

ICANN

**Moderator: Brenda Brewer
April 13, 2015
2:00 pm CT**

Coordinator: This call is now being recorded.

Grace Abuhamad: Hi everyone. We'll be starting in one minute. We're just letting a few more people into the Adobe room. Hi everyone so we're going to go ahead and start the recording. So the audio recording is on and I'm turning on the Adobe recording now, okay and we'll do role call based on the Adobe Connect. We have (Holly) (Gregory) and (Eduardo Diaz) on the phone line only. Is anyone else only on the phone line? Okay, it sounds like no one else. I'll turn it over to (Jonathon Anise) for chairing the call.

Jonathan Robinson: Okay, great. Hi everyone and welcome to our third session of the day and the sixth of this high intensity set of discussions. We focus the first couple of discussions as you know - those of you at least that were in those meetings on the work done in teams and trying to bring those and so far as it's possible to a head so that we can finalize the input for our drop proposal which is due out for public comment on the 20th of April.

We were left with three issues - really three sort of overarching issues coming out of those including some from design team A, design team C - A being the

SLE's and C being the CSC - and probably M on the escalation. In any event not withstanding those points we are now going to move for the bulk of this call to start to look at what I've begun to refer to as rather than the operational or technical issues or functional issues that are being covered by the design teams, more onto the structural points for which we've been leaning quite heavily on our professional advisor (Sidley Austin).

And I'm pleased to say we do have presence and help from (unintelligible). They were on an earlier call I know as well. Before doing that though I'm conscious that we did leave design team on the SLE's with some - some questions and some opportunity to try and develop - push this forward. And I see we've got both (Paul Cane) who's the team lead from design team A as well as (Kim Davies) from IANA on the call and I wondered Paul and (Kim) if you would like to give us an update from DTA.

I see there's a note there - Paul a quick update in the chat that ICANN Legal have your request for the information but my sense from our conversation earlier is while that was a critical piece of what design team A needed to resolve, it wasn't the only outstanding issue. So would you like to take the opportunity to give us any other update now Paul and following Paul (Kim) to give us a sense of the level of acceptance of the SLE's or the likelihood of those - of finding a common view on those so that we can get those into our drop proposal later in the week.

Paul Kane: Yes. Can you just consent you can hear me?

Jonathan Robinson: I think we can hear you Paul. Thanks.

Paul Kane: Great. So yes, we've literally just come off a call where the design team A or five members of design team A spoke with IANA's staff - a very productive

call. A quick update on requests for workflow currently employed by IANA and the necessity to get formal approval from ICANN Legal and NTIA Legal. Unfortunately although (Elise) very kindly forwarded it to ICANN Legal, it got lost in ICANN Legal's in tray.

It has now been recovered actually and very grateful to ICANN staff today for facilitated. And so my request for further information as to what happens today will be expedited and all being well at the workflow diagram ICANN IANA used will be made available to the group as soon as possible.

We also had a discussion on our specific proposal and fundamentally there was a misunderstanding between the various approaches. We have just looked at automated interface that (David Conrad) primarily highlighted for Istanbul. We have now been made aware that there are other methods interacting with IANA and some registry managers prefer to use fax machines to facilitate updates. Others prefer to use a telephone.

Those modes of interacting with IANA have not been considered nor addressed in our service level presentation document. We have just been considering those interactions that are online because those are the only interactions measured using the data available. So IANA very kindly agreed to review our proposal in detail and highlight any specific metrics they have a problem with and come back to us in a written form once they've had time to properly review it. So there's a very quick update instructor call that got held within the last hour.

Jonathan Robinson: Okay, thanks Paul. That's very - Kim is there anything you would like to add?

Kim Davies: Thank you. No, really I think Paul summarized it well. I think we did have a very constructive conversation. He gave an example of one of the - I guess - areas of disconnect that we had reading the document that was clarified and we'll continue to read the document and go back to the design team to try and clarify the implementation impact of the SLA's as they've been drafted.

Jonathan Robinson: Okay and I'm seeing it was quite clear from your interaction that the kind of timeframes that we're working on and the need to try and get something coherent in place essentially by in advance of our call on Thursday this week if possible.

Kim Davies: We're working with the team as quickly as possible. We're aware of the timeframe.

Jonathan Robinson: Thank you (Kim). Thank you Paul. That's helpful to know and I'm glad you got to speak and work together on that today so we'll look forward to hearing of any additional progress by email and talking with you on the call on Thursday if not beforehand.

Okay so turning us then to the primary purpose of the call today which is in this case to really pick up on the structural issues of course some of which we touched on earlier of course by virtue of the fact that we've dealt with the roll of the CSC, the periodic review team or periodic review function as it's referred to in the (Sidley) schematic on the diagram.

And just to make sure we're clear, of course we went into our Istanbul discussions with multiple models and made significant progress in essentially refining the focus of the group and to sharpen that down onto looking at two variants arguably of a single model - the so called internal model.

There was quite a substantial difference between those two variants and that was really - in preparation for Singapore we had a quite detailed memo which came out in around the middle of March and then shortly after Singapore, (Sidley) prepared for us a detailed memo which then started to hone in on that model with the two variants and that came out on April 4th and was shared with the client committee and the group.

And I know there was a CWG call that took place after that and I know that for some of you it was very tempting to get into that and there was a little bit of frustration perhaps that there wasn't an opportunity to dig into that in some detail but people took that and compiled a series of questions which were funneled through the client committee more or less in raw form.

The client committee is very conscious of the requirement not to be seen to be filtering those questions and so (Sidley) had the opportunity to go through those in some detail and then on the back of that to compile a detailed set of responses. And I should credit them with a very, very rapid turnaround. I mean those came back to us in very short order and they were more than just responded to. They were categorized into areas that were really primarily issues for the CWG to deal with - some which were more small legally oriented issues and they work with four categorizations for memory that those were separated out into.

And on the back of that we then had a follow-up immediately thereafter - 24 hours later had a follow-up call with the client committee and (Sidley) at which point (Sidley) talked with us about actually the fact that in many ways there were some themes in all of this and those themes could really be broken down into what we call a punch list or what's sort of referred to as a punch list - the opportunity to actually break that down into distinct and discreet set of questions.

Now I know some of you may have only seen that punch list today for the first time because it really - it came out some time on Friday I think from (Sidley) and then those of you who were diligently following the client committee might have picked it up earlier - the client committee mailing list but if you would, you may have only seen it later - as late as today.

So all of that leads us - Lise and myself - to think that what's really - what really would be useful is to take a step back, go through the memorandum, be aware that (Sidley) has seen and reviewed all of your questions and that in many ways that was then translated into - if you like - the punch list - the critical questions that need to be answered in a sort of a structured way. And that forms the basis of that - I think it's a ten part punch list.

So here it feels like an opportunity for us to systematically go through the memorandum and to talk through perhaps the punch list and get some of the drivers behind those questions. We don't think it's necessarily critical to start to answer those punch list questions but far better for the group to be fully educated and informed and have the opportunity to discuss and air any issues in and around the memorandum and the punch list that derives from that via the questions of the group.

So with that said, I think I would like to hand over to (Sidley) and give (Holly) Sharon or (Josh) the opportunity to talk us through the memorandum and systematically make sure the group is up to speed because a reminder that the group is of course the client. Client committee simply is a mechanism by which we can make the interface efficient at times but we know that the group found it very, very useful to interact directly with (Sidley) in Istanbul and we think it's critical that the group has the opportunity again now.

So that's really the primary focus of the call and therefore I will hand over to (Sidley) to talk us through the memorandum and have any discussion, Q&A and issues arising from that. So over to you (Sidley). We can agree on who handles the Q&A. I think you guys are sufficiently familiar with Adobe that you may want to handle it yourselves but I'm equally happy to chair it and maybe you'd find that easier.

So I'm not sure who's going to pick up first. I suspect it might be Sharon or (Holly) but let us know.

Sharon Flanagan: Thanks Jonathan. It's Sharon Flanagan and what I'll do Jonathan is I'm going to go through the memo and then I'll stop and then I'll turn it back to you so we can spend some time doing some Q&A and then go from there.

So let me start with the memo which is up on the Adobe Connect and I will highlight a few items in it. I know that many of you have already spent a lot of time digesting it and have a lot of really good questions about the memo but let me just kind of step back and recap it for you.

So first I'll talk about the legal separation variance. So as we said, we have this - we have this internal accountability hybrid model coming out of Istanbul and then we were looking at two variants - the legal separation variant and the functional separation variant.

And the primary difference between the two is that in the legal separation variant we will create a legal entity that would house the IANA functions on naming and that would, you know, be ring sensed and be a separate identifiable legal entity. And in the functional separation variant there would be operational separation - different people, different budget - things like that

but there wouldn't actually be a legal entity that would house those people and assets if you will.

