

ICANN

**Moderator: Brenda Brewer
April 8, 2015
10:00 am CT**

Greg Shatan: I see that the recording has now begun. I welcome you to the Legal Sub Team Call Number 10 on April 8, 2015.

As we decided last week the first hour of this call is a meeting just of the legal sub teams without counsel. And the second hour of this call counsel will join us.

This gives us an opportunity to kind of plot things amongst ourselves and then to confer with the lawyers a little more prepared ourselves.

Let me ask (Brenda) to take roll call please using the Adobe Connect as a starting point. I'm not sure if we have (Brenda) on verbally.

Do we have many hosts - are any of our staff supporting hosts on mic? Adam is being asked to do roll call. Hopefully we will get a peak performance.

Adam Peake: Let's see. Hello. Everyone can you hear me? Apologies...

Greg Shatan: Yes.

Adam Peake: ...I was - I hadn't connected audio for this call. Yes so if we do an audio - sorry do a roll call. Anybody who is only on the - on dial in if they could let us know so that we will take the roll call as usual as people attending in the Adobe Chat room and anybody who is only an audio if they could let us know now then we will add you to the list of attendees for the meeting.

And I don't see hands going up so that probably indicates - well no, that's ridiculous. I'm sorry someone walked in the room and they're putting their hand up.

I'm not hearing anybody asking to be added from the audio so I think we can assume that everybody is attending is in the Adobe Chat room and we we'll use the list of names that is there. Thank you.

I will go back on mute.

Greg Shatan: Thank you Adam. We have one person who has identified themselves as legal. And they have just identified themselves in the chat as Rudy Daniel. Okay so that's all that solves that problem unless somebody did legally change their name to legal which is conceivable but it would be confusing.

But I thought we would begin with a discussion of kind of kind of timeline and methodology. Clearly we are in a Sprint mode at this point.

It's now the 8th. The preliminary report is scheduled to be released on the 21st. That leaves less than two weeks in which to produce Sam.

Working parties and teams there are producing a lot of very good documents and meeting often to produce them.

So I guess the question that comes up is how best can the council and the legal sub team support those groups?

And one of the things that we know is that we can't necessarily tell our lawyers on four hours notice or even 24 hours notice that they should be on a call because, you know, shockingly they have other clients.

And so we have to try to anticipate what the needs are a little bit better than we're doing.

At the same time we also have to worry a bit about being cost effective. And I don't know if we have the possibility of putting up the timeline. It just occurs to me that that timeline or calendar for the CCWG.

If we can't get to it now it would be good to at least have it to put in front of the lawyers or we could put it up a little bit later in this meeting once that has been dredged up because I think we should look at that with an idea now of trying to scope out where our lawyers would be best put to actually spend time with the working parties or with the CCWG in full meetings.

We can't assume that they are going to be on every call unless that is the instruction that we want to give them. So we have timeline is in the chat. I don't know if there's a way to put it in the Adobe Connect room?

There is a list of the drafts. Seventh fell down. Well we do need to focus on just a couple of weeks of this timeline. And I think we need actually something a little bit more granular as to when meetings are actually being scheduled rather than just the timeline itself.

So apologies for not having thought of this ahead of time but I think unless we come back to that when we can have some kind of some sort of a calendar that we can put kind of put in front of all of ourselves. David McAuley your hand is up.

David McAuley: Better take myself off mute, thank you Greg. Let me just make a couple of comments about the timeline. And I've got on my screen the table that Brenda sent around last night that shows that shows the CCWG calls.

And I think that is a useful over the next two weeks I should say or the next three weeks. I think that is a useful timeframe for us because as you say we are in a sprint and there are a load of questions.

And as we said I think last week just before we got on legal call our job as a sub team is to sort of triage questions in an open and transparent manner.

And I think that's becoming much more important right now.

So in any event here's basically my thoughts on my calls. The CCWG, the full plenary CCWG has - doesn't have a call until next Tuesday the 14th as I understand it.

But after that it then has a two-hour call on Thursday the 16th, a two-hour call on Friday the 17th which for some of us will be late the night before, another two-hour call on the 20th and two two-hour calls on the 21st.

It seems to me that we almost need to not mirror this meeting by meeting but to be ready to have an extra sub team meeting or two.

I would think it might be a good idea for us to ask the lawyers if they could maybe be available Friday the 17th because by that time I think we might need some extra help from them.

That would be after a full CCWG meeting on the 14th and another one on the 16th and early on the 17th.

And so even though they do have other clients and can't move at an immediate question maybe if we tell them now that we expect we're going to need an hour or two of them on the 17th they can set aside some time that we would get billed for if we didn't use. So that's my thought. Thank you.

Greg Shatan: Thank you David. You of course picked - not you but as the schedule works out you picked the most painful for US lawyers, especially those on the East Coast 6:00 AM UTC which is not very good anywhere actually except Australasia I think. It will be 2:00 in the morning on the East Coast, 2:00 to 4:00 in the morning and 11:00 to 1:00 in the morning on the West Coast which isn't comparatively too bad. It's at least within some people's waking hours.

David McAuley: But Greg I didn't mean contiguous time. I just thought that since that meeting on 17 April is early for the full CCWG maybe later that day if the legal sub team could get some time.

Greg Shatan: I see what you're saying. Thank you. Thank you yes. I think that makes sense. I mean we have a legal sub team call scheduled obviously one week from today.

And I think given the daily meeting schedule essentially of the CCWG Tuesday, Thursday, Friday a call later on the day on Friday would be good. So

maybe something like 1600 UTC or this time period, UTC 1500 or 1600 UTC would be I think a good time for a call with legal.

And then a separate question is where and to what extent legal should be on the other calls that are scheduled.

There is - we have requested that they be on the Working Party 1 call later today. Jordan Carter requested that yesterday.

He also requested that they review the Working Party 1 document and be prepared to make some comments on it.

Fortunately Sidley - unfortunately Adler & Colvin lawyers were all booked for that time even though they've, you know, bulked up their team to I think four or five lawyers which is just the luck of the draw was such that they were booked.

Fortunately Sidley is able to cover the call and do the document review prior to the call. But I think we need to especially if we're asking them to be knowledgeable of that document we need to give them, you know, ideally, you know, at least 48 hours notice but better yet if we could scope out over all the next 12 days or so that would be even more helpful to the process.

So I think (Sabine) is inviting us all to come over to Germany to enjoy a better time schedule for Friday morning, Friday and Monday.

So any thoughts on this point and especially on the issue of kind of having legal more or less kind of ride along with us at this point?

I'll take silence as ascent. David? Thank you.

David McAuley: I'm not sure I follow what you mean Greg by ride along with us. Could you just - maybe I just missed that.

Greg Shatan: Thank you. No that's a good point. And speaking in charmingly archaic local colloquialisms tends to get lost even on anybody but myself sometimes.

What I meant was whether they should attend every call or attend certain calls or attend - or if they are attending only at our invitation which calls are we going to invite them to?

This probably requires I think coordination with the co-chairs and with the working party leads. Robin?

Robin Gross: Can you hear me?

Greg Shatan: Yes, loud and clear.

Robin Gross: Okay great. So yes, no I think that's a good idea forward. I think particularly in the next two weeks before we have to come up with our April 21 recommendations that's really going to be the intensive time not only for us but also for the lawyers because the questions that we have for them are about these structures and these overall mechanisms.

And so we really need for them to get into the weeds with us and attend these calls and understand the particulars of the (unintelligible) that we're coming up with and to really work with us.

I don't think it's going to be this way forever and ever on end but just for the next two weeks I think that that's really important.

And I also like the suggestion about sort of scoping out a timeline for us as well so we can manage this, get it to the lawyers, so they can incorporate it into their schedule. Because, you know, I have complete sympathy for them when they get an email that says we need you on this call in four hours and please review these documents and have the answers for us.

I mean that's just not - that's not going to get us the kind of - the level of quality legal advice that we need and it's really not fair to put them on the spot like that either, so that's all for me. Thanks.

Greg Shatan: Robin that's a very good point and it's also a good point that even if we are able to get them on the call we're not making the best use of their time or our money or ICANN's money which ever - whichever way you want to look at it.

If they're not fully prepared and briefed and ready to go because, you know, lawyers, certain lawyers love to sit on call sometimes for hours on end billing away and only contributing when, you know, the environmental issue comes up in hour for the call.

And then you get a six-hour bill from your environmental lawyer that's for 15 minutes of talking and, you know, five hours and a half hours of sitting. We don't want that. And I don't think our lawyers want that either.

But it's up to us to kind of manage to that point since this is not a billion dollar M&A deal where you can afford to pay a lawyer to sit and do nothing.

David?

David McAuley: Thank you Greg. I just wanted to add my voice to yours. When you said we should add the co-chairs and the rapporteurs for the working parties I think that's an important point.

And I also think we need to recognize when we talk about schedule I think our schedule is intense but ends before the CCWG.

For instance the CCWG is looking to get a report out on the 21st. It seems to me that our schedule basically comes to an end on the 20th at least in so far as helping to get that first proposal for public comment out.

And so I mean I hesitate to say something like this but, you know, maybe we ought to consider at some point having a call on a weekend.

