), you've had the last word on contract (co) which is perhaps appropriate. So let's flip through to the internal model again and we may be able to pass through, we were recently on these. We may be able to pass through this pretty quickly. We did a thorough job on this before lunch but it's, I'll just hold on the slide for a few minutes to make sure.

Jordan's made a point in the chat about whether or not we should be pulling things off the table and I think this is going to be a really key points. It's, they'll be two issues really. One, decision, you know, where we, how far we're prepared to go today or not.

And also what that actually means. You know, are we, when we say pulling something off the table, are we not doing further development on it or are we killing it. And I think there's quite a bit difference and we need to decide that whether we've got the bandwidth capability, enthusiasm and all of the other characteristics that will be required, belief in it as a viable solution or potentially viable solution, that we would like to retain it in quotes on the table.

Comments on this one. Chris.

Chris Disspain: Thanks. On the, following the Chuck theme, the second (con) is work. Need to nail down the mechanisms that could work. Now dependent upon ICANN accountability enhancements, the accountability mechanisms are unclear and (undefined). I mean those two things are basically the same it seems to me in the sense that it seems to me they need to be defined and we need to be comfortable with them.

And so whilst being comfortable with them does not work, having them defined is not work and us getting comfortable with them is a separate issue. I hope I'm making myself clear. The point (unintelligible) where I'm not entirely sure anything is clear anymore. Those are the ones that I would classify I think as work.

Jonathan Robinson: Thanks Chris. Any other comments or issues around the pros and cons here? Alan.

Alan Greenberg: The next one I find difficult. I run lots of operations and found places to put operational requirements and things like that without having a contract. So I'm not quite sure what it's saying.



Man: Yes, I got a bit confused by that because isn't that what the service level expectation and stuff are about?

Alan Greenberg: Service levels or other visible published documentation. It's not, (unintelligible) and contracts often obscures things, not makes it clearer.

Jonathan Robinson: I mean I remember, this is Greg's point, right. He wanted to have a contract being a place for documentation of documentation, requirements, oversights, separation, and so I think Greg, you might want to speak this point that I recall as being yours and it's, the fact that absence of contract there is no place for documentation.

Greg Shatan: Thanks, Jonathan. I would say that this is, in part, just work and in part an issue -- a real substantive issue. As acknowledged in the room, the SLAs or SLEs can embody those and there can also be escalations. But there are the kind of enforceability issues that you get with a contract are to a great extent not just work or maybe they're just more work in order to make sure that basically we have the same kind of teeth that one would have where there is a contract to be enforced.

So this is actually one where I would defer to my brethren of the legal profession to discuss which of these things -- and they've been remarkably patient in listening to all of us -- and to say how far one can go to basically get the kind of internal documentation, internal enforceability and checks-and-balances and escalations, you know, kind of put in place that you would get in a contract.

Clearly inside a corporation you have expectations that your management has of you and you meet them or you fail them and expectations your customers

have and you meet them or you fail them. There are prices to pay for those things. It's not undoable. But it is not as neat as the contract.

Sharon Flanagan: Greg, I look at this and I think that the key point is the notion of, do you have two distinct parties with enforceable rights vis-à-vis one another? And that's what you don't have in this mechanism. Now what's good about that -- two distinct parties with enforceable rights -- is as you say you have to write down what those rights and responsibilities vis-à-vis one another in a document. Without that, there can be slippage. And I think you can certainly replace that with internal documentation.

But two distinct parties who are trying to define rights vis-à-vis one another is a mechanism that helps add some clarity and light and, of course, the enforcement mechanism. That's, I think, the legal response.

Jonathan Robinson: Thanks. So I've got a queue which ends with Eduardo and that will close this slide. We'll then have another look - a last look at the slide we looked at most recently, so that should not be a long session. I think we might take a break at that point before we come back and do what else is possible.

Olivier?

