

**ICANN**

**Moderator: Brenda Brewer**  
**May 7, 2015**  
**6:00 am CT**

Coordinator: ~~(Unintelligible)~~Recording have now been started. Please go ahead, thank you.

~~(Grace)~~Grace Abuhamad: Thank you very much. Hi everyone, this is the 45th meeting of the CWG. It's May 7th at 11:03 UTC. And I will - oh, briefly is anyone on the audio line and not in the Adobe Connect room?

~~(Olivier)~~Olivier Crepin-Leblond: Hi, it's ~~(Olivier)~~Olivier. I'm not sure whether I am in the Adobe Connect room or not. I'm not at my computer; I'm at lunch at the moment. But please consider me on the call. I'm listening and I'll be intervening a bit later. Thank you.

~~(Grace)~~Grace Abuhamad: Thank you, ~~(Olivier)~~Olivier. Okay, so we have ~~(Olivier)~~Olivier on the phone line. Anyone else? Okay, then we'll take attendance in Adobe Connect. I will now turn it over to the chairs.

Jonathan Robinson: Thank you, ~~(Grace)~~Grace. Welcome everyone, thank you for joining promptly and particularly those who had to taste joining us from a very early hour in the day. It's tolerable in Europe, but it's certainly early out on the West

Coast of the United States and, you know, potentially other parts of the world as well. My name's Jonathan Robinson. As you know I'm one of the co-chairs -- together with (~~LisaLise~~ Fuhre~~r~~) -- (~~LisaLise~~) will be with us, but I'm not sure for the entire call. And so I'll be leading the call today.

You'll see the agenda before you. We've got an opportunity to dive into some of the detail in item three using the punch list that we've begun to develop and update with the help of (unintelligible). And thank you to (Sharon) for joining us to deal with that in particular. But prior to that we're going to look at the dependencies and - of our work on the work of the group on accountability and it's a particularly pertinent time for doing that because clearly that drop proposal from the CCWG on accountability has recently come out and it's important to be oriented with respect to that. And with how that work has addressed the concerns and requirements of this group.

So in order to assist us with item two, we've got Thomas, who has very kindly agreed to join us as one of the co-chairs. Thomas Rickert is one of the CCWG in his capacity as a CCWG co-chair, together with his two other co-chairs. But just Thomas is joining us today. So Thomas will lead us through item two and that - and in so doing we can touch on the relevant items in the punch list, although and for the most part those are on - in the background. But we'll come to that under 2b.

So let me hand over to Thomas now and for him to introduce the drop proposal and in particular highlight on the critical linkage points and how this group can rely on the work of the CCWG on accountability. Thomas, over to you.

Thomas Rickert: Thank you very much Jonathan. Hello everybody, this is Thomas Rickert. I'm one of the three co-chairs of the CCWG, as you well know. And I'm proud to

share with you the good news that we have launched our first report on the 4th of May. We are now in the public comment phase with a duration of 30 days. There's going to be another public consultation, but I will speak to that a little bit later.

Let me preface my remarks stating that what you find in the report are not consensus recommendations of our group. So as the CWG has faced difficulties in coming up with consensus positions, we also haven't yet made up our minds on all aspects of what we're doing. So we're drilling down to a greater level of detail as we continue our work. But we really wanted to share the current status of our thinking with the wider community to see whether the community supports the direction that we're taking or whether we need to adjust or rethink certain things that we have been working on.

So what you find in the report are at times options that our group has been discussing. But in most cases we have actually flagged a solution or an answer which got more traction which we would then call a reference model or a preferred option inside our group. So we sort of help the community understand where the status of our discussions is, but again nothing is cast in concrete at the moment. But we're eagerly waiting for community feedback on what we're doing.

And in that engagement is our top priority for the next couple of weeks. We want to make sure that the community understands what we're doing and we would like to get feedback from the community as much as we can -- certainly as early as we can -- in order to take it to account in our further deliberations. And in order to facilitate that, we are doing a couple of things. We have put together the report. The report includes a very punchy executive summary. So I really recommend that you go through the - at least through the first couple

of pages of the report where what we're doing is enshrined in, you know, very concise language.

Then we have provided you with a - or provided the community with the gist of what we're doing in our report, but there's more information in the appendixes, so if you are interested in that - in this subject, I really recommend that you also look at the appendixes because they contain more information than the body of the report.

We also have been working -- as you have -- with explain further in order to help us visualizing the work results that we have produced in order to facilitate understanding of what we're up to. And it's important to note that the graphics I think -- and I think the whole group will join me -- are very efficient in telling a story of what we're planning to do to empower the community to enhance ICANN's accountability. Nonetheless you only get the full story; you only get information on all the options that are on the table if you go to the body of the report.

We're going to hold two webinars on the 11th of May and I'm sure that ICANN staff can put the exact date when these webinars take place in the note section of the Adobe Room so that you can mark your calendars to join. We will certainly offer the opportunity to ask questions and we would very much welcome if you did contribute through those channels in order to engage with us, in order to let us know whether what we're doing is actually in line with your thinking and whether it helps appropriately enhancing ICANN's overall accountability.

Now, what we've done in substance is basically that we made huge progress in discussing implementation models for the requirements that we have established. You will remember from earlier briefings that we have considered

and we still do basing the accountability architecture on four building blocks which would resemble as state.

So we would have the community -- which would be the people or the legislative in a state -- you would have the board -- which would be the equivalent to the executive -- we would have a constitution -- which would be the ICANN bylaws or other policies -- and we would have an independent review process which would resemble the judiciary. And this is sort of a proven concept for many, many decades to provide for efficient checks and balances and sharing of powers but also providing control mechanisms.

So we stick to these building blocks. We have -- as you will remember -- we have defined some community empowerments that need to take - that need to be established in work stream one, i.e. prior to the transition. You know, they need to be implemented or committed to. And these community powers would be the power to recall the ICANN board, the removal of individual board directors, the power to veto or approve changes to ICANN's bylaws, it's mission, it's commitments and core values, and the possibility to reject board decisions on the strategic plan and budget where the board has failed to appropriately reflect community input on these documents.

Further, we've made some of these powers so important that we wanted to make sure that they can't' easily be changed, so we made those fundamental bylaws or we're suggesting to make these fundamental bylaws so that you would need a high voting threshold throughout the community to make changes to those.