Like, I don't know. Let me just say that our schedule is a little bit more intensive then we end at least I think a day before the 21st. Thanks.

Greg Shatan: David that's a good point although I don't know exactly what the plans are for the two calls on the 21st. They're currently scheduled there for 1200 and 1900 UTC.

I'm assuming those are the last calls to thrash out and finalize the document before it gets circulated for public comment on the 21st which typically would mean the 5:00 PM Pacific Time although it could be anywhere as late as, you know, later than that but often that seems to be the time.

I would suggest that we consider having a legal call on the 20th of April as well as on the 17th. It may not - I don't think it needs to be a two hour call, maybe a one hour call on each of those days.

And in addition talking to the co-chairs to see what they think they'll be doing on the 21st and whether they think they will need outside legal counsel to solve the issues.

I also see there are two calls on the 22nd. They may actually just reflect repeating calls and not actually, you know, been thought out since those would technically be the day after the preliminary report was circulated for public comment so not going to worry about those.

I see we have a legal call that day too. I'm thinking we may not - may or may not need that legal call. But that's not my call to make so to speak. And we'll know a lot more between now and then, certainly want to keep it on the calendar for the moment.

So I think in terms of action items coming out of this is to contact, email the co-chairs and the rapporteurs and ask them as Jordan already did to an extent to tell the legal sub team when they think they will need lawyers on their calls in order to, you know, break any logjams or provide, you know, expert advice to sort out legal issues or disputes about what the legal meaning of something is or the downside.

So I think that's the - first that's the action item out of this is to email and get feedback through their co-chairs and the rapporteurs as early as possible and also for them to identify any documents that the lawyer should review in advance of those calls with the expectation that they'll provide either or both written comments on those documents and be able to participate in oral discussion of those documents.

Related to that I had a - kind of the verbal note from Cheryl Langdon-Orr before the call started that the Stress Test Team was also - would be coming to

us or is in the process of coming to us in need of specific legal advice and counsel.

So I will be waiting with bated breath. We all should be waiting with bated breath for the more formal document to come across explaining what the issues are that need to be resolved relating to the stress test by the legal.

David?

David McAuley: Thanks Greg. One more thing we might want to add in the list is when the lawyers do show up at these other like at the working party meetings I think we ought to make sure that one of us from the legal sub team is on that call as well.

And the reason I mention this is I'm not on Working Party 1 or the Stress Test Working Party but I am happy to participate in those calls or maybe we can agree among ourselves who would be on those.

Can you hear me?

Man: I can hear you. We may have lost Greg.

Greg Shatan: Oh sorry. I was speaking to myself. And I was saying that I'm on Working Party 1 I see Robin is as well. So we can, you know, between us be on those calls.

Edward Morris, glutton for punishment is on all three so it sounds like we will have some coverage on those. And Athina is also volunteering to sit with the Stress Test Working Party as well.

So it sounds like do we have only one person on - oh we have two people working party too. It sounds like we have two, three people at least on each of these. So even if we're not all there -- we of course we should all be there -- we will have coverage so that we can keep up with what the lawyers are doing.

And I see (Sabine) a little bit earlier in the chat noting we should ask the lawyers how they feel about this. Clearly we don't want them to be confused.

So, you know, if they need to get up to speed in some fashion on some of the work of the groups we will need to do that because we don't want to waste resources.

I think this shouldn't be viewed as just a blanket invitation for the lawyers to be on every call. I think the groups need to be judicious so to speak in choosing when they need the lawyer so that we don't just have the lawyers hanging around all the time.

Although rarely it's sometimes better to have lawyers around a little more than you need them rather than a little less than you need them in the grand scheme of things.

So I think that covers timeline, methodology. Now I think unless there are objections I think turning to the issues if any that are raised directly kind of by the written advice that we received from Sidley and from Adler & Colvin I don't have any particular points that I wanted to make in this item in spite of having left 20 minutes to discuss it.

But I wanted to see if and assuming everyone has read the documents see if there are issues or concerns that have arisen from reading these documents or

comparing what's going on in these documents to it's going on in the working party teams.

David?

David McAuley: Thank you. But I have already been talking a lot so I think I'll lower my hand and listen to Athina and then maybe raise it again.

Greg Shatan: Thank you David. I'll - when you lower and re-raise and then oh, I see and Robin's beating you to it so that's enough.

Athina Fragkouli: Yes, thank you, just a clarification rather than a question on this document for now. What is the plan? Because I remember after we received the first opinions and we said that the lawyers will look into the mechanism templates and then they will review them.

So instead of having another Q&A session with the lawyers we will follow that path. Is this still the case? I'm just wondering.

Greg Shatan: That's a very good point Athina. And I think they were sent all of the mechanisms in an email last week, all except one and then a last one followed.

So I think we should amend our, the second hour agenda to include a discussion with lawyers of the issues that they see in the mechanisms that were sent to them.

So if I could ask staff may be to just add a 3A issues arising from mechanisms and just put that into the agenda there for the moment or you can renumber it.

Robin?

Robin Gross: Hi. This is Robin. Can you hear me?

Greg Shatan: Yes.

Robin Gross: Okay great. So I think maybe with respect to these memos that have come in one thing we should do is just to start asking ourselves and have this conversation with the lawyers in the next hour as well.

So what are some of the takeaways here? So can we - are some of the models that we've proposed looking like they are definitely going to work for us or definitely not going to work for us?

Are there some that we can sort of eliminate and others that we can focus on based upon what we've seen so far?

And I also think we want to include the memo that came in from (Aaron) and the last day or so. I thought it was really helpful on the designator notion because that's - I'm kind of zeroing in on this.

I mean I recognized a while ago that that's how ICANN is in fact set up now. But one thing that I thought was really interesting that this - the (Aaron) memo brought up which I just read was how some of the powers that the statute gives to designators doesn't perhaps get translated over into the bylaws when ICANN was created.

So we may be able to get some additional power that way. And I hadn't really thought that through. And I thought that was really helpful.

So that would be my suggestion for how we could sort of start to zero in on some of the issues, some of the mechanisms that look like they're definitely worth exploring more or we can take them off the table now because they're not going to work. Thanks.

Greg Shatan: Thank you Robin. I think those are, you know, two good points. One is to I guess essentially triage the various, you know, mechanisms structures that we're looking at and see which ones kind of don't make the cut relatively speaking or which ones are, you know, the most likely or ones on which we're converging.

And I think second is the point of getting the (Aaron) memo. I don't know how many people have read the (Aaron) memo. I did read it as well. I also thought it was very helpful and interesting. And I would like to suggest that we ask the lawyers to read and react to it.

I see Avri's question in the chat. It was in a sense I think - and I know we have Athina and sometimes others from the ASO on the call.

My understanding is that it was - it kind of came out of the ASO or out of the RIRs and that (Aaron) being the North American rep for (Aaron), you know, and us having the most access to kind of US legal thinking was assigned to, you know, get its counsel to give some advice on the thoughts going on so I think - the way that I think they want this treated.

So I think it can be viewed in essence as an ASO proposal but not a formal, not formally. And obviously they're going to let anybody on the ASO speak to that before I do.

My understanding is that it was intended as kind of helpful thinking and potentially pieces or all of it could be considered in our model.

I have a sense that (Aaron), you know, wanted to be or the ASO or the RIRs depending upon how you want to look at it all want it to be relatively low key in how they submitted to us rather than seeming overbearing.

But the document itself I think is a, you know, piece of quality legal thinking and it should be, you know, fully considered.

David.

David McAuley: Thank you Greg, David McAuley here. And this may be redundant in light of the last few comments. But I just wanted to add my voice to the concept of triaging and state that my hope would be that since we're into an intensive work stream it might be best for us to focus our attention with the lawyers on issues that surround Workstream 2 issues.

The (Aaron) memo is interesting. I had a little bit different reaction than Robin did. I see the designator and some of the strengths that it has.

But I think that it - I got the sense that it sort of left open the high level option of spilling the board with not much beneath it. I'm not so sure.

I - maybe I just need to look at it again. But in any event my hope is that we will focus the legal efforts in the next week to ten days on Workstream 1 issues to make sure that the CCWG has what it needs and it's going to put some emphasis on you and Leon working with the co-chairs as we do all this. Thank you.

Greg Shatan: Thank you David. And I think that the Aaron memo or the Caplin and Drysdale memo, you know, it isn't just - it has a number of aspects.

And with regard to board issues it's not just about spilling the whole board but about the ability of designators to remove the board members that they have designated.

And indeed makes the assertion that the California code currently allows designators to do so and that the ICANN bylaws do not prohibit it.

And therefore they would assert that the right of a designator to remove its board members is an existing statutory right.

I'm not going to draw my own opinion on that since we have others who can do that. But it's an interesting and somewhat different line of thinking about what the current rights are.

So Athina?

Athina Fragkouli: Yes. Just a couple of clarifications on the comments I just heard. This is a proposal by (Aaron). It's not an ASO proposal. Having said that the ASO was - the ASO representatives were involved in this proposal and because we - in the sense that we discussed this with (Aaron). (Aaron) was always updating us on the work that they did in their own capacity.

And (Aaron) is also following very closely the discussions and procedures. And I think they - that their goal was to help the group.