So let me start with the legal separation variant and it's up there on the screen in terms of just the diagram reflecting it. So what we would propose here in this model is that there would be this post transition - post transition IANA and that would be a wholly owned subsidiary of ICANN. Now again as we talked about in Istanbul when we say subsidiary, we don't necessarily mean a legal subsidiary. It would be an affiliate if it were a nonprofit corporation but let's just call it a subsidiary for ease of reference.

ICANN would be the sole member of PTI so it would be the only member and then we would transfer into this new legal entity all of the IANA naming functions. The people, the assets - all of that would go into this new legal entity. And then we would have a contract. As you can see on the left hand side, there would be a contract between ICANN and the post transition IANA - the PTI. So there will be a contract between those two entities.

Now in terms of what the PTI would be organized as, it could be a public benefit nonprofit corporation under California law just like ICANN is or alternatively it could be a limited liability company and that's one of the discussion points on the punch list is thinking about pros and cons as those two alternatives.

We also envisioned that there would continue to be support for RIR's and the ITF's through MOU's or other arrangements and there were a number of questions that arose out of this point on the memo which is what would happen to the existing MOU's and other arrangements. Would they stay at ICANN? Would they get transferred? Would there be new agreements? And the answer is that all of those are possible.

So it's possible that the existing MOU's could remain at ICANN and there could be some kind of a subcontract from ICANN down to IANA to actually implement the work that's contemplated. Alternatively the existing MOU's or agreements could be assigned from ICANN down into PTI - the new entity - or you could terminate the old MOU's and implement brand new MOU's or other arrangements. And we understand some of the other work streams contemplate potentially new contracts.

So all of those I would say are more technical details as to implementation but conceptually those arrangements either through new ones or the old ones would remain, you know, in place at least in terms of the functional mechanism of those.

So then IANA would sit below ICANN and ICANN would provide funding and agreed upon resources. There would be presumably a budget that would be approved by the PTI board and potentially by the multi-stakeholder community. So that's the entity itself and then there's the board.

So if we make it a nonprofit corporation or even if we make it an LLC, we need some governing body sitting at that entity - that new entity level and so let's call it a board. It could be a group of managers if it's an LLC but we'll just call it a board for convenience. And so there's a decision point there as to what the board would look like and we will talk about that later on our punch list items as well.

The possibilities are have a board - PTI board that looks like some subset of ICANN. It would, you know, almost like when you think of a big multinational you've got the parent and then the subsidiaries are often populated with board members who are employees of the parent so that's one

possibility. The other possibility is the other end of that spectrum which is to say it's the fully independent multi stakeholder board without any ICANN individuals or something in the middle - a hybrid.

That could be a combination of ICANN individuals and then also multi stakeholder appointed individuals. So that's another, you know, decision point to be made. So that's the PTI board then there's the periodic review function and that's - I know there's been conversation about that on earlier meetings and calls today and so some of this has I think been - and on the CSC as well - has been superseded in some ways or at least there's more thinking on both of these.

But the periodic review team would exist and would be organized to do this periodic - I understand possibly - every five year review and make sure the IANA function is operating effectively. And that could be one decision point there is if the review is happening every five years, is that a standing team that's in place at all times or is it a team that gets put in place at the time of the periodic review every five years?

And one additional thought there is if there is an ad hoc or an emergency periodic review - well it's not really a periodic review but an emergency review function, you know, that might argue for keeping a standing committee that's there at all times and can operate on an emergency basis if needed or otherwise is basically dormant until the periodic review period comes up again and then becomes more active.

And so what we envision if you look at the chart is the periodic review function is looking down at the post transition IANA. It's looking to see is this operating, is it working well and then makes recommendations up to ICANN

to say we think it's working well. We don't think it's working well, you know, here are some suggested modifications.

So then those modifications go up to the board and then the board has some alternatives. The board can say we agree with the periodic review function team. That makes sense. We will implement those changes. It could modify the recommendations so adopt I part or modify them or it could reject them altogether and say we don't agree. We think it's fine as it is. We're not going to implement those.

But the we envision at that point if there is a modification or a rejection then that would get sent up to the multi-stakeholder community for approval. So if the ICANN board just implements exactly as the periodic review function has recommended, that could be the end of the process and it could only be if there is a modification or rejection but it then gets sent up to the multi-stakeholder community.

So one question is well what is the multi-stakeholder community. We put it in this shaded box without any specificity around what that looks like and that's just acknowledging that the CCWG is obviously considering that that is one of the pillars of their work which is to have an empowered member group. As to what that looks like from a legal standpoint, I think that is something that is being worked on and decided.

If it's a membership body then those would be members. If designators, those would be designators of the board of ICANN. I mean I think that's just still an open question but I think coming out of the CWG we should, you know, this group needs to make recommendations as to what is critical in terms of the CWG model from an accountability standpoint.

So if the answer is well it's critical that members be able to veto a board decision then that may say well we need ICANN to have members. That's legally the best way to do that and so that's something that the CWG is saying its model is dependent on so that's the idea of how the periodic review function would work.

Then there would be the customer standing committee and you see in our diagram we had envisioned that there would be some initial...

Jonathan Robinson: Sharon.

Sharon Flanagan: Yes.

Jonathan Robinson: Just to - there are a couple of questions emerging in the chat and then in the hands up area so when it's convenient - you feel your way but when it's convenient you might want to pause and just take a couple of those at that point and we can run through and take them then. Your call.

Sharon Flanagan: Yes, let me just look at them. You guys are all so good at multitasking and speaking and reading all at the same time so let me see if I can keep up with you all.

The first comment here I see is the - apart from the creation - the second key issues is who appoints the board absolutely agreed and that's something that will need to be discussed and it's part of the punch list and there are lots of different ways of looking at that so maybe I suggest we defer that until we get to that list if that's okay.

And then yes, on the comment about the picture on page three would be more complete if we knew what the top level entity was - the member group. I think

we're just acknowledging - at least as of April 4th when we wrote the memo - that that's still an open question. I think my own perspective is that a lot of this model is dependent upon membership at the ICANN level but that is not, you know, obviously that hasn't been fully decided.

Jonathan Robinson: Thanks Sharon. Just a reminder. I mean actually this is new information to a lot of people. I know it's very familiar to you and slightly familiar to me so if you could just manage - and also not everyone's a native English speaker so if you could just take us through at a slightly slower pace, that would be also helpful.

Sharon Flanagan: Jonathan is that on the specific questions that I just went through or...

Jonathan Robinson: No, just generally. I mean you know the - that's all. Thanks Sharon.

Sharon Flanagan: No problem.

Jonathan Robinson: It's very clear but it's just fairly fast. I don't know if we want to take Chris. Chris has got his hand up in the room as well so let's perhaps hear his question that relates specifically to what's going on now.

Chris Disspain: Jonathan thank you. It's Chris. I actually have a couple of questions. I'm happy for Sharon - Sharon are you still planning on stopping at the end of this diagram?

Sharon Flanagan: I was going to stop - yes Chris - and just as soon as I kind of get to the overarching model.

Chris Disspain: Jonathan if it's alright with you if Sharon just finishes this diagram then I've got some questions on it.

Jonathan Robinson: No problem. We'll pause at the end of the diagram. We'll do a walkthrough of the diagram and then we'll take questions and discussion in and around that. Thanks Chris. Thanks Sharon.

Sharon Flanagan: Okay so let me then just finish with the other component on the model which is the CSC and you'll see in our model we envision that - or we had understood that there would be, you know, some initial customer service issues get raised at IANA and then if they're not resolved then they go to CSC on kind of a secondary basis and then, you know, we had understood there would be some reporting out of those issues either to IANA or potentially to the periodic review function team if that is, you know, a standing committee.

We understand or I understand from having listened to the design teams - see that there is a sense that this group will not be mediating - not be sort of a dispute arbiter but rather will more be collecting the input and I think, you know, recognizing if there's some kind of systemic issue, you know, CSC will need to do something and the something I think sounds like it's a bit open but, you know, either kick it over to the periodic review team for some kind of emergency review, you know, or maybe it gets sent up to ICANN as a more significant escalation matter.

So that - those are the components. The last one in the memo itself in the narrative is on page 7E - the multi-stakeholder community organization - also what we're calling the member group. And we've talked about that, you know, a little bit already that that is still a bit open as to what that looks like but maybe as a membership body. And then these are the various powers we were envisioning would exist in this model for the member group or for the multi-stakeholder group.

So the first is the ability to approve or veto certain key ICANN board decisions so that's a broad - that's a broad concept but for example in the periodic review function, that would be if there were recommendations that were not implemented, that would be a place where that would get sent up to the member group and then potentially a veto could cause the board to have to reconsider.

And I didn't mention this but it's in the memo. I think the idea is that that veto hopefully wouldn't be used or needed very often on the theory that if the board recognizes that by going against the periodic review function recommendation that they're going to have to put it up to a vote that there'll be a deterrent effect. There's no - there would be no reason to do something if you felt that the community wanted it and was going to reject your decision anyway. You'd be more encouraged to just do whatever it is the community is asking in the first instance. So that would be the first power.