So if you take that in combination with the enhancements to the independent review process, these are the requirements that we established and in terms of implementation we've been discussing various models that were suggested by

the law firms that we have hired. And that would be, you know, a designator model -- for example -- but also an - as - what we call the SOAC membership model.

And I would like you to scroll down in the Adobe and move to slide - I guess its slide number two where we explain the community mechanism, i.e. the SOAC membership model. And what you see there is that the idea is to have a legal vehicle that can be used for the community to exercise the powers that you find in the lower left section of the slide. And these were all the ones that I have reported to you just a second ago.

And what we're currently envisaging is that the SOs and ACs would form so-called unincorporated associations. Those are very light wide organizations that can easily be established. Those don't have any assets, those would not change the way SOs and ACs are currently operating, nor would those SOs and ACs be transformed into unincorporated associations but they would have these as a tool to exercise the community powers.

And our current thinking is that we would have the community or that we would have voting powers with the community. We're considering to give the SOs and ACs -- apart from RSAC and SSAC -- five votes each. You find that represented in the circle in the right lower section there's a visualization of that. So you would have five votes for all groups except for the RSAC and the SSAC, which we would attribute two votes each to.

So basically that would be the legal construction. The reason why this SO/AC membership model seems to have received most traction in our group -- although the discussions are not yet over -- seems to be that, you know -- number one -- it enables us to operationalize all the requirements that we have

established and also it allows for us to easily have these community powers in an enforceable fashion.

We can also have an alternative model which could help the - make this - these community powers possible, but, you know, there's some differences in how easy things can be enforced and stuff like that. So I recommend if you're interested in further detail, please go to the - through the report.

If you then scroll down further you find one community power per page where it shows the process of how the community powers are operationalized. So we're talking about the question, who can start the process of -- let's say -- asking for an individual board member to be recalled? What happens next? Is there a binding vote versus a non-binding vote? What voting threshold would you need in order to exercise -- let's say -- a vote of non-confidence with the board? So on the subsequent slides that I'm not going to go through one by one you find easily accessible overviews of the escalation paths for each of those.

I would like to draw your attention to slide number nine -- page number nine - - because that's a new chapter. You know, the initial slides are on the community powers. The slide number nine and subsequent slides relate to the independent review process. And I think what's important to understand is that, you know, ICANN had and has an independent review process, but we felt -- and the community echoed this -- that there are some bad things in the IRP as it's currently set up. And we tried to overcome those weaknesses of the current process by adding new features to it.

And those you find on this exact slide. You know, we're - we want these decisions to be binding. You know, so far they haven't been binding. We want the new or the enhanced IRP to allow for a view of the merits of the case. So

far the IRP only looked at where the process had been duly followed. And therefore even decisions that were materially wrong in the substance could not be challenged by means of this tool.

We want to make it more accessible, we want to make it affordable so that cost should not be a major hurdle for people to deploy this tool - this legal tool. And we want to institutionalize a standing panel of truly independent experts out of which the decision makers for individual cases are chosen. There are different ways to do that. You find a little bit more details on the visualizations and you find all the glorious detail on that in our report.

I think I should leave it here to - with a description of what we're doing the same is therefore reconsideration process. So please go through these visualizations at least. You better go to the report; it also has specific questions that facilitate you - facilitate providing feedback. And, you know, I would leave that to you. But I think it's a very interesting read.

Now, the dependencies with the work that you're doing; we have addressed those and I would like staff to bring up our report. And please move to page 12, I think it is. What we've done - we have added numbers of paragraphs to this report. So this is in paragraph number 42. This shall help the community and the reader to easier - to make it easier to comment by just making specific reference to paragraph numbers. So in paragraph number 42 you find the request that you have conveyed to us in written correspondence as well as during the interactions that we had with our fellow co-chairs ([LisaLise](#)) and Jonathan.

So in this - on this page of the report and the subsequent page we address the requirements that you have established for us and we have indicated where in the report you find the response to those. So instead of going through them



one by one now -- which might be - might take too long -- I would encourage you to go through that one page and you will find that we've taken into account all your concerns to the extent that we could.

You know -- for example -- when it comes to peer mechanisms, we are cognizant of the fact that you have deferred this to the CCTLD community to develop policy on. But to the extent that we could, we've taken this into - we've taken your requests -- your requirements -- into account. For example, by ensuring that the periodic reviews that you are requesting are not only included in the updated ICANN bylaws but also that these are made fundamental bylaws so that they are sort of perpetuated in ICANN's legal framework.

Finally, I'd like to briefly speak to the timeline. We have just begun a 30 day public comment period -- as I mentioned at the outset of my brief intervention -- and we're planning to have another public comment period that you're going to see in the Adobe right now - actually, on my screen it's already coming up. And the idea is that we would give the opportunity to the community to comment again on the aspects that are new to - in addition to what we have put into this report and also we're going to hear feedback on greater level of detail that we produce as we move along.

So I think that the feedback during the initial public comment period -- which is currently open -- is of paramount importance for our work. We really want to get your feedback to see whether we're moving in the right direction. Whether what we have suggested is sufficient for the community to truly lean on and be confident that we can move into a post U.S. government phase with ICANN and IANA.

What we have put in our report are the work stream one requirements. So in our view, we have considered everything that we need to have a good feeling to give the - get the community sufficient control to shape and control the organization to their needs so that we will be good to go in the absence of the historic relationship with the U.S. government. So if you - it would be very unfortunate if we got negative feedback during the public comment phase. So it's important that you provide us with substantive feedback now and we will then refine and use the second public comment for sort of finishing touches that we apply to our recommendations and also for the final determinations that we make where options are included in our report.

What we're also going to do is we're going to have another intense work day in the - during -- before the, I should say -- before the Buenos Aires meeting and we're going to have extensive consultation with the community in Buenos Aires. So hopefully after Buenos Aires we will have a very - a much clearer view on where we stand. And this is also the reason why we have timed our public comment period to close early enough before the Buenos Aires meeting so that we can properly analyze public comment and take it into account for our face to face or remote interactions with the community in Buenos Aires.

The overall timeframe is still crafted in a fashion to make it possible for the ICANN board to adopt the recommendations during its meeting in Dublin later this year. I think I should pause here. Jonathan, I hope that I have addressed the points that were of importance to you and I gladly ask any questions that you or the group might have.