And they don't want to impose anything. They just don't want to put this forward for our reference as an idea, an alternative idea to what we already work on.

And in terms of the work and the work in Workstream 1. Thanks.

Greg Shatan: Thank you Athina. I think that is a very helpful clarification. And I see the discussion in the chat. I agree with what's going saying in the chat that this - the (Aaron) proposal is not a full on proposal intended to solve all problems but has essentially is a - adds several tools or adds some slightly different thoughts on several the tools we have in our toolkit which could be combined with other things not contemplated in the (Aaron) memo that are also important accountability measures or mechanisms.

And I think that the (Aaron) document was intended to be shorter and more focused and not to be a kind of a universal solves all accountability problems document which is one reason why it's a good deal shorter than the documents we received from the other lawyers because it's trying to do less which is there's nothing that certainly.

So I think we should view it as a adding a couple of additional concepts and adding a couple of additional thoughts about existing concepts like designators.

So I think we should give it to the lawyers ask them to contemplate it and we should general - also generally contemplate it ourselves.

Returning to the agenda items if there are any comments at this time from the two documents that we received on March 27 in addition to any that we discussed on the prior call before we move on.

Alan Greenberg?

Alan Greenberg: Hi. Sorry I'm a bit late on the previous topic. It took me a bit time to get back to my computer. With regard to asking lawyers to comment on the issue of designators are moving directors I think we should particularly ask them to look at the issue the board members are selected by ACs and SOs through mechanisms of their own process.

I see it potentially problematic to have a designator have the unilateral ability to remove that director.

And if we can use that methodology but make sure it's really the AC and SO that's doing it and not the unilateral right of the designator that would be helpful in understanding whether it's a mechanism we can use or not. Thank you.

Greg Shatan: Alan if I could just follow-up on that a bit. In terms of your distinction between the designator and the AC and SO can you clarify that and perhaps provide a concrete example?

Alan Greenberg: Sure.

Greg Shatan: Because I've been thinking of them as the same thing.

Alan Greenberg: Sure. Let's that the SO names it's chair as the designator or three members as the designators representing them.

These people I believe according to the California statutes have the right to act on their own behalf at that point once they are named as designators.

If we can restrict them to only acting on instruction from the AC and SO then that fixes the problem. I'm not sure we are allowed to do that. Because my understanding is the California statute is that individuals are named as the designators so that's the issue I'm focusing on.

Greg Shatan: Thank you Alan. It's certainly something to discuss with the lawyers. My understanding is that it's individuals or entities with legal personality which gets us...

Alan Greenberg: Yes. But our ACs and SOs don't have legal personalities so we default to - and they can't because they are entities of the bylaws of ICANN.

Greg Shatan: Right. And I guess the question is whether they are currently can be considered formal designators or not under the statute.

And if not then I guess they're right to appoint board members is a creature of the statute, creature of the bylaws and they're not formally designators per se under the statute.

Alan Greenberg: That's what I understood from the Sidley advice that they would have to name individuals.

Greg Shatan: Right, or become legally cognizable entities themselves which the only one they can do that really is the ASO as its alter ego the NRO...

Alan Greenberg: Right.

Greg Shatan: ...which is I think a legally cognizable organization even though the ASO isn't. The rest of us don't have that...

Alan Greenberg: Right.

Greg Shatan: ...unless we're accidentally all unincorporated association which would have its own set of problems.

Alan Greenberg: I don't think any of them want the legal entities in their own right and therefore have the liabilities which would be associated with that.

Greg Shatan: But I agree. I think the root they're getting but, you know, stopping my own digression, the root issue you identify is absolutely important which is that the designators can't - they need to be constrained to act for the AC or SO that, you know, designated in the first place.

So both are designation and their removal has to be only within their the scope of their duties or their duty of loyalty to the organization for which they are the front person and not an issue where they can go kind of take a flyer and make their own minds up differently from the AS, AC SO or other organization. Robin please stop me from talking.

Robin Gross: This is Robin. Can you hear me?

Greg Shatan: Yes.

Robin Gross: Okay great. Two points first I went to pick up with what you guys were talking about because I think there is an answer to that which could be these folks could be restricted and contract how they - that they would agree that they would vote a certain way in accordance their - the stakeholder group or the SO that they represent.

And that takes me to actually the point that I was - that I put my hand up for which was one of the issues in the - that we've been talking about and I think we can zero in a little bit on. And that's out to get the Independent Review Panel decisions to be binding.

So I thought it was interesting in that the Adler Colvin memo of March 27 came up with four different possible ways to do that, the first to basically deal with the members of the panel being members of the corporation. And so that didn't seem to me to then be an Independent Review Panel. It seemed to be too circular to actually be what it's called, an Independent Review Panel.

But the next two proposals that they came up with did just this or did just - did suggest that a contract be signed between the as a condition of somebody becoming a director that they will agree to accept a decision by the Independent Review Panel.

And if they - if it turns out that they're not - that the independent review decision comes down and the director says I'm not willing to accept it then there's a resignation on file they goes into effect.

And then something similar like that with the corporation entering into a contract with a third party that is required the corporation to implement the decision of the panel.

So I thought those were two pretty interesting suggestions that I hadn't thought of about how to possibly get a decision of Independent Review Panel to be binding on the board. And so I thought that might be one area where we could spend a little time or at least focus a little bit in on as a possible mechanism. Thanks.

Greg Shatan: Thanks. I see Sam's note in the chat contracts with whom doesn't that still raise the cognizable entity issue?

So I guess unless it's a contract with between an individual and the cognizable entity such as ICANN it wouldn't really work since you can't have a contract - the OSs and ACs can't enter into contract.

Robin Gross: You're talking about the first - you're talking about with respect...

Greg Shatan: Yes.

Robin Gross: ...okay, okay. Okay well I - that's fine. I mean I think it's not really clear that they can't enter into contract.

It sounded like there was a little bit of possibility on that. I know NCU's entered into contracts before. So...

Greg Shatan: Of course...

Robin Gross: ...I think that's not - that's a bit of a - up for debate but...

Greg Shatan: Non-entities...

Robin Gross: ...the point being is there's a possible mechanism here that where we could figure out through contract how to bind people?

Greg Shatan: Right, yes. Certainly people can be bound by contract. And it's just a question of who's on the other side of the contract, who can enforce it? Who has the right to enforce it?

And not to digress further but until one asks whether one can enter into a contract plenty of non-organizations enter into contracts blissfully not knowing that they can't actually contract.

And the end result as I understand it or law is that the individual members either the contract is not enforceable or the individual members of are essentially thought of as the contracting party and not the non-organization that purported to enter into the contract or alternatively it may be that these are - you're then kind of a de facto unincorporated association.

So I don't want to get too far down into the weeds. The bottom issue is we need documents that are, you know, legally enforceable either those between legally cognizable entities so that they can't be challenged for lack of enforceability because of lack of cognizable entities or they can be dealt with by bylaw or articles that also bind the group.

You know, so for instance, you know, the bylaws of the intellectual property constituency bind us even though, you know, we're not any kind of a legally cognizable entity.

And anybody who is appointed under, you know, the bylaws would have to follow the dictates of the bylaws in that position, at least that would be my position.

David McAuley?

David McAuley: Thank you Greg. I like Robin I was struck by the idea of a contract as a solution for the enforceability issue and the IRP and think maybe there's some promise there.

But back to your question of about things that struck us and up a level or two, to the overall structure of the organization I was struck by Adler's indication that the best way forward may indeed be not only corporate law but a combination of corporate law and contract.

And so I had the same questions that Sam alludes to here in the chat and also in our memos as contract with who will it be third-party beneficiaries, et cetera, et cetera. I think it's an important area to get into with the lawyers.

I will say this, my reaction to the designator model that (Aaron) sort of poses is not the greatest. I don't - I am not sure that's the way forward.

But if the group were to go down the road it seems to me that a very robust contract would be needed to put in place accountability mechanisms below spilling the board, things that we've discussed in the full CCWG.

And so to answer your question I would say that's an important thing that we ought to get into lawyers today. Let's talk a little bit about the contracts that will act as an adjunct to what else we're doing.

And maybe in the last few minutes we could talk about how we're our going to approach the lawyers today. Thanks.

Greg Shatan: Thank you David. That's a good suggestion. Before - I think we should, you know, take - before we take that time to discuss how we're going to approach the lawyers there's one other point or which is issues raised by CCWG participants.

Over the last couple of days there have been a number of emails or several I would say that posed questions which individual participants in the CCWG wished to have the lawyers consider.

I forwarded some of those or at least all of those that are recognized as of last night into the legal sub team's email group.

In addition another email came up today asking a question which the sender wished to have the lawyers look into that was an email from Dr. (Eberhard Elisa).

And his topic was what gives the US government the right to control the root anyway? He also indicated that he had perceived a past promise to for the lawyers to review or answer this question.

I have not done an exhaustive review of the record but don't recall any such promise being made. I also don't see the direct linkage between that and Workstream 1 or even between that and accountability per se.

So I think both - there's both that particular issue and the others that I circulated a little bit earlier we have to decide how to deal with those and what if anything to assigned to the lawyers. Athina?

Athina Fragkouli: Yes. This is Athina. I remember last time we were discussing having our wiki page where we would collect all, you know, the various questions from various groups.