Olivier Crepin-LeBlond: Thank you, (Jonathon). Olivier Crepin-LeBlond speaking. I'm looking at the column of the "cons" with the bullet point "independent on ICANN accountability enhancements," is the bottom of that column a duplicate? Creases the CWG is dependent on CCWG accountabilities?

Sharon Flanagan: I think that the point was slightly different. It looks like it's about what it means for timing. But you're right. They're very, very closely related. But it's a nuance. It's sort of an impact, if that.

Olivier Crepin-LeBlond: One was project management and one was (unintelligible) with the emphasis on timing in that second one.

Jonathan Robinson: Close but perhaps we'll leave them for the moment and adjacent to one another, so highlight that.

Chris?

Chris Disspain: Thank you, Jonathan. Point 1, 2, 3, 4 on the right hand sound is not correct. It's unclear. It was raised as a point that the SOs and ACs are not being cooperated message, but actually the advice from Sidley is that it's perfectly possible using (unintelligible) to have the SOs and ACs (unintelligible) that bylaw and thus have decided to separate by exercising their rights, to actually know, lack in clarity around that. There is clarity that it can be done by then.

You've obviously got to agree what the proportions are but it can be done by them using a golden bylaw. My view is that should come out.

Sharon Flanagan: Short of coming out, it could move with a restatement into the work column.

Chris Disspain: Oh, sure, absolutely. Sorry, yes. I apologize. There is work to work out what will...

Sharon Flanagan: Right.

Chris Disspain: Yes, completely agree, but being rewritten.  
But Jonathan, just to possibly help you. If number 3 and number 6, if they are not already in the next slide -- need to go into the next slide -- they're both applicable to the next slide. There is work to be done on the accountability

enhancements and the significant changes in the status quo. Both of those to be set to the next slide. Thanks.

Jonathan Robinson: I'm just going to pause a moment to let (Grace) to catch up with those two.

Man: Sorry, (Jonathon), point of order. I think (Grace) might have copied the wrong thing across. The bottom one in the column had to be copied to the next slide.

Jonathan Robinson: .3 and .5, did (Chris say)?

Man: And 6.

Jonathan Robinson: One commencing - have you got it, Chris? Okay. It's good. It's what was intended. All right.

Chuck. Or is it Chris next? Yes, Chuck. Sorry.

Chuck Gomes: Thanks. Chuck again. Looking at the first column up there, my assumption on this model -- as we're looking at it right now -- is that we're postponing how we would separate if we needed to separate. We're putting that off. Now in looking at that. Okay, so this model could be modified to include that detail now which means you could either pick something like Contract Co or subsidiary something else.

I guess I'm looking ahead for those who want to see that detail now, a modification to this model might be a compromise that starts bringing us closer together.

Sharon Flanagan: I think that's a good point. I think if you modify that, you're really almost talking about the next model. I mean that's the divergence between those models. So these are, I think, becoming very, very close together.

Chris Disspain: Because I was the one who actually put this on the - if I could just respond to this.

Jonathan Robinson: Okay. Chris, respond, please, but very quickly.

Chris Disspain: I apologize. I know I'm doing a lot of talking.

It was always intended that there would be a process with this model. So I'm not suggesting that we're putting it off at all, Chuck. I'm suggesting it's an integral part of this mode that we decide what it is that it's going to do that enable us to move the function.

For what it's worth -- I'll just very quickly repeat what I said yesterday -- my belief is the way you do it is you build the escalation mechanisms and then the final nuclear button thingy apart from spilling the board -- which is still an option -- would be to require ICANN to subcontract the operational of the ICANN function to another party, especially onto the terms of the contract, so that ICANN still maintains the community, ICANN still maintains the stewardship using all of ICANN's accountability mechanisms.

Policy is still dealt with through the SOs and ACs. Operational function is (hived) off to somebody else because of the catastrophic failure or systematic failure or whatever you (unintelligible) contract from ICANN.