Jonathan Robinson: Thomas, thank you very much. From my perspective you've hit the nail on the head. That's very helpful. It strikes me that there's some key themes in here. It's our dependence on your work in general, our ability to rely on that in doing our work, and the timing. You've - clearly if one of the things that - why

I feel it's so critical for this group to know and understand your work and the timing of your work is not only because it's broadly important to the community but clearly it's also specifically important to this group.

But third, it's critical to our chartering organizations to know and understand. And they may well get to know and understand the inter-relationship better through the representatives on this group - their representatives on this group. So they can know and understand how we are able to conclude our work and with the relevant dependencies on your work.

So that was very helpful. And I see we have at least one question coming up, so let's turn it with the group and see if we can't figure out any more details that we might need to know. Go ahead, ~~(Chuck)~~Chuck.

~~(Chuck)~~Chuck Gomes: Thanks Jonathan and thanks Thomas and my apologies for not being able to spell my name at 4:00 in the morning. So the - Thomas, first of all let me compliment the CCWG. I've only just spent a few hours wading through the report and it's - I'm very impressed with the work that's done so far. And think you're going in a great direction. Also, thanks for the concise and very helpful overview that you just gave.

My question relates to the timeline. I notice in October there the - submit the final report to the charting organizations and then the ICANN board - there's a line showing the ICANN board. Is it anticipated that the report will be given to the ICANN board and they won't spend any time deliberating on it? I'm not seeing any time for board deliberation. What's your anticipation in that regard?

Thomas Rickert: ~~(Chuck)~~Chuck, since I'm not on the board, I can only rely on information that is publically available or that has been conveyed to us. It is my understanding

that the board chose to take an active role in following the progress of our work and by doing so and by voicing concerns -- if any -- during the process of our deliberations we might face a situation where it is easy or easier for the board to make a decision and adopt our recommendations at reasonably short notice.

So this process -- at least that's my understanding -- was designed to prevent the community from experiencing any delays or bad surprises when the board takes a look at the recommendations. So it is my expectation and -- not to say hope -- because I think there's good reason to believe that the board and individual board members where they see difficulties with our recommendations they would voice their concerns during this process so that, you know, the board can swiftly adopt the recommendations once they've matured to a level where we have consensus or support by the chartering organizations as well as the wider community.

I hope that answers the question. I think it's not - it might not be specific to - enough for you, but I guess that I can't give you a better answer at this stage.

~~(Chuck):~~Chuck Gomes: It does, Thomas. Thank you.

Jonathan Robinson: It's a very good question, because it's - in essence what it anticipates -- as I read it and I think - I hope this is correct -- that there is effectively simultaneous or near simultaneous approval by the chartering organizations and submission to the board for approval. And as you say, Thomas, given the background and the prior history that that approval could take place at the same time. So that's a very - it's insightful and it's good to be aware of that.

Thomas Rickert: And Jonathan, if I may...

Jonathan Robinson: (Unintelligible) Thomas.

Thomas Rickert: Yes, let me express my thanks and I will certainly also convey the nice words said by ~~(Chuck)~~Chuck earlier. Thanks to board members as well as GAC members. You know, we are sort of used to getting community feedback from the - from what's been ICANN's core community. But I think it's been a quite new experience to have multiple GAC members following all the calls, being present during face to face meetings, taking an active role in looking at what we're doing, providing advice. Same for board members. (Bruce Thompkin) -- who's our board liaison -- is doing a tremendous job in responding to questions from the community and actively contributing, as well as some of his board colleagues.

And that is what makes me confident that, you know, through this -- in my view -- unprecedented contributions from these groups - two groups in particular during our day to day work as a cross community working group, I think, you know, this is a tremendous community effort and this makes me confident that we're not envisaging any surprises later in the day.

Jonathan Robinson: And so when we think as a group -- as a CWG -- about our conditionality and our requirements, we can anticipate therefore in setting those requirements -- and I guess this is part statement, part question -- I welcome any comments on it.

But to the extent that we are able to as we currently plan complete our work, submit it to chartering organizations in final form ahead of Buenos Aires, we can set out the conditions which we would expect to be meant by the ccWG in their final proposal in order for our proposal to retain its validity if you like, and in so doing, keep the overall process on track, because in the interim it would permit the ICG to start to pull together the three different communities'

proposals and prepare a coherent overall proposal for the NTIA then to consider for implementation.

And you can see how these could all still work in parallel because one of the community concerns that we have to recognize is that this lack of synchronicity between the timing or exact synchronicity, but there's very good coordination; the synchronicity of timing isn't identical. And that certainly seems to be the cause of some concern in the community.

But it seems to me that this still can work together. So I'd welcome any comments or thoughts on that.

Thomas?

Thomas Rickert: Yes, thank you Jonathan. I would like to add one remark to my earlier interventions. And that is even though our recommendations are still in draft form, I have not seen anyone challenging the request that you made, right. So where our group is still trying to define a consensus position that relates to other aspects, but I think that the requirements that you have set out are very clear and I have seen nobody in the group contesting those.

But I would really encourage ccWG members that are also on this group -- and I see a couple of familiar names in the Adobe -- to chime in if they think that this observation does not accurately reflect the status of our deliberations.

So it is my view that you can very well lean on us taking good care of the requirements that you have established.

Jonathan Robinson: Thomas, that's helpful. And I'll also note that - and you know, we'd obviously had a couple of Board Members either both following our work in the CWG and/or contributing at various times and to various depth.

And there is a recent suggestion from Chris Disspain that Lise and I myself present to the ICANN Board our proposal. And I think that probably makes sense in the context of all of this as well to make sure that all of the loops are fully closed. So while Board Members and Staff, I suspect on their behalf, have been tracking this work very, very closely, there is no harm in us having the direct dialogue to again include - make sure that the dots are fully joined up.

Any other comments or questions on this subject matter before we draw Item 2 on our agenda to a close? If you disagree with any of the assertions or are uncomfortable with any of it, please let us know either now or on list, but it does seem like we're in relatively good shape.

And it's very, very helpful to hear from you Thomas directly, and you presented that in a succinct way when there's a great deal of work that you had to cover, so that's helpful.

Okay, seeing no hand for comments say from Shawn relating to the Board Meeting of the CWG, and we'll have a look at that Shawn to make sure that that's understood.

But aside from that, let me thank Thomas again and start to move us on again to Agenda Item #3. That's not strictly correct; apologies. It's Item 2B.