The second power of that multi-stakeholder group above ICANN would be the power to elect or designate members of the ICANN board. And then the third would be the power to remove members of the ICANN board. And then the fourth would be the ability to approve amendments to certain fundamental bylaws.

So the fundamental bylaws remember - those are the things that we're saying whatever tools get decided upon through the CWG - those tools will be memorialized in the governing documents of ICANN and to change those things would require some very high threshold supermajority type of vote in order to make a change and that insures that they don't get just stripped out once they're in place. That's the idea of that.

So that's the legal separation variant. Maybe I'll pause before talking about the functional separation variant. Maybe I'll just pause there and go to the questions. Chris I see your hand is up.

Chris Disspain: Yes Sharon thank you and thanks very much indeed for that and for all of the work that you've done which is frankly extremely, extremely helpful. I've got a couple of questions or points that I'd like to make. Just as sort of a starting point, my understanding coming out of Istanbul is that while we were - one of the things about the internal model - it doesn't matter whether you choose the sort of functional separation or legal separation.

But one of the things we lent on or I lent on anyway as a reason for heading in this direction for me is that it answers the accountability problem in the sense that you don't have to create a whole raft of new accountability mechanisms. You use ICANN to accountability mechanisms.

So with that overarching comment - some of my questions actually refer back to that comment. My first question doesn't actually. My first question is on the transfer of people if we go to this model with a separate company. My question is whether there are any consequences for those people in respect to any rights that they might have having worked for one company for a long period of time or whether in fact transferring their employment into a subsidiary makes no difference to them at all.

I'll go through them if that's alright Sharon and then you can respond. The second - my second question is on the PTI board if you have a completely separate board notwithstanding the fact that ICANN is the member, does that make the use of ICANN's accountability mechanisms in respect to that more complicated, number one. And number two - how would you deal with the fact that ICANN's accountability mechanisms are built to some extent on

having key performance indicators for the seniors to the CEO and other senior staff across ICANN and if they're not actually involved in the board of the PTI, how would that work?

On the review team just a comment to think about. If it's a standing team - assuming everything does well and there are no emergency reviews - a standing team that looks at something every five years would I suspect be difficult on the basis that people come and go. People move roles. And if you - if we were anticipating that the PRF will be elected or appointed by individual parts of the community, having me for example appointed by the (unintelligible) community today. There wouldn't necessarily - I wouldn't necessarily be there in five years' time and so therefore processes would need to be put in place to insure that that's refreshed.

And my final point is - oh sorry - two others. You've made a point about somewhere in your document about the member group or the SO's and AC's being legally - being legally cognizable entities and I noticed that that was one of the questions that you were asked by Greg. In fact it was the first question and you said we recommend that those groups be legal entities. Can you address when we get to the question about whether that would mean that they could be sued because right now the reason why this structured the way they are is SO's and AC's is precisely for the reason that they can't be sued.

And just finally on your last point on the CCWG - sorry - on the overarching work - what you've called it - organization above ICANN. The way that I saw it in my head was that we would build an IANA model that would have escalation mechanisms in it and then they would be very - they would be specifically in our escalation mechanisms and then you would reach a point where you would trip into or move into the overarching ICANN escalation mechanisms such as the board spill.

I want to make sure that we're clear as to whether you are actually suggesting that there should be separate IANA mechanisms for a board spill or whether what you're talking about is actually the interface between the work of the CWG and the CCWG. Thank you.

Sharon Flanagan: Okay, thanks Chris. So let me start with the first question. The first question was about the transfer of people into the new entity and would that create any issues and just using kind of general corporate law analogies. I mean this happens all the time and there are ways to give employees the benefits - all the benefits that they had when they were at the prior company parent or whatever the prior company would be so contractually insuring that, you know, their - all of their benefits stay the same that their, you know, vacation days are all preserved.

So all of those things I think can be pretty easily managed so I don't think it'll - it'll impact the people and so that was the first question. The second question was on the PTI board if there's a separate board does that make the accountability more complicated. I think it does. It does create two layers of accountability and I think, you know, you do have to be appointed board members at two layers - two levels.

I think that some of the items are in our - the way we're envisioning it - some of the items would go to the ICANN board where we have - where we will have the robust accountability that's going to be implemented as part of this overall work and the CCWG's work. And so I think we can minimize what needs to be done at the IANA entity level but it's still a governing body and we'll still have to have some - there will still have to be some consideration as to who appoints the board members, who can remove the board members and what else is the role of the IANA entity going to be.

As for the - as for the individuals - you mentioned that there are ICANN individuals who have key performance indicators that are tied to IANA. Those people would still be I think overseeing and could actually be members of the board of the IANA entity and would still then I think be able to be responsible for and take credit for or address failures of the IANA functions in their roles as employees of ICANN. I think that could be worked out as well.

In terms of the - in terms of the periodic review function is it a standing group or is it a group that convenes every five years? I think no matter how - how you structure it you need to - you're going to need to have a group of people that are on deck because I think you've got the every five year review but then it sounds like there's a desire for some kind of emergency or ad hoc review and so that would say - that would suggest that you do need to have people who are there and being swapped out as needed kind of overtime as opposed to waiting, you know, to do it every five years.

But, you know, I think that alternatively you don't have a standing committee. If there's an emergency or ad hoc, you'd have to quickly convene that group and that would present some challenges as well.

Before I move to the next question, I see - I see a bunch of hands up. Chris your hand is up and I just - if you've got clarification on some of the questions you asked and I had just tried to answer then maybe why don't you jump in.

Chris Disspain: I actually put my hand down Sharon but just to go - just since you asked me, I just want to make the point that we need to be a little bit careful when we're talking about (unintelligible) I said it was well - the emergency PRF. What I think we mean by that is that there's an emergency. That emergency is dealt with by and is in business to be dealt with in all of the plans that I've seen by

the customer services committee working closely with IANA or possibly a group of experts.

But the following - at the end of that emergency there may be a desire or a need to have an overarching review. That's my point.

Sharon Flanagan: Okay, that's helpful. Okay so the periodic review function wouldn't deal with the emergency but would deal with the aftermath of the emergency.

Chris Disspain: That's my understanding.

Sharon Flanagan: Okay. Well let me finish Chris your questions and then I'll go to - I see we've got a couple of other people with their hands up. In terms of the - in terms of the member group - the SO's and the AC's - so we think it is preferable that those entities - at least from a governance standpoint - I appreciate there might be other considerations but from a governance standpoint for those entities to have some personhood and that can be - that personhood can be something as lightweight as an unincorporated association but to be a member there needs to be some legal personhood.

To be a designator as of, you know, before 2009 it was clear that you needed to have legal personhood. After 2009 the California statute was updated but there's still some - I think some ambiguity around that. So we think it is to insure that those rights are very clear and they're legally enforceable, we think it is better that those entities at least have some legal status which could be an unincorporated association.

Now could that - would that make them more susceptible to being sued. I suppose that there's a personhood to sue but, you know, theoretically without a personhood the individual groups could be sued, right? I mean they're still

actors acting and, you know, you assume in the law there's some way to reach any actor acting. It's not in their capacity as acting in a group than in their capacity as the individual constituents of the group.

So I wouldn't think that that would be, you know, need to be the deciding factor. And then let me cover the sixth question you had which is the overarching work and making sure - I think you were asking are we talking about the IANA governance.

Are we talking about the ICANN governance? I think in most places we're talking about the ICANN governance and the CCWG work. I think what we're envisioning is governance at the PTI level to the extent it's needed in order for it to be a legal entity but not putting too much onto that group from a governance standpoint since the work is really happening - the accountability work is happening at the ICANN level. and so it makes sense to take advantage of going to the place where there's been, you know, the most - there's the history and there's been more development on that than trying to put it all in this new IANA entity.

So let me pause there. Donna your hand is up.

Donna Austin: Yes, thank you. Donna Austin. So I guess my question comes from as the correlate of the customer standing committee or the DTC looking at the customer standing committee. I guess what I'm trying to understand is what does the structural organization look like of ICANN if you go to this model and one of the reasons I ask the question is that in terms of the work that we have put forward for remedial action, our escalation path goes through the vice president or whoever it is of IANA and then through the president of the GDD and then up to the board CEO as required.

So I guess I'm just trying to work out in my mind how this model potentially changes that remediation and I guess just to - I don't know whether this is a question or a statement. But the language that you have regarding the customer standing committee seems to be focused primarily on resolving disputes to some extent whereas we've largely tried to move away from that and keep the remit closely involved around performance and monitoring of IANA's (unintelligible).

So I guess I'm just trying to work out in my mind to what extent does this model impact the work that we've been doing as the design team C if you've got any kind of ideas on that. Thanks.

Sharon Flanagan: Yes, thanks Donna. I think in terms of listening to the approach that you're taking on the design team of the order in which, you know, who's going to get the different service, you know, issue as it goes up the chain. I don't think - I think that can be just as you outlined it so I don't think - we're not intending the structure to really drive what is - what works - what you all think works operationally so I think the structure will accommodate whatever you think is the right method of going through those three steps.