Are we still doing this because I find it very helpful which you did like forwarding all those emails and trying to have a collection with all the questions?

Maybe it would be easy to have them in one Web page and then prioritize them or see what needs to be addressed now or what's relevant to, you know, the work that is conducted now and what can be seen in a later stage. Thank you.

Greg Shatan: Thank you Athina. I think that's a very good suggestion because even I'm having a little trouble finding the things that I just sent myself earlier. So it would be a good idea to collect them in the wiki as a reference point.

David had his hand up but it is now down. So...

David McAuley: Backup Greg.

Greg Shatan: Okay very good. David?

David McAuley: It was just to reiterate what Athina said. I think it's a great idea. And we - I think we are in triage mode between now and April 21.

And so my hope is that while Dr. (Elisa)'s question is interesting is that we raise questions right now that deal with Workstream 1 for, you know, in order to support the CCWG as best we can between now and April 21.

And by the way questions that will get lobbed into this document I think Leon's already started one where there will be a centralized list of questions and we can sort of decide when these will be answered, et cetera.

There will be time between April 21 and June that to address these. We're not going to stop work. And so I just think Workstream 1 supporting the CCWG right now is the topmost effort. Thank you.

Greg Shatan: David I would agree with that certainly. Some of the issues that were raised I think go directly to the documentation that we received from Adler & Colvin and Sidley.

So for instance there was a set of questions that (Samantha Eisner) posed relating to the Adler & Colvin document which are fairly discreet questions.

And I would propose that we simply ask Adler to respond to those. And similarly there was a question with regard to the Sidley document. And I think we should just ask Sidley to respond to that as well.

And going back a little bit further trying to find the other ones that were here there was an email that came from Pedro Ivo Ferraz de Silva regarding restrictions under California law of various types asking about approval or veto rights over board decisions and the like.

Again I don't see a problem with asking the lawyers literally to respond to Pedro's question. I think it's we, you know, trying to do too much intermediation will be an issue.

So I want to avoid that. And I think the, perhaps the last item that was forwarded for question was well actually I think it was the (Aaron) document which we've already discussed.

So it seems to me that among this grouping unless anybody objects we should forward these formally to counsel for the responses. Any thoughts on that? Any objections? Green ticks if you agree might be useful?

David McAuley?

David McAuley: Thanks Greg. I doubt that I'd object but I'd like to - I need to take a look at the questions one more time.

And why I say that is I don't remember where but there was some questions asking the lawyers, you know, well what about the other countries in the world?

If that kind of a question is on the list I would want I would want to say well we have to get control and we have to - that's not something I would want to ask.

Greg Shatan: Yes David that's a good point. You know, Pedro's question was really only about the current jurisdiction in which we're acting which is, you know, United States, federal California state...

David McAuley: I agree. I think Pedro's questions were very reasonable. But somebody else at some point...

Greg Shatan: Yes, (Paul) wrote like...

David McAuley: ...I just don't have the...

((Crosstalk))

Greg Shatan: ...(unintelligible) someone threw in the question yes, what about all the other jurisdictions we're considering? Well I guess there's no other jurisdiction that's being actively considered or put forward as the alternative jurisdiction.

And I agree. I think we have an absolute rule against multijurisdictional surveys unless a great deal of thought and need is attached to such a thing.

Those are the kinds of things you give to your summer associates when there's nothing better to do and you want to have a few hundred hours of work conjured up with a single assignment. We don't want or need that. Athina?

Athina Fragkouli: Yes. Thank you. I'm a little bit concerned of selecting questions in particular. And, you know, without shoving a good reason why we - we pick up a question over another one.

Because if we start like to be selective of the questions without having like a proper reason you might get a reaction or people might have like follow-up questions in that. And do we want to handle this that way?

And so maybe if we have all questions together and we like prioritize them in like one transparent manner and why - this is why we prioritize them and this is why we select this question over others this might give like a different feeling to those that have questions that haven't been addressed.

Greg Shatan: Thank you Athina. I think that's a very good point. We don't want to appear to be arbitrary or top down and I don't think we're trying to be.

I think there are good reasons to choose certain questions and not others. But we have to articulate those questions and we have to be principled in that.

So I think we have articulated although not formally the reasons why certain of the questions were judged to be necessary and appropriate at this point in the work and others not.

So I think that if we don't hand questions forward we should have a response for why we're not doing so.

And I think that you're right if we have a wiki page where the questions are put we can have them perhaps in a table...

Athina Fragkouli: Thank you.

Greg Shatan: ...and have the tables note either that the - that note the status which would either be that it's been forwarded to counsel or that it has not been forwarded to counsel for the following reason.

So I think that we now have outside counsel joining us. I see Holly and (Stephanie Pettit) and Sharon Flanagan and (Michael Clarke).

I see somebody else who has identified themselves as legal. If that person can identify themselves that would be helpful.

Josh Hofheimer: Josh Hofheimer is here as well.

Greg Shatan: Thank you Josh. Sorry I got stuck on Mr. Legal, (Gary Campbell). So anybody else? Okay. Who is legal in all caps, Colleen Brown of Sidley.

Colleen if you click on the top of the attendees' box on the right-hand corner there's a little box that's marked Pod Options if you mouse over it.

If you left click and hit Edit my info you can change your name from legal to your real name. And Gary Campbell says I am not legal. That's a discussion topic I'm sure.

So at this point let's welcome counsel just named. I see Rosemary Fei has also joined us to this call and Vivik Mohan has joined us as well.

And thank you very much. This has been now the second hour of the Legal Sub Team Call Number 10 in which we have the Legal Sub Team and representatives of both outside counsel Adler & Colvin, Sidley Austin. So welcome all.

I think that in terms of our agenda for this second hour first thing we wanted to cover was timeline and methodology moving forward.

As you all know we had a call from Working Party One for the team to be on that call and to have read the document produced by Working Party 1 and be prepared to provide written and/or oral comments on that.

That request came in with not a lot of lead-time. And we're fortunate that we do have counsel able to cover it from Sidley in this case.

I think as a general matter we are - we want to get the lawyers on calls where they are needed but with an adequate time for both scheduling and preparation.

So I would like the lawyers, the outside lawyers thoughts on that. Essentially I was thinking or we were thinking in our pre-call of at least kind of a 48 hour notice rule in charge in relation to that, you know, except - unless something, you know, blew up and more particularly to review the schedule which you now see on the screen between now and then, then being the submission on the 21st of April and try to figure out where the lawyers could be best used on all of these calls.

And to do so we would want to interface with our co-chairs, (Thomas Mathieu and Leon as well as with the rapporteurs for those groups, you know, in addition to Jordan Carter also Steve DelBianco. And I'm missing another rapporteur for which I am apologetic.

Holly I see your hand and I think Rosemary and I see Josh. Holly go ahead.

Holly Gregory: Good morning, afternoon and evening everybody. What Greg it sounds generally right what you're suggesting. I think 48 hours is short lead time if it's a brand-new legal issue.

I think a lot of the legal issues are could have cross over stuff we've seen and so are comfortable with the call this afternoon.

It's just that there needs to be some recognition that sometimes when you schedule a call on short notice it's thought that we can't answer the questions. It's often more the difficulty of other competing issues on the schedule.

And for some of these calls at least early on I think it's important that very certain of our lawyers are available for the calls and we're not all quite interchangeable although we're getting there.

So with that said I don't know if others - if Rosemary had a comment or Josh but I think, you know, we can be prepared to talk later this afternoon.

The schedule is a little challenging for me. I'm - I have a meeting that runs through I think the first half an hour, 45 minutes of the scheduled WP1 call. And I'd very much like to be on that call to participate. But that said, you know, we have a strong bench.

Greg Shatan: Thank you Holly. Josh?

Josh Hofheimer: Yes I agree. I mean I would echo what Holly would say. And I can be on the call this afternoon. But, I did want to clarify one question with what exactly or what is the intended submission that will be put out on the 21st?

I'm - and I know obviously we're putting something out but what specifically? Is it going to be these 16 or so matrices, you know, as further refined and put out for public comment or is it going to be something else?

Greg Shatan: Is there anybody on the call who would like to take a crack at answering that, perhaps one of our rapporteurs since we don't have any co-chairs on?

Josh Hofheimer: Yes I mean my point is what's the - to be simple what's the work product that we're aiming for?

Greg Shatan: Yes. Thank you Josh. I'm absolutely - I just was not - was a bit hesitant to be the one to answer the question so I'm no shrinking violet.

I think that essentially it's going to be as Robin says in the chat initial outline of recommendations for the different items in Workstream 1 which I think will be based on the matrices and mechanisms documents that were sent to you.

I think that the Working Party 1 document that was sent by Jordan Carter yesterday is a good example of that as well.

I think there's going to be a lot of cutting and stitching and harmonizing of documentation as things go on. And I see several hands up in the chat so I will seed first to Holly unless that is an old hand. Holly.

Holly Gregory: I'm sorry could you repeat that question Greg? I'm sorry.

Greg Shatan: We were just kind of responding to Josh's question of what the CCWG's work product on the 21st of April is intended to look like.

Holly Gregory: Okay and the question here?

Greg Shatan: And so I think maybe we'll get David and Cheryl to weigh in on yes as people producing the document and then maybe return to you Holly.