But as far as I can see - and I'll just see Kenny, you had a comment to the contrary. Looking at the Sidley Punch List which I'll just draw to your

attention has been updated and we have an updated version of that where elements of it are renumbered as well as Grace has kindly updated the agenda that the (unintelligible) to cover that renumbering, so what was 36 to 42 is now Items 34 to 40 as we start to deal with items.

But essentially on ccWG dependencies, the note - the current status is continue to monitor. So I think you've got independent scrolling in this document. If you want to see what I'm talking about, it's clearly Page 5, Items 34 - 5 and 6 Items, 34 to 40. And here we propose to continue to monitor. So absent any comments to the contrary, I think that's the point.

There was a bit that I guess we haven't - yes Chuck, that's an interesting point. I wonder if it's not a good idea to fix the numbers. That strikes me because it may be more logical to do that rather than - thank you Sharon for your comment. I think that's a good idea even if we strike them off.

So from now on, let's fix the numbers. If we had new items, we create new numbers. If we delete them, they simply are removed. I think that's probably will enable us to have a less confusing tracking of it.

So anyway, on this current version, it is 34 to 40 and we promise to continue to monitor.

One thing that Sharon, you may be quick to remark and I don't want to put you on the spot here, but having just heard from the ccWG, and I'm talking here about our relationship with the ccWG, are there any current thoughts or is it something we need to work on?

So it doesn't appear absolutely encapsulated in the punch list in terms of our ability to create this dependency especially now that we have this visibility of



the proposed timeline; public comment now, public comment prior Dublin, proposed Board approval in Dublin.

How do we secure that conditionality? I don't know if you've got any thoughts on that or if your hand was up for a different reason. But in either case, go ahead.

Sharon Flanagan: Thanks Jonathan. Can you hear me okay? Hello?

Jonathan Robinson: We hear you great; thanks Sharon.

Sharon Flanagan: Okay, great. Yes, you know, all along the way we've been making sure we link the work of the ccWG with the CWG, and that's why we've got the note just continue to monitor. I think we should keep doing that.

As we sit right now, all of the dependencies that are outlined in the punch list are contemplated by the ccWG proposal with one exception and it may not even really - it's really not an exception I don't think. And that is the separation process.

That I think is one that CWG needs to do more work on. And in the end, if that process is really part of the IFR, then is the contemplated because IFR is contemplated. So that's one thing I think I wanted to just comment.

If you're looking at the ccWG report, you won't literally see separation process appearing in that report. But as we do the work and determine what that is, it may actually be subsumed within the IFR. So that was the one comment I wanted to make Jonathan.

Jonathan Robinson: Thanks Sharon; that's helpful. And you're right; I mean that is work in progress. But to the extent that it either is fleshed out and independently of work and/or subsumed within the IFR, we need to continue to track that and make sure that's the case.

I guess the second issue, and I'm going to raise it as a kind of elephant in the room if you like, is what if the Board, in Dublin, rejects critical elements of the Accountability on which this group depends?

We've gone out, we've made our proposal, we've submitted it by the ICG and it's going through the works of being integrated with the other groups. It's actually even gone through to the NTIA by then for implementation planning, and yet this is the sort of risk if you like; the contractual or process risk.

So I think that's what we seek to mitigate against. Indeed that it's inappropriate to or, you know, unable to go into detail.

But I think one should mention that and be ever cognoscente of that; that's the concern. Because it's all well this group getting its work done in time but I think the pushback or concern we'll have is, well, can you rely on the outcomes of the ccWG. Not only meeting your requirements, which I think we're increasingly of the case from Thomas's input and Sharon's, but then can you rely on them actually being implemented.

And so those are the two key points that we'll need to, as part of our monitoring, keep a track on. If anyone wants to make comments on that, by all means do so.

Donna, go ahead.

Donna Austin: Thanks Jonathan.

I just have a question with the ccWG work. Does NTIA need to sign off on that in any way as well or is it just a Board signoff?

Jonathan Robinson: I can give you my understanding. And my understanding is that it is just the Board. But this is precisely the reason for linking in a sense in quotes contractually our work with that. Because while NTIA needs to sign off on our work, we need to make NTIA aware that we are dependent on that group accountability criteria being met.

So the short answer is it's just the Board, and the longer answer the explanation as I've given you.

Avri?

Avri Doria: Yes hi, this is Avri.

One point I wanted to bring up that started to come out in some of the conversations that we've been having around the CWG draft, and when one explains it (unintelligible) work one makes reference to the ccWG work. And beyond work, the approved, there seems to be there's this question which of course is relatively hard to answer, which is, but will it work and even if approved.

And there's a sort of subsidiary question that comes out in that. Or is there a possibility that even if approved, even in implementation, it will be implemented in a way that waters it down (unintelligible). We can certainly make a story now that we have reconsideration requests now. And we have IRPs now and look at how they've been watered down.

So I think we're making the story. That's another piece that people have been asking about. And I just wanted to put that on the table. Thanks.

Jonathan Robinson: Understood Avri. I'm not sure, but personally I have specific answers to that other than the specificity of how these items are captured and how these mechanisms are defined at the outset. And I guess that's what having legal help is about, to some extent, is creating, as water tight as possible, specifications for what is required.

For example, one might draft the exact wording for the bylaw in the recommendation rather than saying, "A bylaw to cover independent review." It might be much more specific about that and actually deal with that. That's just an offer top-of-my-head thought, but in general, the point is taken.

So I suppose there's one other remark I'd make and that is that as far as I understand it, the NTIA is expecting to view this holistically; this work, the CWG and ccWG work. So while technically - and this goes back to the Board signoff question.

While as technically it is a Board signoff, both independent of our linkage and as a consequence of our linkage, I'd very much expect that the NTIA would like to look at this holistically in signing off the transition proposal together with the enhanced Accountability mechanisms.

Fair enough. When does the Board review for signoff and when does NTIA review for signoff? Well as I understand it, the current (unintelligible) of the ccWG is clear; the proposal goes to the chartering organizations and the Board in the Dublin meeting in October for their Accountability work.

For our work, the CWG work, the Board receives the collated proposal from the ICG, and in a sense simply transmits that rather than signs off on that to the NTIA. So there's a different function in those two cases.

And then there's some thoughts and comments on implementation oversight. And I suppose, again, that's two (unintelligible); it's the accuracy and the effectiveness of the specification, and then the insurance that the specification is met. And clearly a weak specification with weak oversight is likely to produce a weak result; a strong specification with strong oversight. So that is a point that we might want to put into the public comment.