So I think we should just - we will follow your lead on the structure so if you tell us what works, we will just make sure it can be implemented to the legal structure so I think that was the first thing.

On the second - on the CSC moving away from dispute - yes that was one of our big questions and you can see it in the punch list. We didn't - we didn't have a full and complete understanding of what the CSC's role was. Was it a mediator? Was it just a reviewer? What really was the function? And so now we have I think a much better sense that it is not to address disputes or be some kind of mediator or facilitator of disputes or decider of disputes. It's

really to be a reviewer of the effectiveness of the operations and part of the review is to hear customer issues and be able to take that in and recognize that there's something more systemic going on.

So I think - and not to jump the gun but that I think may lead to another question that came up in the questions that were fed back to us on the memo which is, you know, what is the relationship between the CSC and the periodic review function. Are they the same? Is one a subgroup of the other, you know? So you could envision a periodic review function team that is multi stakeholder across lots of different functional areas and that there are - that there is a group within that would be the group that you're envisioning for your CSC.

And you could say well why can't that be a subcommittee of the periodic review function and that the CSC is operating to address particular review issues and then the periodic review function is addressing overarching issues. So that's something we can talk more about but it seems to me that there is more connection between the CSC and the periodic review function than I thought at first blush so I think we should talk about that.

Let me go to Robert Guerra.

Robert Guerra: Hi. First thanks for the briefing and apologies for not having been able to meet you and others out there in Istanbul. I have a question that focuses on the multi-stakeholder community organization part that probably affects others as well which is the language (unintelligible) to electing or designating members of the board and just to point out that there's an existing mechanism already in ICANN. The NOMCOM that performs that rule may take into consideration issues of regional balance and gender and things like that.

And so if there is - that language should be referred to but also perhaps there might be some coordination with that group because, you know, there is a balance that tries to be struck and then also at a larger level - I mean the community might think about is whether - where the NOMCOM may want to fit - whether it should stay where it is right now or perhaps it could be used to a new entity as well to so just the issue of the relationship in the bylaws between the appointment, removal of ICANN board members in the NOMCOM.

I wonder if that's been addressed and if not if outreach is needed to the NOMCOM. Thank you.

Sharon Flanagan: Yes, thank you. That is something that is being considered by the CCWG at least in terms of the lawyer's work on that so that's something that we're looking at whether how the nominating committee gets built in if there is a membership structure. So yes, that is very much on peoples' radar but thank you for flagging it. Paul Kane?

Paul Kane: Thank you and thank you for the great work you have done to date. I was actually going to ask a very similar question to Seun though I see his hand is up so I will leave that question to him.

I appreciate the goal is really to have the operator (unintelligible).

Sharon Flanagan: Paul we're losing you a little bit.

Paul Kane: Oh, okay. I'll shout a bit more. Okay so the issue is I appreciate the internal accountability model best to be aligned as (Chris has highlighted. The mechanisms are in place for ICANN accountability and therefore we want to build on that accountability tract.

My issue is relating to the subsidiary or affiliate company and precisely what that affiliated company is responsible for. If it is just responsible for the operator then the issue I have is if the authority is at ICANN, the trust element at the moment of both the IANA staff and ICANN board have the trust in the community but that has not always been the case.

Staff change and we've had it in the past where the services deteriorated quite significantly. ICANN may say it no longer wants to have the job of running the IANA. So my question is who is the steward responsible for the IANA function 12 which is currently being undertaken by NTIA? Periodically they have redid the IANA contract to see if anyone else is interested in it and the mere threat of losing the contract is an ability to drive a quality of service.

So I'm wondering where the stewardship part fits in and whether in this internal accountability hybrid model diagram the left arm contract to administer the IANA functions would be better served if it was contracted to be the IANA steward of which of course appointing the IANA contractor which currently is ICANN staff would be its first job.

Sharon Flanagan: So thanks Paul. Those are interesting - interesting thoughts on the contract. So let me put that to the side and just respond to who's the steward based on the current model.

I think that, you know, in the current model you've got boards - at least in the legal separation area. You have boards at two levels. You've got the board of ICANN. You've got the board of PTI but ultimately the real stewardship comes from the community in the sense that the periodic review function determines is it working, is it not working, makes recommendations and then sends it up and if the board isn't listening then the membership can either

trigger the ultimate separation and that's a topic we need to discuss more about what does that mean but trigger the ultimate separation or replace the board with board members who will do maybe a better job of stewardship.

So ultimately I think in some respects the multi-stakeholder community stands in the shoes of NTIA to say hopefully all will go well and there will be no need to do anything but if it's not going well then the multi-stakeholder community will - sitting at this top level - has the power to rebid the contract, replace the board, you know, divest the IANA function. All of those things could be options if things are not working.

Paul Kane: I want to move on but the issue of stewardship is one that is in my mind critical because the fact there has been an external party - mainly NTIA - holding the stewardship role has been a valuable asset to the community and there needs to be a distinction between the ICANN community which to be candid, I thought the affiliated company - the subsidiary - was going to epitomize so members from the ICANN community would be there as stewards in the affiliated company awarding the contract to ICANN as the current operator.

But if they fail to live up to expectations or ICANN elected not to continue in the IANA role, that body was going to appoint another contractor. It's the stewardship to me that is vital but I thought your mechanism would accommodate it but I was somewhat confused between the left arm as I say embracing the stewardship role rather than the ICANN function - the IANA function operator. I don't see why ICANN would appoint someone other than its own organization to do the IANA function.

Sharon Flanagan: Yes, I think Paul - I think the idea is it would if the membership said that it should or if a new board said that it should but I appreciate the importance of

stewardship. So let me - Jonathan let me turn it to you. Your hand's been up for a bit.

Jonathan Robinson: Yes, thanks Sharon. I think there's going to be - I mean there's a couple of issues here. I had some points I want to make. There's also - I mean we've got to be mindful of the fact that we've got quite a lot to get through here. We wanted to give you the opportunity to talk through the memo properly. The key objective of this is to educate and have gifted to the group on your thinking to give them the opportunity to challenge it and understand it.

But also the group is the designer of the model ultimately with your help and assistance. So we can't expect that you have all the answers. There's also a synchronization issue here and you are aware of much of it. You heard talk - I mean you prepared this memo ahead of - well ahead of today's calls and the work of some of the design teams. Now we know the CSC has moved on, narrowed its focus but also is not - is also being asked to consider perhaps slightly broadening that focus.

So we've got a number of moving parts here. We've got your advice and we've got the work of the design teams and there's various issues that we need to work with. And so some of it is various parts moving at the same time and that knitting together is some work we still have to do.

There's a couple of points I wanted to also consider. I mean when you highlighted the role of the PTI or the PTI board, you talked about whether it would be fully independent from ICANN or a hybrid. I mean my experience of subsidiary boards is they're often entirely not independent because it's a wholly owned subsidiary. So I think I sort of wondered why even flag that as an option and in fact to me in many ways that was the simplest and most narrowed down option.

Having heard some of the discussion today about how we handle the relationship between the CSC, the PRF and perhaps the board of the entity - I'm wondering whether I might have begun to change my thinking on that and whether others might think about how those three interact with one another because it's possible that putting, you know, a proportion of independent members on the board of the PTI might give us an intermediate mechanism of escalation for CSC related issues.

So there's something that might just come out in there. I see Greg highlights that an inside board should be seen as an option and that's all I'm flagging at the moment is it wasn't an option on your list so either it should be an option or you should justify why it wasn't. But more than that - as I say - my personal thinking started to shift on that perhaps based on some of the discussion we've had today.

Just for - I'm not sure that Chris picked this up. He talked earlier about and others talked about emergency review and a standing committee. I think it was pretty clear from the review group that the roles on the committee - the PRF committee would be there but it would be convened for the purposes of the periodic review or in the event of an ad hoc or intermediate review as required by a trigger mechanism which is yet to be determined.

And then finally on that green bill at the top, the multi - the stakeholder community member group. I mean that's - just so we're clear - from my understanding and again you may clarify this Sharon. That group is derived from the work of the CCWG and the question for us is how much do we depend on that group. That's not ours to - we're not going to build that ourselves. That is something which is being built within the CCWG and on which we hope to and by I hope we should be able to rely on.

So those are a couple of thoughts and questions though I guess the two key questions were really around the board of the CTI and the stakeholder community member group deriving from the CCWG and then Sharon maybe you want to answer those and then we should probably let you get on with moving to the differences with the other model and your sort of mechanisms of thinking between the two. Thank you.

Sharon Flanagan: So this is Sharon Flanagan. So the PTI board - yes it is - one alternative is for it to be ICANN controlled and that's sketched out in a little more detail at the end of our memo is the three alternatives - ICANN controlled, joint control or fully independent control.

The ICANN controlled board in some ways streamlines things because in the end that makes it feel more like a subsidiary and really then your only recourse is to go up to the full board and maybe that's just easier to deal with to have one clear place where accountability resides rather than trying to divvy up accountability between the boards of two entities so maybe that's an argument for just having it be ICANN controlled.