Jonathan Robinson: Briefly and then we'll move onto Eduardo.

Chuck Gomes: This is Chuck again. This is probably where I have a problem with the hybrid solution that we're on right now, too. If it's an operational problem, competency, poor performance that can't be corrected, I understand the contracting it out, get somebody else to do it. That makes perfect sense. But if it's a management of stewardship problem on the part of ICANN, that doesn't solve the problem. And we seem to be leaving that part alone and that bothers me.

Jonathan Robinson: Sure. So we've - the question is that dealt by adequately and satisfactorily within our related and associated accountability (unintelligible)?

Chuck, your hand is still up. But I think that's an error. So I've got Eduardo, Jordan and then I'll move us onto the next slide. Oh, I closed the queue where? At Eduardo? So what you see is he has dropped his hand as well. We'll go to Eduardo and then we'll come up on the next slide.

When the queue has closed, we've been lowering hands. Okay. All right. To avoid - okay. We've been pretty systematic about it but to avoid any upsets about this, we'll bring in Alan and Jordan. I think the auto - have you dropped someone else as well?

So Alan and Jordan, we'll finish this slide with you. So (Eduardo, Allen, Jordan), let's go and let's do it.

Eduardo Díaz: Thank you. This is Eduardo. I'd like to be brief again. I just want to talk in general terms between this and the next one. Here, basically we're talking about the difference of a contract between this one and the next one -- the affiliate. We look at this as a practical point of view. We're talking about the IANA functions not being done properly at some time. Here we just go out and subcontract. And the other one we have to have a contract, and that

affiliate would probably have to subcontract somebody because the function has not been done.

So basically we end up with two contracts -- the one between the affiliates and the contracts. Thank you.

Sharon Flanagan: I think in that situation, the contract would be terminated with the affiliate, if that were the problem. So, no. I don't think you would end up with multiple contracts.

Jonathan Robinson: Okay. You didn't re-raise your hand. So I wasn't sure if you'd taken the roster.

So Alan and Jordan. I thought you have perhaps said okay.

Alan Greenberg: I took the chair's word as being good.

I just wanted to comment that the highlighted section which is no longer highlighted -- the first one on the right -- I had earlier made a comment saying that the restructuring work could be done prior to the disaster but post transfer so it's not in our critical path. And that didn't get noted.

Thank you.

Jonathan Robinson: Okay. Understood. Good point.

Jordan?

Jordan Carter: I think that there has been a subtle re-definition of what the internal model is during the course of the last day of discussion. I was operating under the

assumption that for the internal and external models the point for debate was the mechanism that will add the communities to reassign the IANA functions operation. So then the external model of the Contract Co has the right to assign this function and it isn't owned by ICANN.

In the internal model, my thought was that it was the same thing. So while it was organized within the ICANN bylaws, the decision that was being made was to assign the right to operate the IANA functions to another party. I had not gained any understanding that the right to keep making that decision still stayed with ICANN. I had thought that it transferred as well as because it would not make any sense to leave it in the body that the community had deemed to be failing at the path.

So if that - I don't know whether it's my understanding that is flawed there, or whether there has been a re-definition there. Just to restate the point. I agree with everyone saying we need to have a predefined escalation process. But the point in the external model is that the MRT acting through the Contract Co makes a decision about who can operate. As long as ICANN - it will be ICANN at the transition that could have sided with someone else.

In this model, there will be some representation in the community, maybe an MRT, that acts through the bylaws to decide who operates. But then why would ICANN remain as the steward?

Man: So at some eventual point of escalation...

Jordan Carter: ICANN loses...

Man: ...ICANN golden bylaw is exercised and the rights are lost.



Jonathan Robinson: Very different to what Chris has been saying.

Chris Disspain: Can I address it because I think it's a really important point. Jordan is actually not wrong which is kind of the same thing as being right. It just sounds better, right?