Sharon?

Sharon Flanagan: Thanks Jonathan. Well as lawyers, we always prefer as much specificity as possible. And I think if you think of it in a private context, it's like thinking about do you go on a term sheet or do you go to definitive agreements? And that's always a question of timing.

So the reason I ask about when these items are going for final signoff is partially a question of will there be time to completely draft all bylaws, you know, all contracts, everything that you could possibly envision, because in a perfect world I feel specificity is always better and it avoids any misunderstandings. So the further we can get beyond term sheet status the better; it's just a question of time and what can be accomplished.

Jonathan Robinson: Well thank you Sharon. I think you've highlighted a piece of work then that I'd like to capture as an action for the Client Committee and into facing with Sidley.

It seems to me that what this effectively says is we need to have a project plan with you that understands -- and that includes the work of, you know, the interfaces with the ccWG and what realistically might be done when so that we can start to look at this holistically rather than working with you on one track.

And I know we've got continuous monitoring, but it strikes me that then an additional item here is to integrate you with our overall project planning and make sure these align and we know what can reasonably and realistically be delivered when.

So Grace, I'm not sure - or Marika it looks like, is captured - where that action is captured. But I think that would be very useful to capture that, you know, integrate Sidley's delivery of work into our project plan with again a little more detail.

All right, that turns out to have been a very useful discussion and focus on the integration work. But I'm going to - (unintelligible) just end then, and thank Thomas again for that part of dealing with that part in the agenda, and consider now moving onto review of other items on the punch list.

So just as a sort of remark before we take a deep dive into this Item 3, this includes some critical areas. Things like the incorporation - the type of incorporated entity potentially touching on and dealing with the PTI Board, which you might argue is directly interrelated. In other words, you might - I mean I have been pushing a little bit the line that the composition of the Board or the role of the Board must be determined by the function of the Board, so form follows function.

But of course there is an element there where there's also a connection with the nature of the entity whether it's a California not-for-profit or an LLC private entity. So that's one point to bear in mind as we discuss this.

Second, I think it feels to me like it's time we as a CWG started to discuss these items and made some real progress on them. That said, it feels inappropriate for more than one reason to try and force a conclusion on any of these.

I'd like to have an open discussion; air some thoughts. Ideally those are well-informed thoughts. And you should have as a basis now, or if you haven't had a chance to read it in the very near future, a good basis to be well-informed.

I'll just remind you. We have a memorandum from Sidley dated April 28 which is PTI Board duties and subsidiary costs.

The question there was in and around costs. But in actually fact, the base costs are very - are more administrative than practical rather than substantial or material.

It did remind me, Marika, who's capturing actions here, I think we have an outstanding action and I don't know if this has been fulfilled. So I'm going to remind us of this action, and if it's been fulfilled we can rapidly check it off.

But it is go back to ICANN Finance and ask - and maybe we put this as part of our public comments and one can remind me to ask for the cost implications of the model as currently envisioned at least so far as they can address that.

So touching on what's there is the PTI, what information you have. There's the PTI Board duties and subsidiary costs. Sidley's draft of the 3rd of May on

the Summary of Legal Structure, which has a lot of detail and is insightful and helps in terms of thinking about and touches on concepts such as various elements associated with the different types of corporate entities.

So again, strongly encourage you to be aware of these documents and ideally to have read them and consider them in some detail.

So let's look at these items on the punch list. Let's try and talk through them in either an informed way as possible, and let's not force a conclusion on them. But let's see if a conclusion naturally emerges fine, but I don't want to drive us to a conclusion prematurely.

So the items to consider in the first instance under Item 3 is 17 to 19 on the Contract and Statement of Work. I'm just rechecking the current list on 17 to 19. This is the Contract and Statement of Work. Now here we don't have the status other than referring items 17 to 19 to a CWG.

I must say when I made a first pass on this with Lise, I think we - this seemed to be something where we needed perhaps legal input on. I mean determinative to what extent the contract will be an enforceability mechanism versus CSC, IFR and other Accountability mechanisms determine which rights under the existing NTIA contract will be implemented in the ICANN governance documents determine who will have a right to trigger remedies for breaches. I mean this is quite complicated and detailed work.

I just wonder if anyone has got any ideas or thoughts as to how we deal with this even when it's in full session like this. It feels challenging.



I don't want to put it necessarily out to the client committee. If anyone has got any ideas or suggestions as to how we deal with this, I'm open to discussion on that.

Thanks Sharon. Go ahead.

Sharon Flanagan: One way we might deal with this is to - and this goes back to implementation frankly - would be to try to prepare a term sheet of sorts at a high level of the contracts between ICANN and PTI. Now maybe that would be getting ahead of ourselves in the comment period and the structure is being reviewed and, you know, but anyway.

One next step would be to create a term sheet of what that contract would like, not obviously into the SOWs; the SOW itself is a separate work stream all together. So maybe put that to the side, and Jonathan you can advise on that.

But on some of these other pieces which is how will the contract actually articulate enforcement. Will it refer specifically to the CSC and the IFR? Will it rely on an IRP process? Will it have some other arbitration process? And we Sidley could put together that kind of a term sheet, and then that's something that the group could consider in more detail.

Jonathan Robinson: Well thanks Sharon. That's an interesting suggestion for two reasons. One, because that's normal business practice in my experience that when a contract is to be drawn up, the first step is to set out the principles or the high level points on that in the term sheet.

And second, because in my opinion, notwithstanding the fact that the document is out for public comment, it's unambiguous on its proposal that there is a separate legal entity which will contract with ICANN. Therefore it's

not - well anything can be commented on in the public comment. It's not - that's sort of a fundamental premise of the proposal at this stage.

Are there any other reactions or thoughts to Sharon's suggestion as to whether we try and pull together a term sheet with some realistic progress with that?

Donna?

Donna Austin: Thanks Jonathan. So I don't have any objections to the term sheet, but I guess (unintelligible), you know, what (unintelligible) of ICANN (unintelligible) given that it's ICANN that will hold the contract and negotiations should be, you know, between two parties. But we're kind of imposing on ICANN what we think should be in the contract.

And I'm just wondering to what extent, you know, ICANN Legal will agree with you. So one of the quotes is I actually want to see in the contract as well.

So I guess I just had that thought in the back of my mind is that how does this work practically given that it will be ICANN that is the entity that holds the contract. And I'm pretty certain that ICANN Legal would have some manage as well. Thanks.