Holly Gregory: Okay.

Greg Shatan: David?

David McAuley: Thank you Greg, David McCauley. And Josh I would agree with what Robin had said in the chat. We're going to basically, the CCWG will be putting out a document for the community to get a sense of where we're going on accountability measures.

And in that respect either in our call last week or the week before the co-chairs, the three co-chairs put up a form that we would use for the draft report.

And we can try to find it between Greg and I or we'll get a copy of that and send it to you all this afternoon. It's just basically the form that this thing will take.

Thank you.

Greg Shatan: Thank you David, Cheryl?

Cheryl Langdon-Orr: Thanks. Cheryl for the record and I'm one of the rapporteurs. David you picked up on one of the issues I was going to raise.

The only other one document that may be of use in answering this question Greg would be the tracking document which is about to be updated. (Adam New) should be able to get that to (Alice), get that - that we've discussed that that's one of the forms we are going to be taking into the final documentation and.

And what that is doing is a current tracking of where Work Party 1, Work Party 2 and indeed the stress test work party is.

So with those things I think you'll be able to get a fairly good idea of what our output is likely to be for this first public comment documentation. Thanks Greg.

Greg Shatan: Thank you Cheryl. And as Robin points out in the chat the point of putting out this document for public this public comment I believe is a 40 day public comment period which is pretty much that's mandated for public commenting generally at this point in ICANN. Whether or not the mandate specifically applies to this group or not we're using it.

So then the public will comment and tell us how we're all wrong about everything or what we haven't thought of. And different groups will have different opinions. And that is the public both SOs and ACs and individuals involved in ICANN and those who have no particular involvement in ICANN on a day to day basis.

But we'll comment and then we'll refine. And as I say a second version will be produced and put out again for public comment so I believe the timeline has it.

So I think that is what we are angling for is a document that will basically allow the public to see where we're going on Workstream 1 at least and to have the comments from the world.

And I think that, you know, right now the idea is to have counsel join those calls and comment on the pieces where it's most needed for the group to get kind of a real-time legal advice as obviously understanding the limitations of real-time legal advice and also understanding the amount of preparation it takes to then give real-time legal advice.

So I think the idea is to, you know, take the next two weeks is basically what we have between now and the 20th and try as far in advance to ask the rapporteurs and the co-chairs where legal should be present so that hopefully you'll have as much as nearly two weeks notice for certain of the calls.

And that will then, you know, allow counsel to coordinate both between the two firms and within each firm's team to put the right people on the right calls.

In this regard there has been one other - a request that came in literally at the beginning of this call for legal support and for the Stress Test Team.

And I've received an email during the course of this call summarizing in more detail what the issues are and the timing of that.

And therefore, you know, as soon as that - I've had a chance to take a look at that I think we'll - we will want to get the lawyers on that point.

I guess the lawyers have any question or confusion about kind of the concepts of the stress tests generally or the Stress Test Team?

I will assume that means a complete knowledge.

Holly Gregory: Greg I'm sorry it's Holly. I can't raise my hand at the moment because I'm checking into the hotel but that sounds fine with us. We'll look at the stress test issues and let you know if we have any questions.

Greg Shatan: Sounds good Holly. And I'll send on some version of what was sent to me by the Stress Test Team with their request for legal advice.

And also acknowledge that it's a formal request for legal advice so that we follow our procedure of making sure that legal - requests for legal advice are formally noted as such so that you can understand when you don't have to respond to stuff that's being lobbed at you.

Cheryl Langdon-Orr who's on the call was on the stress test call as well. Cheryl herself is undergoing kind of a stress test given that it is some ungodly hour in Australia and she's been on calls before this call.

So in any case we - Cheryl says you'll have the meeting transcript of the stress test meeting in the next 12 hours or so anyway.

On the screen there is an answer to the earlier question of what might the deliverable of the group as a whole going out on the 20th looks like. And here's a essentially a table of contents. Rosemary your hand is up.

Rosemary Fei: Yes I'm trying to understand. You said that you had received while we were within the last hour and a half I guess an email with questions from the Stress Test Working Party and that you intend to refer to those two legal.

And my question is is that related to all this later today or is this a separate set of questions? And when do you think you're going to expect answers?

Greg Shatan: Those are good questions. The call later today is Working Party 1 which is not the Stress Test Working Party. I am not on the Stress Test Working Party so I don't have their calendar in front of me.

Perhaps Cheryl or Ed Morris can tell us when this next stress test call is to help answer this question?

Cheryl Langdon-Orr: Cheryl here if you don't mind me jumping in. Yes we meet weekly at 1100 UTC. But for me I'm already in Wednesday when I have the meeting but I think it's Tuesday for the rest of the world so it's a weekly meeting at 1100 UTC.

Greg Shatan: Thanks. And that's...

Cheryl Langdon-Orr: There's three working...

Greg Shatan: ...a time to support your West Coast lawyers or anybody on the West...

Cheryl Langdon-Orr: Yes there's three working parties. You've got Working Party 1, Working Party 2 and the Stress Test Working Party. We were around before. The Stress Test Working Party was around before Working Party 1 and 2 which is why there's slightly different nomenclature but...

Greg Shatan: Thank you Cheryl. And so the good news is that there will be some time before the next stress test meeting, nearly a week since the last meeting was just before this meeting.

The bad news is that 1100 UTC minus 7 is the time on the West Coast. So that will come up shortly. Josh I believe that is correct 4:00 AM Pacific, time to watch the sunrise after the call.

So there were also several other documentations. I see Rosemary asking when do you need answers to the questions that we got yesterday?

Rosemary are you referring to the questions that were - that I forwarded into the legal sub team's email list yesterday?

Rosemary Fei: Yes. I believe we got and we were told that we weren't supposed to answer them. And actually we were told that we were supposed to answer them on this call ideally but possibly on paper later. And that's a call that at least I can't be on.

Greg Shatan: Okay well there's I guess two separate items. One is the Working Party 1 call later today there was a document that was sent originally by Jordan Carter who's the rapporteur for that call.

And that document I guess maybe some related questions is going to be discussed on the Working Party 1 call later today. So that's what would be done at this time. So...

Rosemary Fei: Now if we can get you a response by a few hours from now which at least my team that - I don't have the ability to do that -- I think Sidley might -- we

should just treat that as water under the bridge and move on or you want answers?

Greg Shatan: Well it looks like I think since Sidley is going to be on the Working Party 1 call the day and I would in terms of coordinating counsel perhaps look to Sidley to take the lead on reviewing that document and answering those questions providing some thoughts like Josh in the Chat.

Holly Gregory: Greg? Yes...

Greg Shatan: Yes?

Holly Gregory: Greg we'll be - this is Holly. We'll be prepared to address them at a high level.

You know, I do think that it would be helpful just to talk a little bit and get some feedback from you all about, you know, how we continue to best, you know, look at the kinds of questions that you're providing us.

It seems that's a little bit like there's a lot of - I can't - I don't mean to be at all disparaging but sort of throwing spaghetti at the wall to see what sticks. And that is a fine thing to do. There are a lot of really interesting ideas in what you're providing us.

I think that we do need to recognize at some point that, you know, how the community is organized as a legally recognizable entity is going to be a key aspect in how power is given to the community.

And I do think, you know, it would be helpful for us to understand when we do things like talk about the powers whether there is a priority to the powers or whether you're seeking all of these powers.

So for example when I look at things like setting budgets and strategic direction I think that typically is a management function but I understand with approval of the governance function and certainly understand why the community would need mechanisms to hold the board accountable on those kinds of issues.

But we think of usually the primary mechanism for accountability is being this election of the right directors and the replacement of those directors when they don't function well and having an extreme circumstance of the ability to recall the entire board.

And certainly you need the power to approve and disapproved by law changes including fundamental bylaws to make sure that the board can't change the rules of the game midstream.

And so those to us are sort of, you know, we - oh we understand those and they're pretty clear and we think that there are ways to do that.

When we get into the setting budgets and strategic directions there's probably ways to do something here as well. The devil's going to be in the details of how you define what's a budget, what's a strategy and what's the business plan.

And, you know, we have some concerns about how you actually will put the meat on the bones in terms of the definition.

It's all a very long-winded way of saying it would be helpful for us to understand whether people view some of these mechanisms or powers if you will as alternate powers or if the goal is that you think that you want all of these powers.

Greg Shatan: I think the short answer -- and I see some answers, you know, in the chat -- is that we want all of these powers, that the exercises that they group as a whole has been doing has been sorting things into what have been called Workstream 1 and Workstream 2.

Workstream 1 are powers that are necessary to have in place or at least planned for before the IANA transition can take place. And Workstream 2 are additional powers or mechanisms or structures that should be thought of in the long run but don't need to be in place or concretely planned for in Workstream 1 so long as there is the power to make sure they ultimately occur.

So we have identified all of the - all of the ones that are being put forward at this point I believe our Workstream 1. And just to...

Holly Gregory: (Unintelligible) yes, yes.

((Crosstalk))

Greg Shatan: (Unintelligible). Let me just finish one last thing. Just to avoid confusion Workstream 1 and Workstream 2 do not relate to Work Party 1 and Work Party 2 so it's just coincidental nomenclature.