However on the other hand we've got a contract we're contemplating - at least in this model contemplating a contract between ICANN and IANA and so if the idea is that the contract is intended to put them a bit at arm's length if in the end the ultimate authority at PTI is ICANN, does that make the contract kind of meaningless and that really - it's really just ICANN doing this. There isn't really a contract and maybe that's okay and that is how the functional separation model will look and I can talk about that but I just point out that that makes a difference.

So those are things that have to be weighed against each other. There's no - there isn't an easy answer. If there were an easy answer, we would just, you know, kind of put it out there but there are tradeoffs to be considered. Greg?

Greg Shatan: Thanks Sharon. It's Greg Shatan. A couple of things. In terms of the relationship between ICANN and the PTI as a - assuming that we go the affiliate route - does ICANN control I guess through its being the sole member of the - of the public benefit corporation and through the IANA contract or is there some other sort of affiliation agreement or the like that would define that relationship.

And secondly I guess maybe more of a note than a question - this gives us a second set of bylaws and articles that we would need to think about in terms of forming PTI.

Sharon Flanagan: So Greg let me answer that and then Jonathan I'll come back to your second question.

So in terms of the power, ICANN as the sole member has been the power as a member however if it's a California nonprofit, we can give some of the power away to designators similar to what exists in the current ICANN structure. So the power that can be given away in a designator model is the power to elect the director. So there's not as much - there's not this type of ability to veto specific line item type decisions if ICANN is the only member but there would be the ability to swap out the board and then indirectly control the IANA entity.

Going back to Jonathan's second question on the multi-stakeholder community that - I absolutely agree. We agree that it's CCWG that is taking primary responsibility for that. I think my sense is that what this group will

need to determine is what are the minimum requirements that you will have on that - what the form of that is in order for the model that you choose to work.

So if the model that you choose is a model that requires the ability to have control over the ICANN board in terms of putting people on the board and removing people from the board, well then basically you're saying it's a membership that you - CWG needs ICANN to have a membership body or designator, you know, a designator type model. So that would be an example where yes, it's CCWG's work but the CWG may have - may have to say these are our minimum requirements in order for it to operate for our model.

Jonathan Robinson: Yes so Sharon it's Jonathan speaking. That's a key technical point and that's one of the key things that we want to try and achieve out of our work over the next couple of days is as we work on what is our business so to speak, we need to be very clear that we create the specifications or requirements of our group for the CCWG and so that's a very helpful point that you make there.

If and you could help keep us on track with this as much as you can. It's if we have a requirement of a sort then we need your help in knowing how to make sure that requirement is met by the work of the CCWG and clearly that depends on where we settle in the model and the structures but that's helpful that you make that point. Thank you. So let me let you continue down the queue then and deal with those other questions but also be mindful that we need to go to other elements of the other model variant and the issues and questions that that throws up.

Sharon Flanagan: Greg your hand's up.

Greg Shatan: It's an old hand.

Sharon Flanagan: Okay Chris.

Chris Disspain: Yes Sharon just one more question from me I think on this model which is that one of the advantages that you talked about with this model is you're getting all the separation done now so that you've got this entity in total and I acknowledge that. I think that's actually quite a valuable exercise. I'm slightly concerned about the fact that we've been talking in terms of as if when the - if the separation trigger is pulled by whatever mechanism in the future so we would see this company sort of being hived off to someone else.

I'm wondering whether actually that is that we shouldn't be assuming that that would happen. It strikes me that what we'd be looking for in those circumstances is a technical operator to take over the functions and it's highly unlikely that an experienced technical operator would be prepared to pick up (unintelligible) a company that has been a subsidiary of ICANN and much more likely so that the function itself would be moved into a new entity.

So I just wanted to flag that because I think it's important that we don't just assume in our discussions that when we pulled it - if we ever pulled the trigger it would simply be a case of rolling this company off into some other ownership.

Sharon Flanagan: Thanks Chris. Yes, I think this is - this is really just to provide the flexibility or the ease if ever that were the mechanism that people wanted to use that it would at least be part way along the road to it but recognizing there are other ways - if there are issues in terms of the IANA function, there are other ways to address that short of a divestiture and that could be replacing one or more

boards and putting in, you know, new management in affect - new boards. It could be replacing individuals.

There's lots of ways added and so this is just one mechanism to prepackage, you know, the entity for divestitures that were ever something that people wanted to pursue. I'm not saying that, you know, one scenario is more likely than another but we're just saying at least it gives you that head start on that process. Jonathan?

Jonathan Robinson: I'm sorry to just come back with one other comment. And therefore the group should be thinking about as we analyze this and thinking about that if one takes this as a prepackaged entity, in part that relates then back to the board of the PTI because you have a board because a subsidiary requires legally a board and correct me if I'm wrong here Sharon but it's not necessarily that that board needs to be - as of day one of the transition - have the kind of independence that it might need to have invoked should one or more forms of separation take place.

So like I said - I haven't personally made a decision in my mind. It partly depends on the other structures what - how the shape that board takes but it's just important to recognize that the board as of the PTI is currently part of that container thinking. In other words we've prebuilt. We've prepackaged that ability and it doesn't mean we necessarily have to prepopulate that board in exactly the way that we might at some future stage. So I guess that's partly a question Sharon for clarification but also trying to help steer the group's thinking with my chair's hat on. Thanks.

Sharon Flanagan: Jonathan in terms of the question, could you just restate the question?

Jonathan Robinson: The question is is that I guess is that the - it is a necessary condition - is it a necessary condition of having the subsidiary that you have to have a board but that board - that's really the question but the board itself then doesn't necessarily need to be comprised of many different entities. It could just as easily have a couple of bigger head appointees from within ICANN as on the one extreme.

Sharon Flanagan: Okay, thank you. So if it's a corporation, it does need to have a board but that board could - you could contemplate two different types of boards. It could be while things are going well and there are no issues, it could be a board that is simply an ICANN type board but maybe there is an ability if there is a transition of some sort to replace that board with more of a multi-stakeholder independent board. So you could - you could build something like that into the governance structure.

If - one alternative that we had in here is it doesn't have to be a nonprofit, you know, corporation. It could be an LLC and LLC's - limited liability companies - obviously have a lot more flexibility so you could - you need some kind of a manager but it could - it could be member managed. It could be ICANN managed for example. So the benefit of the LLC is more flexibility in how you set up the governance structure. Okay.

Jonathan Robinson: Okay Sharon let's let you move on then to the old - the other variant and the issues and challenges that that throws up.

Sharon Flanagan: Okay, okay. So let me turn now on page seven - the functional separation variant and there's a diagram of this as well. The concept here is that there is no separate legal entity that has these IANA functions. It's just all part of ICANN. It would be functionally separated. There would - it's almost like a distinct division of a corporation, you know.

A division doesn't have any legal entity status but people understand what the division is, what the mandate is, who the people are, what the budget is, what the goals are, you know. You could have a lot of the hallmarks of a separate entity while still maintaining it only as a division so that would be the structure.

Because though it would be the same, there is no separate legal entity. There is no contract. There can't be a contract because there's only one party. ICANN is the only entity to be a part to a contract so there would be no contract at least between ICANN and the operator.

And then in a lot of ways the rest of it is very similar. Periodic review function could be the same. The CSC could be the same. The board, you know, ICANN board would need the same measures of accountability. Let me talk - let me talk about the advantages and the disadvantages of this variant and really for the legal separation it's just the mirror image so I'll kind of talk about them both at the same time.

So in terms of advantages of the functional separation, the first is that you eliminate the formality of having another legal entity. You don't have to address some of these governance issues, create - as Greg mentioned - create new charter, bylaws or an LLC agreement. If it's an LLC, you just don't deal with that at all. You have one place where the governance resides. That is at the ICANN level and you don't have to replicate it at a separate level.

The other benefit is it avoids the complexity right now of having to separate out the IANA assets. So there's always work that's always a project whenever you're trying to separate out a division and either it's a project now or it's a project in the future. Benefit and we talked about this in Istanbul - the

advantage of doing it now is doing it when everybody is on the same page and there is work being done - some efficiencies to doing it all at once and it's being done at a future date. Presumably that's when something has gone wrong and, you know, they're - it's always harder to do things when something's already gone wrong.

There's just certain dynamics that come into place that'll make it harder. It's also easier - presumably easier now when we understand what the assets are and the people are and the structure because you kind of know what you're dealing with. And in the future - it could be 10 years, 15 years into the future - things could morph and change and those assets may be even harder to determine. There may be shared assets that are clearly IANA or not IANA. So that's another downside to waiting to do the separation but clearly doing the separation now does add a layer of complexity and additional work at this point.

So the disadvantages of the functional separation - as I said - is the need to separate in the future and the challenges that that would pose. There is no independent governance body at the IANA level. You could look at this as a pro or a con. You may think well we only want - we only want it to be in one place so actually we view having to have it in two places as a disadvantage although you could if you like the idea of legal separation but you don't want to replicate too much of the governance, that would maybe argue for more of an ICANN type of board where it really is more seamless with the larger ICANN organization.