So I want to be really, really clear. I want to just go back to square one. So the idea of the internal model -- let's forget everything else -- just the internal model. The idea was -- as you just said Jordan -- by whatever escalation mechanisms you agree and at some point it all goes belly up. You've got the ability to transfer the operational aspects of ICANN to another - of IANA, sorry, the IANA function -- the operation of that -- to another body. Okay?

I want to stop at that point. Now no one has had no conversations that I've heard has anyone said and at the same time ICANN would lose its ability to do the policy. Just making sure I'm clear. So what we're now talking about is the very specific point that I made which is that it would be on the subcontract from ICANN. ICANN would still maintain the control. Okay.

Now let me be very, very clear about this. I agree with you. I'm not saying that is a part of this model. I'm saying that's my proposal within this model. It's worth. It's my personal assessment of the only likely acceptable to the USG.

In other words, what I'm saying to you is: My personal opinion is that if you accept (Larry's) hints about the way that this transition needs to happen, then my assessment is that as long as the gaps that he has held a mirror up to - one of the accountability mechanisms of the new body, et cetera. My assessment is as long as you can show that the accountability mechanisms -- the new, improved, enhanced accountability mechanisms -- are still there in respect to the checks-and-balances on the running of the IANA functions operation,

there is a change that politicians will agree to allow that to happen. That's my personal assessment.

But I want to make it clear that is not a specific part of that model. The model is that you can separate. We still have to have the discussion about what that separation actually looks like. Do I make myself clear?

Jonathan Robinson: Chris, let's - I think it is clear that there has been - and I think I've said this two or three times. I've detected like Jordan and, in fact, partly created by trying to see clarity, a nuance of what we mean by separation and whether that is a form of corporate separation or a form of functional separation expressed as outsourcing.

There is a subtle difference between the two of them. And then that subtlety may or may not sit on either side of the tolerance of the U.S. government or anyone else for that matter, any other stakeholder. But that is a distinction worth thinking about is all I'd say. I don't think - and it sort of crept in. I agree, Jordan. You make the point that the subcontractor is - but in a sense it's worth having that on the table because it's a nuance variant that we need go to.

Let me push us on to a final look at the third option. Just make sure that we've done justice to all three because I don't want anyone saying, "Well, we never looked at the hybrid twice." We looked at it recently. We looked at it thoroughly. It's kind of going, going, gone situation. But at least we cannot with respect to the model -- with respect to the pros and cons.

We've done a pretty good tour of these models. It's not -- as (Thomas) talked about earlier -- a rigorous going through principle-by-principle. I think I answered that. In my view, that was going to be very difficult in the time

available. We've attempted to use our collective expertise to get somewhere including the advice we've received with the flushing out of the pros and cons.

Chuck?

Chuck Gomes: This is really a continuation of my last comment for the previous one because the same issue occurs here. See how it deals with competency, you outsource and define that makes sense. You get somebody who is competent. But it still doesn't deal with the stewardship problem, if that's the problem.

Now maybe we're comfortable. I'm not saying I am or not. But maybe we're comfortable then with the spilling the board option for that kind of situation. That's not clear in my mind that, that necessarily solves the problem and it's a very huge step. But I think we need to be at least conscious of that if we're going this route -- that a stewardship problem is different than a competency problem, an operational problem, and outsourcing doesn't solve the stewardship problem.

Now then if we're okay with just spilling the board and that's what the CCWG comes back with, that may be okay. I just want to keep that in front of us.

Jonathan Robinson: One other point I'd just make on that spilling the board point there is that the CCWG themselves told us that in dealing with stewardship problems they would be a ladder of escalation prior to board recall. So there should be a number of recourses available to us to deal with stewardship mechanisms as part of their overall thinking.

It feels to me that what I'd like to do now -- and I said do at the outset -- is offer Sidley the opportunity to make any comments they would like to make having heard all of this. My slight concern where we've got to hear is we came

into this with a good clear input from the CCWG, good clear input from Sidley, an apparently relatively clear idea of seven models. The good news is that we've ended up reducing that down. It is great that there is less on the table.