Jonathan Robinson: Well that's another interesting and I guess insightful and challenging question. I see Sharon's hand went up so let me let Sharon respond and then we'll take it from there.

Sharon Flanagan: I would view this more as your, the CWG's articulation, of your proposal on what the contract would look like. It will be similar to, ultimately, when the fundamental bylaws are being drafted.

Yes, sat (sic) in an ICANN document. That's a document they will need to live under. But at the same time, the work of these groups, the ccWG and CWG, to some extent will be articulating the requirements.

So I think it's appropriate - and maybe it's not appropriate to get into the level of a true term sheet of every provision we'd envision, but focus on the things that address these Accountability-type issues as it relates to the contract and put forward your proposal. These are the things you want or expect to see in the contract. And ultimately, ICANN will need to accept those terms.

But I do think it's appropriate to articulate the requirements from this group.

Jonathan Robinson: Any other comments or (unintelligible)?

So absent any objections, I would like to capture this as an action which is that the Client Committee will instruct Sidley to develop a first draft of a term sheet to cover the Statement of Work and possibly even go so far as to at least contemplate the SLEs.

I know we're at a slightly different position with the SLEs, but notwithstanding the fact that they are under some discussion and negotiation for the detail, but nevertheless the ultimate contract will make reference to those. So I think we can cover items - it feels to me like we can cover Items 17 to 20 in this work.

Thanks Sharon for that input. It's both valuable in and of itself, and a justification for you having got up this early in the morning. Right. So I think we'll draw a line under that Item A, and move then on to Item B which is the PTI incorporation type.

Now I don't know how many of you will feel qualified to comment on this. Like I said, there is good information on this in both the Sidley draft memo of May the 3rd and the memo of April 28th on PIT board duties and subsidiary. By all means Sharon, come in with any remarks if you would like to. Anyone else in the group, please do go ahead and then respond with any thoughts or comments.

Like I say, I don't necessarily want to force this to a conclusion, but I think it would be useful to start to have the discussion in the CWG as to what the issues are since we haven't properly dealt with this at all - Sharon.

Sharon ~~Lemon~~Flanagan: The difference between or on the decision between the nonprofit corporation and the limited liability company - the first item on the punch list. I wanted to remind the group that during the intensive sessions in mid-April, we circulated a two page chart that walked through the different approaches on those. And it probably would be helpful for us to recirculate that, and we can do that.

But it looks at - there are advantages and disadvantages to those two structures. This isn't I don't think as big a decision as the role of the board decision. That's a more complex decision, but it is still a decision. And I will recirculate that document so that you can review that and consider that as well as you make a decision.

~~Jonathan~~Jonathan Robinson: So Sharon, thanks for reminding me. I'm not sure I even recall that document, and I've tried to be relatively diligent on this. It looks to me like we may need to have a more detailed discussion. I'm not sure how significant a decision this is either. Does anyone want to offer any initial comments or thoughts on this at this stage? Or do you feel you would rather be better equipped once you've read through things?

I'm sensing that this needs homework, and I'll encourage you all to do it on both of these. But nevertheless I felt it was important enough to sort of sweep these Items 1 and 45 which is the PTI board under the carpet, and that we would take an opportunity to at least open the conversation and make sure we had that in a well-informed way. Sharon?

Sharon ~~Lemon~~Flanagan: One other item that might help the group make the decision on the PTI board is to - we talked about stress tests or scenario planning. And we've been doing a little bit of that thinking on our side just to think about what we think makes the most sense. And that's another thing we could put down in words for the group to think about.

Its things like what about, you know, hiring and firing, you know, key personnel? What about issues on the budget? What if there's a breach of the contract and now a decision needs to be made to enforce that contract - meaning let's say ICANN is in breach and PTI has to make decision.

I think that seeing those scenarios on paper might help as well - help the group. It's certainly helping us think about it. And it will I think drive this form followed function point you made Jonathan at the outset of this part of the discussion. So that's another thing that we could send around to the group for review. We haven't drafted it yet, but that's something we could prepare and circulate.

~~Jonathan:~~Jonathan Robinson: Sharon, that sounds sensible. That sounds like a very sensible way to sort of test things. I'm going to push that even perhaps a step forward further. So let's agree on that - that unless there are objections, the client committee will instruct the lead to share with us their stress tests for the PTI board - PTI entity and board as it may become constituted.

My thinking on this has started - sort of - I've heard some - I mean one of the points on the LLC for example was that it created flexibility. My concern with flexibility was that flexibility means choices. It means a whole lot of additional choices and issues. So I will share with you my personal thinking when I read through these documents, and that's that flexibility meant many different options and choices, and potentially created more work without additional benefits.

So on that basis - and that's only one analysis - I started to think that it may - that the less flexible option - the option that was more constrained was - had some attractions for a group like ours. And that was the California not for profit. As you know, I've also asked repeatedly that to the extent that the board was other than some form of minimum, we needed to understand why that's the case.

So one thought I've sent to you as a technique is to start off with one structure, and the structure that I'm suggesting is a California not for profit with a minimum board. Subject that to the stress tests. And to the extent that it fails the stress test, try and mitigate those and/or consider alternative structures to the board or the corporation.

But it feels to me it's easier to start off with a single model that you test than multiple models that you have multiple tests for. You may feel that you're being pushed into a position that - too far on that. But that's my suggestion that that may be a constructive way forward. So I'll put that to the group as well. Sharon.

Sharon ~~Lemon~~Flanagan: Thanks Jonathan. But we can certainly do that. As we've been looking at the stress test though, they don't really weigh in on what type of entity we create. It's - they're really more just about the role.

Now to one - you're correct that the LLC allows for much greater flexibility. So if for example the group said we don't want the PTI board to do anything, well then that would be an LLC because you can do that. California will have minimum requirements if it's a nonprofit corporation.

But short of that, most of these stress tests aren't really - don't really weigh into that decision. The decision between the entities is about slightly different stress tests that are not so much about governance stress tests as they are other legal considerations. And so for example if we use an LLC, we don't - ICANN doesn't need to go out and get a new tax exemption for this new entity. It will - I'm sorry, let me restate that. Actually now I'm not sure which way I said it.

If we do an LLC we don't need to get a new tax exemption requirement. If we do a nonprofit, we do. And there is risk around getting a tax exemption. If people would expect that there would be no issue, but you never know. So that's an example where from a tax standpoint an LLC is preferable.