There's just a legal separation in the sense of ring fencing but not from a governance standpoint and then the other disadvantage as I said is that there is no contact between ICANN and IANA in this model and so it may be harder

to - I think we're getting a little bit of feedback if people could mute their lines.

So, you know, without having a contract, you lose some benefit of being able to have two parties who are outlining expectations and then there is some formal mechanism if there are disputes. Even though these are related parties, they still would have the ability to enforce the contract visa vie one another and there might be - you might see that as having some advantage.

So that's - those are the - that's a basic kind of broad strokes on the functional separation variant. There are some additional considerations which I can go through but let me pause here and see if there are questions. Okay, I don't see any hands up so I will - and if people in the chat - as I said it's a bit hard to read and talk at the same time so if people in the chat have questions you want to flag, feel free to just raise your hand and I will try to address it.

So let me then just note that the rest of the memo goes into some of the different considerations. Most of these are reflected in the punch list and so maybe we can talk about them there and we've touched on many of them already which are some of the decision points along the way and pros and cons of different structures and the like.

So Jonathan maybe let me ask you do you - at this point do you want to talk about the punch list or I can kind of just continue to walk through the memo?

Jonathan Robinson: Sharon my feeling is that the critical objective of this call is to make sure that we've done a proper walkthrough of the memo and highlighted the punch list points so that the group is empowered to discuss the issues properly and make the kind of decisions we need to make.

I know Seun felt overlooked. I actually saw his hand up earlier and then it went down which is why I didn't come to him but I think he's going to direct a couple of questions through Lise which actually relate to the affiliate model and then I suggest we go onto starting to walk through the punch list and make sure that the group understands why those questions are there.

And as you say, we've touched on some of them but I think it would be good to do a relatively quick tour through those and make sure that there's a - because our objective here is not to answer the questions here at this point but to understand the dynamics around them and what the kind of considerations are and I think that's a very sort of educational and helpful way of doing it. So Lise what were the questions that Seun was after coming up?

Lise Fuhr: Well the questions are marked in red in the notes and one is that by ICANN awarding contract means ICANN can decide to reassign the contract to another operator so what then becomes the role of the PTI?

Sharon Flanagan: Yes, I think - I think how you think about the contract and renewal is something that really depends on how, you know, what this group thinks is the right way to approach it and that can be - legally we can address it any way really you want. It can be that it's a contract between the two parties. It has a set term and then each time it expires, both parties determine whether they continue or instead it could be that this is something that fits at the ICANN board and goes up to the member, you know, some kind of multi-stakeholder group saying yay or nay, we want you to continue the contract or we want an RFP.

So I think I would maybe put that more - a question back to the group as to what you think is the right way to operationalize it and then we can structure around it legally.

Lise Fuhr: Okay, thank you Sharon. There's another question. I heard about removal of ICANN bought in legal separation, wondering why ICANN would come into the picture again since PTI is the new board managing IANA.

Jonathan Robinson: We've dealt with that - haven't we - through the discussion of the fact that the board is a variable entity at this point - the board of the PTI. I mean if the board was solely dependent entity within the subsidiary then all of the accountability goes up to the ICANN board and then we have the mechanisms.

If the board has the degree of independence, we have the advantage that there is the independence but then we have the challenge of building in new accountability issues.

Sharon Flanagan: Yes and let me just - let me just speak to that point. So the way that the PTI subsidiary would operate at least in the structure is that - is that the member is ICANN and then the only way that the multi-stakeholder community has input on that is as a designator - the ability to appoint and remove directors. But we can't have a line item veto at the PTI board when it is - the member is ICANN.

So that's why in some places I'm saying if - if we need a line item veto meaning we don't agree to renew the contract or we think the review, you know, the review function recommendations should have been implemented or whatever it might be - that can only really occur at the top level - at the ICANN level with a membership structure because members can vote or veto certain actions beyond - the power extends beyond just appointing and removing directors.

But at the PTI level - that entity - we're only talking about the power of the board - the power to appoint and remove board members because the multi-stakeholder community will not be the members of PTI, at least not in this structure.

Lise Fuhr: Okay, thank you Sharon. We have one last question. How does ICANN (unintelligible) based on IANA operations considering this is no longer about ICANN accountability but will be about PTI accountability over IANA?

Sharon Flanagan: Well is the question whether mechanically it can be done or whether it should be done? How does the board get built? I mean if the question is why would the board get recalled if there's a problem at the IANA when there's a separate board responsible for IANA - well I think that would just be something that you choose to give and the CCWG gives the power to the membership to do. The members can all - if the members are the people who elect directors, they can always hold directors accountable in any way they like. That's the power of electing directors. You can - you can have all kinds of reasons to remove and appoint directors.

So I think that the accountability over at the IANA function can be part of the ICANN - the big ICANN board mandate. I think that could be addressed.

Jonathan Robinson: Okay, thanks Sharon. That's really helpful (Susan) and Chris wanted to make - he's got his hand up and I think he wanted to clarify a point.

Chris Disspain: Yes. Sorry Jonathan. I know you want to move on and I do apologize but Sharon just referred to the only way that the board could be steered - the ICANN board could be - goes to the actual members and I want to make sure that we're very clear. Sharon you're not suggesting that ICANN has to become a membership organization in order for the board to be spilled

because that can't be true. The board can be spilled on the basis of a vote from the SSIC's if that's what the bylaws say.

Sharon Flanagan: Yes so designators also have the power to appoint and remove directors.

Chris Disspain: No, I'm not saying that either. I'm saying using the current structure, it has to be feasible by having a fundamental bylaw in place that says if the supporting organizations and account and advisory committees in whatever percentages we agree vote for the board to go, the board goes.

Sharon Flanagan: So I - my understanding of the way the current - are you talking about the current ICANN board structure Chris or are you talking about...

Chris Disspain: Yes. What I'm saying is if we're talking about board spill mechanisms here in the context of IANA and generally and I am getting the impression that you are saying and I want to make sure that this is either the right impression or not. I'm getting the impression that you're saying in order for the board to be spilled which is a fundamental thing that the CCWG is working on and is very relevant to design a CWG because it's the sort of, you know, it's an accountability mechanism.

You're - are you saying in order for that to occur, it is necessary to completely change the current structure of ICANN because that's not my understanding.

Sharon Flanagan: No, no.

Chris Disspain: My understanding is at least with the current structure of supporting organizations and advisory committees with the golden bylaw or fundamental bylaw - call it what you will - it is possible with that structure to spill the ICANN.

Sharon Flanagan: So I think the way the - the way the current ICANN bylaws operate is it's not stated entirely clearly but I think our view is that the intention is it's a designator type of structure and so but there are some ambiguities in the current ways it's articulated and that - there was, you know, there's a memo out there from (Aaron)'s firm that makes some of the same points that we've identified which is that there's probably some more clarity needed around the current status of the SO's and the AC's relative to the ICANN board.

And so our view is that the intention and how people have been operating is that the ICANN board is by designation that those SO's and AC's are designators.

Chris Disspain: Correct.

Sharon Flanagan: Okay, that's...

Chris Disspain: Thank you.

Jonathan Robinson: Okay but we need to be careful not to go too far down this road as some have referred to in the chat. This is a mechanism that's being contemplated and worked on by the CCWG that may be an ultimate recourse under certain specific circumstances but really there's likely to be a whole lot of other steps along the way that, you know, I think others and perhaps even myself are struggling to see how we would ever get anywhere near board recall when dealing with the IANA function. I guess it would be only if the board tenaciously and refused to budge on either repairing or dealing with any aspects of IANA performance.

But it's a long way down the road and it's not a primary function or - as Chris says - a refusal tactic combining all the (unintelligible). But it's not a primary function of this group to design or deal with that. It's something we will rely on ultimately and an extreme from the CCWG so let's try and get back on track.

We've got half an hour to go and I think in that time we could probably reasonably walk through the questions that this group will need to answer which are encapsulated on the back of the memo via the questions the group answers and to this punch list and although I'm not entirely - I think the order could do with some thinking about as far as the way in which this group processes them. They don't necessarily match with our work order. I think for scope this is very, very useful and certainly useful to take a tour over those.

Sharon Flanagan: And Jonathan just to be clear, are you suggesting we go through the punch list document or the Q&A document?

Jonathan Robinson: I think where the punch list is exactly where we need to go now Sharon and it'll be very useful to just go and feel free to skip over items that you think we've covered. And it's just really a matter of making sure that - because this is effectively - I'm not so familiar with the punch list but it's effectively a check off list that the group has to deal with in terms of coming to the kinds of decisions it needs to.

Sharon Flanagan: That's right, yes. So let me go through those and we have touched on a number of them already and actually some of the other earlier calls have touched on some of them. So let's - if people have that punch list document, it looks like (Grace) is going to load that up.

The first item we've talked a little bit about already is the board of the PTI if legal separation were the ultimate model. And so - as we talked about - a decision needs to be made on what is the composition of that board and who appoints those members. So is it fully independent. Is it fully ICANN or is it a hybrid - mixture of independent and ICANN?