Holly Gregory: Okay.

Greg Shatan: So both...

Holly Gregory: Okay so...

Greg Shatan: ...work parties are working on Workstream 1 activity.

Holly Gregory: Okay so if I may we're getting a lot of sort of questions that are at - that show various levels of sort of understanding, a lot of an educational aspect in some of the questions that we're getting.

With an understanding of what you all have decided that you think you need one way to sort of cut through this and allow us to go and sort of quickly come back to you is to say how would you do this and let us think of it and come to you with the how.

If these are the things you want how do you do it instead of sort of this rolling stream of questions and answers that's sort of a little bit, you know, I would say educational in nature.

I mean there's some, you know, engineering we need to do here to do the how. We think a lot is possible but the devil's going to be in the details.

And so I'm trying to understand how we can best help you most efficiently get to where you need to be to put something out for public comment.

It seems to me that if you said to us today we want to be able to recall the board, remove individual directors, approve the bylaws and have some kind of power to reject the budget strategy how would we do that?

We could go and come back to you with a here's a way to do it. Here's some of the issues that you'll still have to decide.

Greg Shatan: Thank you Holly. I'm conscious there's a queue but I want to respond. At least my understanding is that the - in trading emails with Jordan Carter who's is the rapporteur for Working Party 1 - he'll be joining later today -- is that it's exactly kind of where they're at.

They are pretty far along in having enumerated the powers that they wish the community to have but feeling a little bit more uncertain as to mechanisms.

I believe they has some mechanisms kind of under consideration. But that is exactly where they really need the legal advice is in the how do we actually have the ability to exercise these powers? What are our mechanisms?

So I think there's a convergence here. And I think that is exactly why we in the Legal Sub Team support for the lawyers to get close to the working parties and their work because they are producing the documents that ultimately will be the work product.

The CCWG meetings sometimes can be a little too high level to get at the actual kind of boots on the ground work of the individual working parties.
David?

David McAuley: Thank you Greg and thank you Holly for your thoughts. That sounds - it sounds like the right approach.

I think what's been happening though just to put it in context is now that you're on the list you see how the multi-stakeholder process is working here.

And while there are a tremendous amount of questions just before you all got on the phone we were talking about how we organize this.

And Athina was rightly pointing out to us that we did sort of come up with some priority as we put all the questions in one place on the wiki that you'll have access to.

It may be that the questions themselves will simply be information for you and background to understand why we're asking how do we do this, what's the best way forward?

And in the meantime the Legal Sub Team I think -- this is my personal opinion -- we will be getting our arms around getting that stuff organized and getting that question to you in that way.

This all is going to pick up next Tuesday which begins an eight or nine day period of very intensive work.

And so I think that - I think that you'll get what, you know, a more focused question but between now and us delivering that to you is this process that we're going through.

Greg Shatan: Thank you David, that's good points. And I see, you know, following what's going on in the chat I want in the first hour of our call before we had the outside counsel join us the word triage came up. And I think that's very germane to this discussion.

We're looking to cut down on, you know, which questions are getting answered now as opposed to later and also on which - we should also be

cutting down on which mechanisms get serious consideration or not - now is the time, you know, to start focusing and getting rid of the outliers.

So Rosemary I do think we want at least I will say that I think we want you to advise on best mechanisms and not - and to start spending less time on outliers, you know, on those that don't think will work best even if out of our large group there will - it seems like there will always be somebody every week who will ask the same question about some, you know, pet mechanism that really is not a good one.

So I think they're to some extent will just need to sort things out. And I do think we need, you know, at this point we are definitely in the funnel so to speak as we head towards producing the work product.

So we need to focus on what is going to go into the ultimate work product. So I think that is the key.

And we don't want the lawyers to feel like you're just kind of getting blown around by, you know, whatever questions, you know, happen to emanate from the CCWG.

Most if not all of them are good questions but some of them aren't necessarily needed to get to the bottom of the work even if they're needed to help educate certain members.

And as you'll see getting members and ultimately the public that is commenting on this comfortable with the choices we've made and explaining them it is a big part of this.

We do often do Webinars and FAQ documents even to comment sometimes on more complex public comments to allow people to understand what went on.

So Rosemary I'll stop talking. So I'll give you the floor.

Rosemary Fei: I don't think I have my hand up. I'm happy to talk about this a little bit if you like.

Greg Shatan: Okay. I do see your hand up in the screen so...

Rosemary Fei: I tried to take it down. Sorry it was probably an accident.

Greg Shatan: Well that's okay. Hand management is one of those things that comes with time. So yes I see you're comment in the chat you hired experts let us give you expert advice. We really want to do that.

And we really want you to do that. And I think that, you know, one of the reasons why we have outside legal experts is that the inside - those of us who happen to be lawyers who are inside the process have to be viewed as participants and not experts which means that anything we say is viewed as just being a position and not a definitive opinion.

So even if I think I know what I'm talking about or any one of our other colleagues knows what they're talking about we need the outside legal experts to either agree or disagree or be more expert and amplify and clarify so that's what you're here.

So and I think that Avri is asking isn't this a legal team's job to educate the rest of the CCWG? I - that is part of it definitely. And that is why we can't nearly ignore the educational questions that are coming in.

But we need to figure out how to balance the answering the educational questions and comfort raising questions with actually getting an output.

And I think that we do have enough lawyers outside who can help do both but definitely we need to triage.

So and Avri asks is that this team - doesn't this team have the job of explaining what it is the legal experts send us?

Well hopefully the legal experts will send us stuff that can be read by laypeople. And but if not definitely we are also hopefully able to interpret and expound on what the legal team has sent us as well so that we don't have to necessarily have, you know, all the legal team answering every follow-on question. Some of them will need to be referred back.

So that - I hope that answers that question. So the next the two items on the list in my opinion one is the mechanisms that were sent, the whole group of mechanisms were sent to you last - I think it was last week.

And then also there are questions that have come on to our list from the main list which mostly I've forwarded out to the main list which are either comments on the documents of March 27 or more general questions from members of the participants in the CCWG, you know, who are looking for education or clarity or making suggestions.

So, you know, first I guess I would like to ask outside counsel if they have thoughts and comments on the mechanism documents that were sent out. I think there were maybe 17 of them. Holly I see your hand is up.

Holly Gregory: Hi. There. So we've been working through these mechanisms, the Adler & Colvin folks and the Sidley folks working cooperatively. We split up the various templates between us.

We're adding a section at the bottom that - of each template that provides sort of a legal assessment of the viability and some considerations and concerns.

We're sharing those with one another so that you get feedback from us in one voice. And I think our goal is to have those to you by the end of this week Friday.

We told you it would take us a week to do it. We got those things on Thursday. If we can get it done by the end of day tomorrow we will but maybe Friday.

I invite my colleagues Rosemary, Joshua and others to add if I've gotten this wrong but I think that's where we are at the moment.

Greg Shatan: Great. That's very helpful. And I think that timing should work with the overall timing of the group.

And I see Stephanie agrees with the timing. I see some plus ones, so that all sounds good. I think that is working the way it should work.

Next then there are the questions that have been - that were put into the CCWG list and then into this Legal Sub Team last that were hoped to be requests for the lawyers to respond.

On our initial call earlier today or just the first half of this call we agreed that we would try to create a wiki page within the CCWG wiki to collect those questions so that they don't disappear into the morass of the email inbox.

There were several particular questions that came up though that we would in fact like to refer to counsel. And I can kind of put those into new emails that reflect that they are formal memoranda as we are putting it to counsel.

Particularly Samantha Eisner from ICANN had several questions with regard to the Adler & Colvin March 27 document.

And I think it would just be easiest to have Adler & Colvin answer those questions rather than try to, you know, figure any other way out of dealing with that. And perhaps that can come after the mechanisms are dealt with.

So the - and then second there were a couple of questions on the Sidley document on March 27 as well from Sam so those two will be referred over.

Then there is the - there was several questions from Pedro da Silva relating to powers under California law. It's a little more of an educational one but I think it's, you know, the questions are - were well set and focused in that email. And I think it's just worthwhile to try to answer those as well.

There was a follow-up to that one asking for the same questions to be answered for any other jurisdiction we're considering.

That is too broad for the current process. So I think that Robin Gross suggested a, kind of an alternative way which is to ask whether the lawyers are aware of any other jurisdiction where this could be better accomplished than California rather than getting into the specifics of other jurisdiction since, you know, doing a multijurisdictional survey will have neither the time nor the budget to do.

Last there was a document that was sent by (Aaron) which is one of the regional Internet registries and also a member of the ASO, the Address Supporting Organization which is one of the chartering organizations of this group.

(Aaron)'s counsel Caplin & Drysdale of DC provided several thoughts primarily on the designator concept and views on that and also on kind of a community what they called an accountability meeting as a kind of a relatively lightweight community empowerment mechanism.

So the - thought that it would be useful for counsel to consider what is in (Aaron)'s counsel's email as part of their work.

And I think it's by and large they're commenting on concepts at least the designator concept is in their email and they're commenting on that which we've already been.

So I think a - to respond to Rosemary I think we do want a response to the Caplin & Drysdale memo. It doesn't need to be highly formal since it's being viewed as a - not just a friendly input to the process, not as a straw man or alternate scenario in total.