On the other hand from a bankruptcy standpoint the nonprofit might be slightly preferable because there are some exemptions under at least US bankruptcy law that are more protective. So they're a little bit different stress tests when you look at entities than when you look at what's the role of the PTI board.

What I would suggest is maybe first people look at that chart we will recirculate. And then on the other piece - the stress test on the role of the board, I think that needs to be a little bit of a separate project, at least for now.

~~Jonathan:~~ Jonathan Robinson: Okay. Well it does sound like - would be we need to do our homework. We may need your help with focusing that homework as our sort of guide. And let's do that and see what progress the group can make. These are relatively sophisticated points for which - it's a helpful reminder of that tax and bankruptcy point, both of which I'm cognizant you have mentioned before previously.

But it feels to me like we've got to pull this together in some form of structured analysis now in order to get to a conclusion. This can't be just sort of shoot from the hip opinion stuff on the part of the group. We've really got to listen carefully to the professional advice, and try and just do a formal structured analysis and come out with a logical conclusion that stands up to the test.

So let's recirculate. Let's inform the group as much as possible. And those that do have the time and interest to become informed can work as part of the group as a whole to try and help us come to a logical conclusion.

All right. The next item - and it's interesting, we sort of effectively dealt with - just to be clear here - we've effectively dealt with B and D I think - Item 1 and 45. Item 1 incorporation type - Item 45 PTI board. Let's touch on Items 2 and 3 then which is the transfer of the naming functions.

And I wonder how closely related this is to that - the area on the head the terms. I mean again when taking a first pass at this list with LisaLise, this seemed to be very much in the realm of legal rather than the group. This is



Item 2 - determine the assets that will need to be transferred to PTI, and Item 3 - determine whether consents will be required to transfer assigned assets to PTI.

I guess there's a new note in Item 2 that the IETF consent is required for assignment of IETF MOU, should that, you know, should that be something that's going to take place. So this strikes me as something which - I'm not quite sure how much the group can make progress in open session like this.

Again it feels to me like there's some prepared work that needs to be done in terms of trying to list out those assets. And we need to - feels to me like we need to assign this work. And possibly this is really part of our - at least in small part our discussions with the other groups submitting plans.

So Sharon, you suggest that ICANN is in a good position to help us with this. Maybe that's a first step - is to - for the group to note that these are areas which we feel will need work, and to communicate with ICANN - take an action to communicate with ICANN on this and ask for their assistance on - from ICANN - stroke ICANN legal. Alan Greenberg, go ahead.

Alan Greenberg: Thank you - just a question of clarity. When it says ITF consent is required for assignment, is it also required for - I don't need the answer at this moment. Is it also required for subcontracting of the work to PTI? In other words, ICANN still holds the - is assigning of the memo of understanding, but it subcontracts the actual work. So is that equivalent to assignment in this case or different? Thank you.

~~Jonathan~~Jonathan Robinson: And Sharon comments in the Chat that they will check and don't know offhand. And my only supplement to that would be it also depends on what the mechanics of change, you know, where in the Sidley memo it

contemplates that - I need to refer to that. It makes reference to the fact that there are various ways in which the other groups might need to modify substantially or less so their arrangements with ICANN based on this structure.

And this is where we've been so cautious about not presuming. But as the other groups become perhaps more confident with what is being proposed here, and that it isn't necessarily presumptuous but has a logic to it from the naming community point of view, it may be that they see a natural way to work and respond.

But I see a couple of comments in the Chat that in essence, let's check that. It's a good point Alan, and you did acknowledge that you didn't need the answer right away. So that's something to check. So it's - I wonder if this can be captured in any form of simple action. But one of the things I'm conscious of is that quite like the status of this punch list to reflect these things. But I suspect is will - I mean submit taking it on themselves to update on the back of these different groups - so different pieces of discussion.

So, all right. Under Item 3E we had this - I think I'm skipping over D because we discussed that previously under Item B - just for the record. Under Item E we have an opportunity for any updates from the drafting teams. Is there anyone from any of the drafting teams that would like to make any points or provide an updates?

I know there's a couple of calls planned. And I don't expect to systematically work through them. But is there a point or a question that anyone from that sort of reactivated drafting - design team - would anyone like to make a comment or provide any input?

Seeing none for the moment, we'll move us on then to Item 4 which is just a brief update on the plan for Sections 4, 5 and 6 of the document, just to make sure that everyone is clear on what's going on there and give the opportunity for any questions or points at this stage. ~~(Grace)~~Grace, I think I'm expecting that update to come from you.

~~(Grace)~~Grace Abuhamad: Thanks Jonathan.

~~Jonathan:~~Jonathan Robinson: ~~(Grace)~~Grace, go ahead and then Olivier, I notice you have - Olivier, is your question ahead of this Item 4? Just to check before ~~(Grace)~~Grace goes on, is your item related to Item 3 or is it on 4?

Olivier Crepin-LeBlond: Thanks very much Jonathan - Olivier speaking. That was actually related to Item 3, and then belated action 3. Sorry.

~~Jonathan:~~Jonathan Robinson: Go ahead Olivier.

Olivier Crepin-LeBlond: Okay, thanks. No, it was just to ask - I know that the escalation is going to be looked at again - escalation mechanisms by DTM. And I was hoping to ask whether it would be possible to have some kind of a diagram to show the escalation process because I certainly have had some difficulty in understanding some of the extensive ramification of the escalation process. And it would probably help to have a diagram on that for the proposal. Thank you.

~~Jonathan:~~Jonathan Robinson: Thanks Olivier - so request to DTM to articulate their work with a diagram if possible. Go ahead ~~(Grace)~~Grace.

~~(Grace):~~Grace Abuhamad: Thank you Jonathan. So on Tuesday we had discussed work plans for Sections 4, 5 and 6. And so today I'm just going to go over sort of the discussion from Tuesday - do sort of like a second reading for the group.

So Sections 4, 5 and 6 of the proposal - we've suggested that staff do the drafting, at least an initial draft for the group. And that the group then - we would take these drafts back to the group, and the group could critique the drafts, edit, you know, put in changes, input, etc.

And it's in part to help with the timeline of the work ahead moving forward. And the other part of it is that all three of those sections are essentially in some cases information that we already have or where work has already been done. And it's just a question of compiling and writing up text for the proposal.