And then the next sub point of that is what is the role of the PTI board. So are we going to try to consolidate decisions and accountability primarily at the ICANN level or is there a desire by this group to have some level of decision making and accountability - more than just the kind of statutory minimum happening at the level of the PTI board - one category of questions.

The second category of questions is the periodic review function. So first is what is the composition of that and who appoints and I don't know if that's something that's already been discussed fully and we just haven't been briefed on it but that obviously will need to be decided.

Jonathan Robinson: Sharon it was pretty thoroughly discussed today and we've got effectively a provisional recommendation that wasn't argued against but just to give you that update - I mean we had the recommendations from the review group and it was - yes so we've got a long way down that road.

Sharon Flanagan: Okay, good. The other questions is - as we addressed before - is whether this group would exist at all times or only during the time of the periodic review so every five years or would it just be a committee that sits there and is ready if an ad hoc review is required and can be, you know, otherwise be more a dormant entity.

Another question is should the periodic review function group - should that be a subgroup or committee of the PTI board? So if the PTI board is structured to

be more of a purely independent board, is that board also the periodic review function? Are they one in the same? One downside of that is as a member of a PTI board, there are fiduciary duties owed and so that means that people can't just wear their hats. Whatever constituency they come from - they have to actually be wearing the PTI board hat and so the fiduciary issue may make that more problematic.

The same question could - you could ask the same question about the ICANN board - should the periodic review function be a subgroup or subcommittee of the ICANN board. Avri I see your hand up.

Avri Doria: I raised my question on an earlier point on the - yes can that be heard?

Sharon Flanagan: Yes.

Avri Doria: Oh, okay. I had asked the question - I was going to ask a question on an earlier point in this list and that's when you ask the question, is the - is the PRP a standing body or a body that is constituted periodically and earlier in the discussion you had mentioned that if indeed it was needed for an out of band - let's not use the word emergency - but an out of band review that was somehow triggered that that would argue for a standing board - I mean a standing PRT.

And I just wanted to ask whether that you felt that was actually necessary or whether there being a predefined mechanism that said whether it was triggered by calendar or whether it was triggered by some other mechanism, it could be appointed when triggered and wouldn't need to be freestanding even if - I mean permanent standing - even if it could be used in an out of band manner.
Thanks.

Sharon Flanagan: Thanks Avri. So I think the comment that was made earlier that the urgent situation would actually be dealt with more at the CSC and then - and then this ad hoc or out of band review would be coming in following in behind to say okay, what went wrong. What could be improved? In that's the case - if it's not happening in an emergency situation then I think you could just let it be - let this group arise at the time a review is needed whether it's on the five year cycle or it's needed for an out of band review because it won't be an emergency situation. Presumably there will be time to constitute the committee.

So I think if that's the current thinking then I think having it come into existence only at the time of a review should work.

Jonathan Robinson: And just a brief comment there Sharon from Jonathan that the concept that the design team working on this had was the concept of positions on that committee or review group originating from certain organizations. So even in relatively short order that committee could be populated by members of - by the relevant groups so it could act quickly even if it was for - I'm not sure I understand when an emergency would happen but for - it could be constituted in short order so that's just a supplementary point there.

Sharon Flanagan: Okay. Alright so let's see. Where were we? I think we're - okay so we're talking about number two - the periodic review function. We talked about should it be a subgroup or committee of the board. Should it be the board? What is the scope of the review? What changes or actions can it recommend and what is beyond the periodic review function scope? And so this again may be something you discussed on the earlier call. I think that call got moved so I unfortunately didn't get to hear that part of the call but is there anything Jonathan that is worth mentioning in light of that?

Jonathan Robinson: In relation to three here on the customer standing committee?

Sharon Flanagan: No, in relation to number two on F. So is 2F something that's been fully vetted and discussed by the committee already?

Jonathan Robinson: We went through many elements of the review group but I think sufficient to -I mean from the point of view of this group, this punch list tells us what we need to answer. We had a design team dealing with both item two and item three. So to that extent, we know this is part of our work and we've done quite a bit of it. So I think whilst we haven't comprehensively settled on all of the detail, we've got a long way down to many elements of that.

Sharon Flanagan: Okay, great. Okay so number three - the CSC. So obviously there's a lot of work has been done on that. There was a report given on that as well today. In terms of composition and who appoints, I think on that just probably there's another level of detail further down which is more mechanical and I know it's the GNSO and the CCNSO with - there's going to be two of each of those I think or two - two from the GTLD and two from CCTLD and so I think mechanically you have to decide who is actually making the decision. So does the GNSO appoint two? Does the CCNSO appoint two? Do they jointly agree on the additional person? I mean those are the kinds of details I think that'll need to be worked out. So that's 3A.

3B - this is one of the questions that came up in response to the memo that we put out and what - and so that's what's the connection between the CSC and the periodic review function. Are they - can it be the same group? Is it just one group and the CSC is a subset of the periodic review function - the customer representatives of the periodic review function?

If the decision is that the periodic review function should really only exist at a time of a periodic review then maybe that doesn't make sense because the CSC presumably will be acting on a more regular basis and so there's not really - I there's no PRF that's standing, you obviously can't have a subgroup without it being a CSC.

And then similarly is the CSC - its PTI board is some kind of multi-stakeholder board. Is the CSC a subgroup or committee of that board? Again that creates the same issues as we talked about in the periodic review function which is fiduciary duties would apply and so is that something, you know, is that going to hinder the ability of the CSC to act in a manner that people think is needed if it's also got to be thinking about what's overall in the best interest of IANA.

And then I think 3D - we've got an answer on that one which is - it's none of those things. It's not a mediator, negotiator, facilitator, decision maker. It's really more of a repository. It will - I think is what I'm hearing - will hear the complaints and determine whether there was something more systemic that needs to be addressed but isn't going to mediate the issue on behalf of the customer.

Okay, number four is the ICANN board and we've talked about that a lot already. I think I, you know, this obviously is clearly really the CCWG's work as to who - what the composition is and who appoints but we wanted to flag it because one of the mechanisms of the CWG model is that there is some ability potentially to recall the board and without that, your model won't work.

Jonathan Robinson: Yes, I just know Sharon there's been quite a substantial chat on our discussion that asks what point that takes place. But yes, at some point in our model we have that as an ultimate recourse and it is a point on which we

depend on the CCWG for. But there does seem to be quite a substantial body of thought that's in relatively limited conditions and we should have all sorts of other areas which we've worked on which is the work of the customers, the CSC, the PRF, various other elements which hold to account the ICANN - the IANA operations and make it perform and continue to perform and have future performance improvements via all of those mechanisms such that this is a very small part of the picture but nevertheless ultimately it's something we have to be aware of.

Sharon Flanagan: Okay. So number five is the independent review panel and that's just really kind of standing in place of just generally speaking is there a point at which you need some kind of arbitration mechanism?

So the first is for the CSC if there are some issues that are not addressed, is that - is there a mechanism by which there's an independent review panel? This kind of goes to the work of the escalation design team as well. And then is there something on the periodic review function that also would require some kind of independent review panel?

And then there's a question of is there anything else. So I have not heard anything else in the C category but it's a question for this group whether there's any other mechanism or time that you'll need that.

Jonathan Robinson: I'm not - Sharon I'm not currently aware of another issue. I mean as it stands with 5A, that's still kind of dynamic with the CSC. Certainly I can see that if the PRF undertook its periodic review, made some recommendations, the ICANN board rejected - clearly that makes a lot of sense but that's an area where the group would rely on something like that and I'll rely on the group to highlight if there is something else in 5C. I'm not aware of something at this point.

Sharon Flanagan: Okay. Number six is accountability on the contract if there is a contract. So between ICANN and PTI will the contract itself provide the mechanism? Will it just have its own enforceability or will the PRF or the CSC deal with issues on the contract or will there be some other means necessary?

Okay, number seven in the legal separation variant - there's also a decision that needs to be made as to what the PTI actually is as a legal entity. Would it be a nonprofit corporation just like ICANN? Would it instead be a limited liability company? There are some benefits to a limited liability company. The main benefit is there's less formality and you can mainly do whatever you want to do by contract with an LLC so there's some advantages there. There's also some tax advantages in that you don't need to apply for any kind of a new tax ID for the nonprofit status so there's some benefit there.

There's also - to the extent that there are funds flowing between ICANN and IANA - if it's an LLC it's a totally disregarded entity from a tax standpoint so there's some advantages there to just being able to have the flow of funds without worrying at all about any tax issues around that. So that's one of the advantages of an LLC.

In the nonprofit world we have this benefit that is that you can have entities, individuals who have no legal status relative to the entity meaning they're not owners of the entity but they can be given powers and that's this designator concept and that's something that doesn't exist in traditional corporate law. You can't - you could never have in a traditional US style corporation - you couldn't have third parties with no equity or no ownership being able to vote in directors. That's kind of the hallmark of a corporation is that the shareholders make those elections.