My slight concern -- and it's evident in the room -- is that those three we've now got some nuances in there. As we've hammered away at them, we've either become slightly confused around the details or had some challenges with them. So it seems to me that it might be quite useful to just offer Sidley some opportunity to make some comments.

Lise, did you want to say something before we switch to that?

Lise Fuhr: Yes because Avri had her hand up. Jordan mentioned - he questioned. You said you had some question that you'd like to offset with not specifically for these models.

Jordan Carter: I don't think it will help but I'll talk to you guys at the coffee break to see if would help.

Lise Fuhr: Okay. Avri, your hand was up. And then...

Avri Doria: Yes. I had my hand up on two things. One in answer to Chuck. I think in both versions of the internal model -- I hate having to say that at the moment. But in those version of the internal model, there is an assumption of an MRT like function that is dealing with the issues that is the first line of dealing with the competency, the management issues that you brought up. And then yes, if they can't resolve it, then there is the escalation procedure.

So in both of them, in the hybrid integrated model, it was discussed as that was proposed but we would have to do more work on it to finding out what exactly the group wanted in the internal model on the bullet. So I just wanted to say that yes, that was there. That was recognized as being work. And both of them had an MRT-like community board, community council, whatever we wanted to call that thingy.

On the last one, there was a bullet I didn't understand that said something like "significant change to the status quo in the sense that we abolish the need for a contract." I don't understand that one since there is a contract -- or an MOU or an SLA contract -- between ICANN and its subsidiary as a notion. So I'm not quite sure I understand that bullet.

Jonathan Robinson: It was the one that I asked to be moved across from the previous slide and it's because it's exactly the (unintelligible) of the USG stewardship function that is replaced with Contract Co in the external model, not replaced in either of these models. The contract between ICANN with a subsidiary isn't quite the same thing. But I'm happy to take it out. I'm not going to...

Avri Doria: Right. But is it that part of what makes this a hybrid model is that it's internal but requires a contract?

Man: It's a functions contract.

Jonathan Robinson: All right. Takes it off its slide. Takes it out.

Lise Fuhr: We'll edit it to try to fix it.

Jonathan Robinson: So I've now had a couple of more people put up their hands. I'm very keen to try and move us on a little. So Martin, Greg, do you wish to say something

before we get, at least to give some sort of overall input on these proposed structures?

Martin Boyle: Thanks, Jonathan. I'm sorry to jump into the queue but it was in response to Avri. It's Martin Boyle here. I'm not sure in either of the internal models that the model is dependent on establishing an MRT. That decision is something that would need to be made as we went ahead. Because being an internal model, there are existing structures within ICANN. There is the possibility discussed in the cross community working group on accountability for an ATRT type of review and bringing into the accountability process.

Of course, it is always up to the communities to develop cross community working group to pick that up. So I'm not quite sure we firmly ink in must BE an MRT. An MRT is one solution among others.

Thank you.

Jonathan Robinson: Okay. Thanks, Martin. That's a good point.

Greg?

Greg Shatan: Greg Shatan. First point: I'm not constitutionally opposed to any of these three models. I'm not sure how many of us could also say that; I hope many. I still have - I do have certain preferences. But I think each of them could do the trick. I think the biggest probable with any of them to me is how well they supply teeth to the customer community and the multi-stakeholder community in order to deal with operational oversight and operational failure and resolution of operational failure or partial failure.

I do think that whenever we - and when I say multi-stakeholder that really is trying to directly respond to Martin in that I think that there needs to be a role there -- whether it's the MRT exactly of something similar. I don't think it's a working group because we're talking about a governance role, not a working group role, that would need to be fulfilled. I think that really needs to be considered across all the models.

But I think, to my mind, if they provide the right set of teeth, then I think everything else is just work.