So I'll go over those sections briefly. Section 4 is transition implications. And that's very dependent on Section 3. And now that we have fleshed out Section 3, it will be a little bit easier to develop the implications section in Section 4. And we also have work that was done in the fall from the RFP four group. And we also have some work from SAC 69 that we can look at, and the stress test and the CCWG accountability. So it's a question of compiling all that information, and then putting it into a draft form for the group to review and see where there are gaps, etc.

Section 5 is the NTIA requirements section. And essentially that section, if you look at the other two proposals that have submitted to the ICG, really what they're looking for in Section 5 is sort of verification that the group has met all five requirements from NTIA with the proposal. So that's something that we think staff could also help with because we can list all five requirements, and then sort of pull the information from the proposal where

relevant to complete the requirements and to sort of make note that those requirements are completed.

Section 6 is the community process section, which we've done a very good job of documenting. And we have a very good - in our group - the CWG has had extremely good outreach efforts and good activity from that end. So we have a lot of that documented on the Wiki. And we have a lot of it documented with the mailing list. And I think it's just a question of - this is another one where staff can just compile all that information and provide it to the group.

So that's what we're thinking for Sections 4, 5, 6. We have a staff meeting later today to discuss how to divvy up the work and then sort of the timelines for delivery to the group. But we would expect to have something to you by next week for the meetings. Does that work Jonathan and CWG?

Jonathan:Jonathan Robinson: Thanks ~~(Grace)~~Grace. That works and it tells us what your plan is and what's happening. And that feels sensible. So thank you. And it's useful that everyone is informed on that. Are there any questions or comments or points for ~~(Grace)~~Grace? Okay, well it sounds like we'll work to that plan unless I hear otherwise or any other tweaks to that.

Our next item is the any other business item. I've got a couple of points here I'd like to raise, and feel free anyone else to do so. ~~(Grace)~~Grace, your hand is up - go ahead.

~~(Grace):~~Grace Abuhamad: It's in reference to a completed action from the last meeting, but I can wait until the end Jonathan.

~~Jonathan:~~Jonathan Robinson: Well that's a good point. I mean we should cover those and make sure that we - I mean one of the things that we probably haven't had the discipline to do is highlight the action items from the previous meeting. So I'll just remind you and me and us - any other staff at least working on these agenda - that we should do that. So please go ahead and just say it now.

~~(Grace):~~Grace Abuhamad: Thank Jonathan. So at the last meeting (Milton Neeler) had requested that we update the public comment page to show - to better show the proposal at the top of the page because it's a little difficult to navigate a lot of text on the page. So there's a format that ICANN has for public comment pages, and so we had to sort of work within that format.

But I've put in a gray box at the top of the page that shows where the proposal is, where you can click and download it right away, and then indicates that translations will be forthcoming and that you can find the rest of the documents in Section 3. So I've posted that link in the Chat.

I think that will help. The chairs - Jonathan has also raised sort of some concerns with some of the way that the public comments pages is formulated. And I think I can go back and edit that so it's a little bit easier to read, and the documents are quicker to find. So I'm going to work on that over the next week. But that's the update from that action item on Tuesday.

~~Jonathan:~~Jonathan Robinson: Thank you ~~(Grace):~~Grace. That's helpful. So one other point I suppose which is closely related to that is emerging out of the webinars, we've received a number of questions. We've given answers. And what we've started to work on with staff is to produce those into the form of an FAQ which LisaLise and I believe will be a useful aid to the public comment period.

I'm reviewing this Sidley memorandum. It also struck me that there is content in that Sidley memorandum that better or more substantially explains some of our thinking. For example some of the rationale behind the creation of a separate legal entity which is of course is an FAQ and a necessary condition for understanding the proposal.

So I'm going to suggest to you to go ahead quickly with something, and then work with the group to further develop that. And I think what we should do is find the best way possible to produce an FAQ and a link from the public comment jumping off point to that FAQ.

And in the first instance use some of the content from the Sidley memo to deal with key FAQs in and around for example the strengths of the proposed structure - of the separate legal entity. And then we build on that perhaps with reference to the CWG other FAQ responses that have come out through the webinar.

So I'd like your support as it were to go ahead and start to produce that right away. And I think it will be a useful aid to our work, and potentially - most importantly assist in us not get under informed responses to the public comment and/or in some way - I think that probably covers it - where we could help public commenters by providing greater clarity and rationale. So if anyone has any reservations, let me know. If not, I think we'll crack on with that and try and produce that in very short order, at least a first pass of that.

Second item under AOB is that we have of course received overnight at least indirectly this letter from the NTIA asking us to be - to give - to work with the ICG to clarify our intent on timing and what's going on there. So I don't know how many of you have had a chance to look at that letter, but clearly there's - I'll expect shortly that we'll be hearing from the ICG to work with us on

further developing and refining of timelines of our work. And so that can be used to inform the NTIA's thinking on the overall timing of the transition.

And then third, there's something that's bothering me in the back of my mind. And Chuck, go ahead. Let me pause for you to respond to that one. Go ahead.

Chuck Gomes: Thanks Jonathan. On the previous point, as you well know, we need to coordinate with the CCWG in terms of the response to NTIA as well because our proposal as NTIA has said themselves is dependent on the work stream one completion.

~~Jonathan:~~ Jonathan Robinson: Chuck, I'm sorry. The audio wasn't great for me there. I don't know whether my line broke up, but I'd love you to just repeat that if you could please.

Chuck Gomes: Sure Jonathan - Chuck again. As you well know, the - we need to coordinate with the CCWG in terms of a response to the NTIA's latest request on the timing because our proposal can't be completed until the CCWG work stream one work is done.

~~Jonathan:~~ Jonathan Robinson: Absolutely Chuck, and that relates strongly to the earlier part of our conversation where we talked about timelines - integrating Sidley's work with our project planning and so on. I agree with you. I think that's a key element of the coordination with the CCWG and understanding their likely response. That's a good point.

All right. I think that covers the agenda today. It feels to me like that we've taken 90 minutes instead of the full two hours. There's no harm in that. It feels like it's been a productive call. We've certainly covered the territory. I hope



it's been useful for everyone. It's quite clear what the actions are that come out of this.

So let's draw a line under things for the moment and continue with our various days and piece of work that we have to get on with. Yes, thank you all.

Group: Thanks. Bye.

~~Jonathan~~:Jonathan Robinson: All right, we can stop the recording at this point.

END