So the nonprofit has this built in designator idea that is unique. Now an LLC - we think we could implement something similar in an LLC. LLC's are very flexible and we think you could implement that by contract in the LLC agreement so we think it can be - it still can be achieved. It's just not as clear as it is under necessarily under the nonprofit corporation statutes.

Jonathan Robinson: So Sharon just a clarifying question there I suppose. I'm just trying to understand that designator function that you refer to that could kind of essentially built into the nonprofit - nonprofit variant or potentially could be a just sort of stretch built into the limited liability company.

If we had - that would really become - come into play for - it would not be an issue if we had fully an ICANN board of the subsidiary. It would really be much more relevant in the event that we wanted non-ICANN board members and the ability to appoint them via designators, correct?

Sharon Flanagan: Right. I mean if it's solely an ICANN board then no issue. ICANN is the member. ICANN appoints the board. That's perfectly - that works perfectly. It's only when you have - you want to give some third party that doesn't otherwise have legal status relative to that entity - it's not an owner. That's when you need some structure to allow for that.

Jonathan Robinson: Okay, thanks Sharon. That helps because that's really - that then helps us to understand at what point that designator function becomes advantageous or necessary or useful - functional if you like.

Sharon Flanagan: Right. Okay Chris I see your hand is up.

Chris Disspain: Yes. Sharon I just have a follow-on question from what Jonathan just said. I - would it be possible - would it be possible to have that right through ICANN?

In other words could you not create a circumstance where ICANN as the member has to act in accordance with its bylaws and its bylaws say that it must do X in respect to its subsidiary. Surely you'd be able to do that.

Sharon Flanagan: Yes, that's an interesting idea Chris. We haven't looked at that but it's an interesting idea. Could you make it mandatory at the ICANN level and then ICANN is just following instructions. Yes, I don't know...

Chris Disspain: I'm just continuing - I'm thinking in the case of having - just as an example in the case of having - just say you just started to have a sort of ICANN board of the PTI but have, you know, two representatives of the customers just say - the CCTLD and TLD customers on that board. You could mandate that through the ICANN bylaws. You don't necessarily need to create a structure within the PTI that makes that happen.

Sharon Flanagan: Yes so that's - Chris that's something we'll look at. That's an interesting - it's an interesting idea. And I shouldn't - I should say we think it will work under the LLC laws. It's just not something we've seen before but that doesn't mean that it can't be done. Anyone who's done any work with limited liability companies in the US know that one of the benefits is there's - there's a lot of freedom. You can - it's largely just a matter of contract laws - whatever you put in the agreement.

So but it's another - it's another interesting way to look at it. So we will - Chris we'll take that offline and give that some additional thought.

So those are the choices on the structure - on the entity. If the decision is made to do legal separation, what type of entity and there are pros and cons of both. As I said, the limited liability has some appeal at least from a legal standpoint

just because of the flexibility, the tax, you know, the benefits on the tax side, some clarity on the tax side that you don't have in the nonprofit.

I suppose the nonprofit might have some appeal in that it's structure that is already part of the model. It's what ICANN is and so maybe it has some appeal in that it just looks like that and it's easier to understand it in that sense as opposed to introducing a wholly new legal structure.

Okay, let me just - I think I'll just move on now to number eight. So this item number eight is perhaps the one that may require the most thinking. This is the ultimate separation of the IANA functions if it were ever to come to pass. And I understand that may be an extremely unlikely situation but as lawyers we're always tasked to - well even if it's very unlikely if it still could happen then you need to have built it out so that when - if it were to be triggered you'd be, you know, ready to address it.

So I think there's really three questions here. The first is what would trigger a separation? So what would be the issue that would trigger it? It would - would it need to be some kind of systemic function issue that's just not been remedied that there have been multiple efforts to remedy and it's not worked and this would be the final conclusion of a long process of remediation. So what would trigger a separation?

The second question is who could trigger a separation? So who is empowered? Is that something that the periodic review function could recommend and then the ICANN board makes a decision and then ultimately it goes up to the multi-stakeholder community. That would be an example where if you did want it to go up to the multi-stakeholder community, that's a place where you might be thinking then of a membership structure because you're saying we'd want to have that veto power at that top level.

So what would trigger a separation? Who could trigger a separation? And then the third is how would the separation be implemented? What would happen? So is it an RFP gets triggered? Is it a decision to divest? What exactly would happen at that moment in time? Would there be alternatives? Would there be some group empowered to choose among the alternatives?

So these are I think big picture questions and once the big picture questions are resolved we can - we can start, you know, working through how to work it through on the legal side but those are some of the kind of the big questions.

And then number nine obviously is the choice between the legal or functional separation. We thought the memo outlined the two approaches and this committee - this group will presumably make a decision as to what they think is the best approach to take so that's an open item.

And then number ten is our interdependencies with the CCWG. We've all been - we all understand that this is really important and that we need to continue to have a list that is an evolving list of what the needs - where this model - where the CWG's model is dependent on the work of CCWG to insure that that gets communicated and hopefully reflected in the ultimate CCWG proposal and so this is a running list and it's a list that will continue to need to be updated and we've been trying to take notes on today's calls as well to reflect where are the places where people have identified interdependencies but, you know, just a handful of examples here on this list.

You know, the first is this ultimate responsibility of the ICANN board to the recommendations coming out of the periodic review function. The second is is there some membership community review of those decisions. The third is is

there an ability to remove directors either of ICANN or at a PTI entity or both and then the fourth is the so-called fundamental bylaws or the golden bylaws.

I think what we're envisioning is that all of the pieces of this model that require governance answers or solutions that those things would then become fundamental bylaws so that they couldn't then - as I said earlier - couldn't be stripped out of the model post transition. So those things needs to be put in a more hard coded way that to change them would require a higher threshold, you know, we think of almost like a constitutional type amendment in order to unwind those. And then five is just to remind us that we are trying to flag any other places that there is - input is needed to CCWG's work.

And then - and then the last is really just a group flag just for this group. Are there any other dependencies with any other working groups whether it's how we think about the contracts at IANA and there were some questions about that - what would happen with the MOU's. Are there other - are there other aspects of work going on that, you know sort of flow into the model and require thought and recommendations from this group?

So that's - those are the punch list items as we've been calling them. Jonathan why don't I just turn it back to you?

Jonathan Robinson: Thanks Sharon and we've worked you hard. That's a two hour tour of the - of both the memo and the issues and it reminds me how much potential we could in this group do and therefore how much we've got to try and focus our intention on what absolutely needs to be done.

And so I hope that's given the group sufficient understanding of the two variants. I know it's complicated enough with those two variants, let alone with anymore.

I think the objective from mine and Lise's point of view was to make sure that we really had firsthand both heard from you and had the opportunity to question you and (Sidley) about your thinking and you've - so it's come around in a full circle in a sense because having done that, you've left us via the punch list with a series of questions - some of which have been fully answered, some of which are partly answered by the work of the design teams and it's up to us to thrash out some of these issues and then do some work I think together with you once we've made more progress on that.

I know you Sharon can't personally make call 40 tomorrow. I think we currently plan to deal with these structural issues in calls 39 and 40 tomorrow which is unfortunate because 39's a horrible time for you and 40 I don't believe you can make but...

Sharon Flanagan: Jonathan let me just mention on that I moved my conflict for the meeting 40 because I just thought it would just be too difficult for me not to be on call 40 so I will be on that call.

Jonathan Robinson: Well that's very helpful actually because what that does is it empowers us then to deal with trying to do further work on our design teams in meeting 38 to try and have a structured discussion on the structural issues that don't necessarily need to involve you as we process this information in meeting 39 and then loop back to meeting with you in meeting 40. So it feels to me like that could work very well and it's really appreciated that you're able to accommodate us in that way.

Right well I think that's given us a lot to think about for those of us anywhere I guess east of somewhere in the middle of the Atlantic probably the chance to start thinking about sleeping on these issues. I know some of you west of that

will have some more time in your day to think over these things to think about some of the topics in particular - things like scope of the CSC and interrelationship between CSC, PRF, PTI board, IANA board. There's a lot to digest and think about.

I'll just remind you that in doing all of that we've got to focus our attention on coming back to relatively simple solutions not only because that's often, you know, keeping things as simple as possible is more elegant but also we simply don't have time to build out tons and tons of detail and probably nor do we need to. We need to try and produce the minimum viable products in product development terms.

So any other final comments or thoughts? Is there anything else that someone feels has been strongly missed in this meeting? If not, we will plan to be picking this - our work up as a group at 7:00 UTC tomorrow in meeting 38 and then onwards on the structural issues in 39 and 40.

Alright well thank you very much for your contributions, for your questions, for your attention. It's been a long day for all of us I know and more to follow tomorrow and hopefully we can drive this towards an integrated and well-structured proposal for public comment with some more work tomorrow. Thanks everyone. At least good night from Brussels and good day for the rest of you in your various parts of the world.

Sharon Flanagan: Thank you.

END