Jonathan Robinson: I'm going to hand the mike over to Sidley to try and pull this together and bring us back to where we started, which was an initial list of seven variants -- now we're down to three -- and see if there are any remarks based on all of this that you'd like to make.

Holly Gregory: As observers in this process, it's been very, very interesting to us. I think the discussion this afternoon is sort of highlighted that we all sort of have ideas around these models and what the details of them might be. But there is a lot of work to be done to flesh out the details so that we can see the kind of teeth that Greg talks about so that we can understand the accountability mechanisms and how they will work so we can understand things like escalation; so we understand things like the oversight rights that may be had over a board and the ability to sort of instigate change at that level and also bring in other mechanisms for the kinds of stewardship that you've been discussing today.

I think that we're well positioned based on the discussions today to try to help you do that, to maybe go back into a cave and try to sketch some things out. We do think that it's hard to do that with three models, although we're prepared to if that's what you ask us to do.

It seems to me that we've heard some movement, though. I do wonder whether there could be discussions today around which ones you'd like us to take on in a priority, at least. If you're not ready to get rid of something, you could at least say which one to take on first and which one to take on second and third in the interest of getting to something that you can feel comfortable within the two-to-three week period for the commentary. So that's just a suggestion of how we might move forward.

Sharon, do you want to add?

Sharon Flanagan: And I agree with all that. I would make two observations. The first is that the two internal models we've been talking about have been accountability mechanisms plus something. I think that accountability piece is really critical and we haven't really talked about that yet. And so that might be part of the - coming back to. But okay how do we ultimately hold ICANN accountable? Is that through board recall of whatever that - or is there an MRT?

I think we need to flesh that out. And that would be part of that process. I think part of it is not talking about that makes it a little harder to evaluate those models.

Also just a very particular observation as a person who is just coming at this from the outside: In the Contract Co solution, it sure sounds to me like this NTIA issue - that sounds like a significant issue. So I don't know if we're chasing windmills here or tilting at windmills. So I just put it back to you all. Is that something you still want to make a priority item? Or is that something that you would want to potentially but on the back burner?

Jonathan Robinson: Okay. Thanks very much, both Holly and Sharon.



What I'd like to suggest we do now is I think we're just about at the point where we can take a little break, if you promise to be good. I figured this might be a point of leverage. Seriously, though, we've got the input. I mean I'm hugely mindful of a need to get a decent draft out in time for a public comment period and a need to focus Sidley on their work. They've just talked about the possibility of working on three of these. I'll tell you, if I was paying the bill, I would not ask them to work on all three. I think maybe we have a responsibility there as well.

So what I'd like to be thinking about is: Can these solutions be converged in any way and also what are the fundamental issues we are trying to solve? If something falls kept us sort of honest on and we've tried to keep ourselves honest. Those are the initial NTIA requirements. Our own CWG principles and many other things that we've talked about along the way.

We know - as I said a few minutes ago, we did put out a previous model and a whole structure that we've got some input on. It would be easy to forget some of those inputs because we've got some critical comments. So I'd ask you - let's have a quick break now.

Let's take 15 minutes and think about are we or can we converge around a solution? Can we condense some of these solutions together? Is there something that comes into the myriad feedbacks that we've received as well as our own positions? Is there - are we anywhere near a form of compromise that we can all live with or do we need to continue to work on more than one solution?

Indeed, if we do, we don't necessarily need to put something aside, you know, kill it. We can put it aside and ask for extensive work from the group. We're

all tired, right? We've all - there is a limit to what our capacity is as well plus the resources.

So let's just think about that. Whether there is something around which we can converge that might be solved for many of the issues we are trying to solve for.

I'll leave with you that. Let's take a break and come back and see if that's a possibility. So for those remotely, we'll take 15 minutes. We'll be back at 5 minutes past the hour. For those in the room, we'll take 15 minutes and be back at 5 minutes past the hour.

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