And in fact it doesn't attempt to answer every question. So that's - that covers kind of those assignments. And yes, I hope I've caught everything in chat.

I see David McCauley said he sent some questions on April 1. Given the date I did not take them seriously. So if you could look for those I will find them. I'm just joking. I just overlook them.

And Holly says we can go on record that - at this time. We and then there's nothing on the record so I guess she went off the record.

Holly Gregory: That's right. I went off the record.

Greg Shatan: Holly why don't you take the floor?

Holly Gregory: Hi. I just want to clarify so you've outlined a lot of good kinds of questions. But we are not answering anything until we get a little note from you that says this is a formal request to answer the questions and that's been our understanding.

We look at the questions as they have come in. We consider them to be very helpful in us either in trying to understand what isn't translating where we need to be more clear and where we need to be do more work?

So they're helpful. But again we're waiting till you give us a formal indication in an email, you know, please add this to the list of things that we are (unintelligible).

As for the jurisdictional issue that's what I was going to go on the record and say. At this time we're not aware of another jurisdiction that will allow you to do all the things that you want to do in comparison to California. That doesn't

mean they don't exist. But we haven't gone out to search for one. That would take a lot of work.

And there isn't anything that springs to mind, you know, that we're aware of where there would be some great benefit.

So I just want to - want, you know, that's our perspective on that at this time? I know that people continue to be interested in other jurisdictions unless they're particularly jurisdictions the folks are aware of that they think it would be beneficial to look at that could be added to the list.

But we think that that enlargement is a fairly inefficient exercise at this point in time.

Greg Shatan: Thank you Holly. I think that's very helpful. I've seen that informally in the past. And I think that perhaps in responding to Pedro's questions that that can be noted again.

At I also see there's a suggestion in the chat that some of - perhaps some of these answers can be turned into an FAQ so we can kind of, you know, and maybe the Legal Sub Team rather than the lawyers can look at how we might want to assemble an FAQ out of the answers that we're getting from counsel.

And Holly it sounds like you have a procedure exactly right that while these questions are flying by and you may have looked at them informally until we send you a specific memorandum or email that says that this is a request for work, that work shouldn't take place.

We will in fact be sending you those memoranda on each of those points that we have discussed. There are also a couple of questions - there was one other

set of questions they came in today which this group determined was not within the scope of Workstream 1 and which will be put off to the side for the moment and will provide a reasoned response to our participant as to why it's not currently being considered which was a question of how the US gained the authority over the root in the first place.

Holly unless that's a new hand I'll turn to Avri Doria.

Avri Doria:

Hi. This is a Avri. Two things. One on the fact yes I was really suggesting that. And this is terribly cheeky for me to do as a new observer in this group but that that was something that the - not that the expert lawyers hired would do it but that this group would be the one to fill in the fact of questions that had already been answered.

Of course perhaps at some point the legal experts taking a sanity look at it to make sure that the fact is indeed correct is probably useful.

What I wanted - what I put my hand up to ask about during the jurisdiction conversation is I had thought it had been fairly well covered in terms of the jurisdiction of the company itself of ICANN itself and possibly even of an affiliate if that were the path taken.

The other question didn't come up and I'm not sure whether it's one that's been posed or one that has yet to be formally posed is that one of jurisdiction for non-US citizens or IGOs for states to bring their - to basically raise their issues in an appropriate or a pertinent jurisdiction given (unintelligible) and such.

And I don't know if that's a question that is on the table so far not. Thanks.

Greg Shatan: Thank you Avri. It's Greg. I think that that question - I saw that question kind of come by informally kind of in the course of a discussion on the list.

I think it would be helpful to formulate that into a more specific question for the lawyers. I think, you know, the question as I see it -- and I'm trying to formulate on-the-fly which would be poor -- is whether intergovernmental organizations and sovereign states can bring actions against ICANN in state and federal courts in California and the United States or whether there are other fora that are needed to be created or utilized for such disputes.

Is that anywhere close to the question Avri?

Avri Doria: Yes that's essentially it. I had gone so far as to bring action but to raise their legal issues but yes that is essentially what I've understood that division to be, yes.

Greg Shatan: Right and I'm no international barrister so I don't know the issues of how a foreign sovereign or IGO goes to court. There have been various assertions about their inability to subject themselves to the jurisdiction of other sovereigns.

But that is so far off what I know that I definitely would love - I'd love to know the answer.

And obviously IGOs and states are, you know, significant players, especially the ccTLDs are in many cases sovereign state - run by sovereign states or entities controlled by sovereign states.

So, you know, certainly an interesting question there for a sector of our community. Josh Hofheimer.

Josh Hofheimer: It is an interesting question and obviously one that's, you know, quite complex. Is this something that we would consider part of Workstream 1 or Workstream 2?

Greg Shatan: I think it needs to be Workstream 1 although it does not necessarily need to be done before the 20th.

If we're absolutely stressed out on the question although perhaps it might fall within the bailiwick of someone who is not currently, you know, being so much consumed by the basic work of this team since I would expect that would probably be some, you know, cross-border litigator or international governance specialist.

Josh Hofheimer: You're going to get...

Greg Shatan: So...

Josh Hofheimer: ...international law and international dispute resolution mechanisms that, you know, look more like a WT, you know, WTO or WIPO type structures and our treaty-based.

So it's actually I mean it's something that can be addressed and we've had some experience with. And we certainly have members on the team instantly. We have a lot of experience with it and (Ed McNicholis) who's not on this call today is having more of it.

But you are looking at - you're looking - you really are looking at a larger and more complex analysis in some way and something that obviously would take a substantial - likely take a substantial amount of effort to implement.

So I'm not sure it's really a Workstream 1 or the 20th solution type, you know, a solution that could be positive by that time frame so much as it's clear that this is something that should be acknowledged and perhaps needs to be developed, you know, as part of a plan, a more proposed plan would need to be developed as part of a longer term subsequent effort to Workstream 2.

Greg Shatan: Yes I think it would have to be a Workstream 1 issue although not necessarily an April 20 issue because from among other reasons we are going to need to have the approval of both the GAC and the ccTLDs, ccNSO to move this document out to the board and ultimately to the NTIA.

And I don't think that they will be satisfied, you know, since those are the sovereign states and in many cases aspects of sovereign states that we'll have to deal with.

So I think that this is one of those things that probably while the public comment period is going on we can take that time and try to tackle it.

So I think it's a post-April 20 question but I think it is one that is going to need to be answered at least it may need to be answered first in short form and later on if at all in a more extensive document.

You know, to some extent the question is simple which doesn't necessarily mean the answer is simple which is can sovereign states and IGOs take ICANN to court and/or how - where else would they kind of formally raise their legal issues?

And I guess secondarily do we need to create within ICANN forms of - forms for redress and raising of issues by IGOs and sovereigns?

But I think right, since this is not an April 20 issue we should just put it to the side for this moment. And we may send the question in but indicate that it is somewhat less of a priority because it does not need to be reflected in my opinion at least in the work product coming up in two weeks. David?

David McAuley: Thank you Greg. I just forgot to take my hand down. I'll just say that in light of what you just said I agree that it's certainly not an April 20 issue.

I personally suspect that may not be a Workstream 1 issue. I have a feeling that most governments all around the world have already taken account of whether they can or cannot take action against ICANN in their own countries.

I just don't see this as a burning issue. But in any event it's certainly in my point of view nothing for April 20.

Greg Shatan: Thank you David. Let's see, we have about five minutes left. So I guess it's probably good time to kind of recap action items.

And I think we have covered the agenda. So I think the action items as I see it are to give you formal memorandum emails to initiate work on particular items that have been received from CCWG participants and to - for us to contact the rapporteurs and co-chairs and confirm with them when and with what documents we would want the lawyers on particular calls that are coming up in the schedule so that as much advance notice and putting the right people on the right calls can take place, that we will also be sending you the Stress Test Working Party's request for legal advice and noting that the Stress Test meeting isn't for another week so an inopportune time of day for the US West Coast does at least give a good amount of time for back and forth.

Are there other items that I am neglecting to mention? Josh?

Rosemary Fei: I think I had my hand up but maybe I didn't do that right this time either. This is Rosemary. Yes I didn't.

Can I just make sure that when you give us some questions that, you know, come often well before we've had a chance to finish answering the prior set that you let us know about relative priority so that we know that what you want is okay?

These questions that we're just sending you now are really urgent. And we need these as soon as you can set aside what you were doing to answer these.

We don't - I don't think either firm has unlimited capacity. So it would help if you could try and not just say here's question oh, two days later here's more questions, a week later here's more questions but tell us where you want your new questions to fit into a queue?

Greg Shatan: Absolutely. I think triage is our watchword. Privatization is our watchword at this point. Maybe those two watch words. But absolutely we do want to make sure that you have, you know, work sorted out.

And, you know, absolutely feel free to reach out to me, Leon or any of the kind of key members of the legal sub team that, you know, you're interacting with or just reach out to the sub team on the list if you're unclear about how to prioritize something.

But we certainly will make every effort to prioritize things up front. Josh?

Josh Hofheimer: Just a quick process check. The - I don't know if it's (Brenda) or someone else if there's responsible people for the - for each of the sort of work groups the WPs.

But we need to get sort of somebody - if somebody could be responsible for distributing calendar invites to the law firms we can sort out who will attend them. They don't have to worry about trying to say it should I go to only Holly or only Josh or a combination of others.

But if they could invite the law firm, you know, participants generally when they want us to join and we'll take care of staffing.

But we are getting sometimes requests for meeting invite for joining meetings without getting a link to that team's accountability page on Adobe and otherwise so...

Greg Shatan: Understood. We'll - I think (Brenda) may have made a remark in an email about that today this morning. But absolutely we will make sure.

I think you're right. I mean we need to just invite the legal team en masse to any meeting where legal "is expected to be on the call."

And then we would look for a response from legal as to which lawyers were actually showing up and make sure that you get actual calendar invites for them so that you know where to go and not just when to go. Holly?

Holly Gregory: Thank you Greg. So I want to push a little on a theme that we talked about earlier on the call which is that you've got a fairly sophisticated group of legal advisors here who can provide some help in thinking about how to focus and

prioritize on things that are most likely to work best in the most efficient manner.

And I continue to be a little concerned that we're not - we haven't yet found that sort of forum in which to do that.

So I just put that out to generally perhaps the call later this afternoon will provide some of that forum.

But I do think we need to start instead of simply doing sort of a back and forth have a chance to really set out in a detailed way what we think might work best, what we think can work with some, you know, but with a little bit of struggle and where from our perspective, from a legal perspective some of your priorities might lie.

Greg Shatan: Thank you Holly. I think that is absolutely expected and appropriate. I think that, you know, now that counsel have kind of wrap their heads around what we're trying to do and also getting a sense of how we're trying to do it and what the multi-stakeholder process looks like we do absolutely want your thoughts and opinions on what is going to work best. And what's...

Holly Gregory: By Greg the point is though that we need a forum for that. It may be that we should set up at some point in the next sometime next week perhaps a call. We could call it sort of an informational call but a chance for the Adler & Colvin folks and the Sidley folks to almost present our reflections, thoughts for the legal framework. That's one potential.

We can also do it through these kinds of calls. But it seems like it's happening a little bit more in a piecemeal manner.

And I think when I look back to Istanbul and what was effective with the CWG it was the ability to have some time to really present and educate and lay it out and then have a discussion about pros and cons.

We really haven't had the chance to do that kind of framing yet with the CCWG on these issues.

Greg Shatan: Very good and I thank you for clarifying. And I think that what would be necessary to do that is to do it on a call of the full CCWG.

I'm looking I believe -- and correct me if I'm wrong -- that the next call isn't until next Tuesday the 14th and that the calls for the remainder of this week are just calls of the working parties so which would not be quite the right place to do those things.

Although clearly when you're working - if you're on a working party call you should speak your mind about any, you know, about what's better.

But I think in terms of setting the CCWG as a whole on the right track or at least, you know, conveying, you know, you're now kind of big picture or overarching, you know, thoughts about how best to proceed that that should be done on a full call.

I think the action item on this actually would be to go back to the co-chairs for me to go back to the co-chairs. And now I see why it's nice to have a chair of this committee who's also a co-chair which I'm not and suggests that we either put you on - by you I mean the lawyers as a whole on the agenda for a good solid chunk of time on Tuesday or to call an exceptional meeting between now and Tuesday because we do have three working days or five working days depending upon how you count working days.

We have three Thursday, Friday, Monday before that where we could have a call for legal with the CCWG.

And I'll leave it to the co-chairs to decide whether to use the Tuesday call for that are to call in exceptional call of the full CCWG for that purpose. But I think that is the forum for such a discussion. Josh?

Josh Hofheimer: Sorry didn't lower my hand.

Greg Shatan: Holly?

Holly Gregory: I'm sorry I didn't lower my hand but that sounds good to us. I mean I haven't had a chance and I, you know, to talk with Rosemary and get, you know, have our thoughts.

But if you could let us sort of confer online and determine whether we think it's doable given everything else that we have on I think it might be a good use of that time on Tuesday instead of the kind of back and forth that's going on.

I just really would like an opportunity to try to level set with folks. And while we've provided a lot of information through written memos I'm not sure that either everyone is fully reading it or really fully grasping it. And that's always our challenge as lawyers to be as clear as possible.

But I do think if we could have an opportunity to do sort of a presentation and walk-through with almost without interruption and then get reactions it might be beneficial.

Greg Shatan: Right. So it seems to me that you say doing it on tomorrow or Friday would not be - it would be rough for a variety of different reasons. I'm getting that message both from you and Rosemary in the chat.

Holly Gregory: Yes.

Greg Shatan: So, you know, maybe Tuesday is the right time for that. Rosemary?

Rosemary Fei: I think it's really would be helpful if you get the responses that we're currently drafting which we hope to get to you Thursday or Friday depending on how things go and have time to actually read what we've written before we try and give you a more holistic presentation.

Because I think there's just a lot of - I think you want these answers about all these different mechanisms even if you would never adopt all of these mechanisms at once. You want to hear how they look.

And that's what we've tried to give you in response to request number two. And I think it would be helpful if everyone could look at that and then I think the holistic presentation will make more sense.

Greg Shatan: Thank you Rosemary. I think that, you know, given the press of time if that comes out Thursday, Friday I think we made sure that everyone has read and reacted to them and then we can hopefully have that conversation that level setting big log kind of talk on Tuesday just conscious that Tuesday's only a week before the document's supposed to come out so I want to give enough time for reaction to the latter.

If we had a little more time it might be nice to have a conversation about number two so to speak and then a separate conversation a little bit later on the level setting and recommendations. That may not work just time-wise.

I think if everyone does their weekend reading that we - you should make that work. Cheryl?

Cheryl Langdon-Orr: Thank you. Certainly I personally welcome the opportunity to have a presentation from the legal team.

But I did want to let you know that immediately before I joined the first hour of your call Greg I spent an hour with the co-chairs putting together the agenda for Tuesday's meeting. o there's a little mismatch there.

That said if we could get an idea on how much time would need to be allocated for this presentation that might be - we might be in a better position to work out how to shoehorn this in or to suggest it should be a separately convened meeting.

So would you be looking at a 35, a 40, a 50, a 60? What sort of block of time? Holly I know it's how long is a piece of string but if you guys were to give us a vague idea on the type of time allocation that would help with the co-chairs and (unintelligible) makes a request on.

Holly Gregory: Yes I think given the importance of these issues and how fundamental they are to everything that you folks have on your work plate, you know, devoting 50 to 60 minutes to it.

Now we may not need that full-time for presentation. I would assume that we could have some Q&A in that time. But I think it's significant. And it's not a 10 or 15 or 20 minute kind of approach.

Cheryl Langdon-Orr: I would have been very surprised if it was. I did start with 45 as a minimum.

Okay Greg when you put them forward to the co-chairs make sure that timing goes in there. Because I as I say unfortunately we had literally just put together an agenda that obviously may be able to change but that 50 to 60 minutes allocation is essential. Thanks.

Greg Shatan: Thank you. Thank you Cheryl for bringing that up and thank you Holly. Rosemary?

Rosemary Fei: Oh. Did I raise my hand again by accident? This is ridiculous. Sorry. I think it's something I'm doing when I try and type.

Greg Shatan: You - probably what is happening is that your mouse is ending up over your little hand man and some how...

Rosemary Fei: And then I try and type and it's treating it as a click. Sorry.

Greg Shatan: No problem. Hand management is a definitely an advanced ICANN skill. So Holly is that an old hand speaking of an management?

Holly Gregory: Just proving that proven that I'm still alive. That's an old hand.

Greg Shatan: That's okay. Only the technologists are technologists. All the rest of us are some version of wanna-be technologists to let - at least that's my view.

So I think we are about to the end. I think that it sounds like we need an hour for legal and that it either needs to be an hour of the call on Tuesday or there needs to be an exceptional call on or around Tuesday for the full CCWG to convene with the legal team and have the big discussion.

And I will leave it to our co-chairs to decide but quickly since trying to follow our 48 hour rule and not counting the weekends into that 48 hours we really would need to give you a notice by tomorrow about what our expectations are for Tuesday whether it's the big call or a separate call about the big - about big legal.

I think that brings us to the end of this call. Is there any other business? Seeing no other further business...

Holly Gregory: One last - Greg?

Greg Shatan: ...I will call this - yes please?

((Crosstalk))

Holly Gregory: ...(unintelligible) and it's Holly. And I didn't raise my hand and I'm interrupting you. I'm sorry to do that but I haven't seen a calendar invite to this afternoon for the session. So if someone could send a calendar invite that would be great.

Greg Shatan: Absolutely.

Josh Hofheimer: I'll send it to you Holly.

Greg Shatan: Who was that who spoke?

Josh Hofheimer: Josh. I just forwarded it to Holly.

Greg Shatan: Josh, you got it. Okay thank you very much. Excellent well, with that I'll final call for all other business?

I will take that as no other business and bring this meeting of the Legal Sub Team to a close only 14 minutes over time.

And I ask that the operator stop the recording. And I wish you all a good day or good evening or good overnight.

Woman: Bye.

Greg Shatan: By all and thank you.

END